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A Review of Public Policies relating to the Use of Environmental Labelling and Information Schemes (ELIS)

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A REVIEW OF PUBLIC POLICIES RELATING TO THE USE OF ENVIRONMENTAL LABELLING AND INFORMATION SCHEMES (ELIS) - ENVIRONMENT WORKING PAPER No. 105

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Keywords: Ecolabels, Environmental claims, Environmental reporting, Information policy approaches, Product environmental footprints

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ABSTRACT

This report provides a brief review of how national government policies and guidelines apply to or regulate the use of environmental labelling and information schemes (ELIS) in selected OECD countries. The report reviews definitions relevant to environmental claims and identifies four types of potentially false or misleading environmental claims. The report also reviews countries' different approaches to guidance and regulations relating to such claims, as well as approaches to monitoring and enforcement of compliance with rules and guidance. Examples of court action relating to the use of consumer protection laws for environmental claims in several countries are described. Based on the reports available, it is not possible to assess to what extent the enforcement processes have been effective in improving the overall quality of environmental claims.

The report also notes the extensive similarities in how different national guidelines categorise misleading environmental claims, perhaps beacuase many of the guidelines are derived in part from the International Organization for Standardization's (ISO) 14020 series of internationally-agreed standards. Moreover the report acknowledges that several attempts have been made towards harmonisation across countries concerning environmental criteria, mainly concerning eco-labelling schemes and organic agriculture standards. There appear to be strong incentives for this type of cross-country certification, including reduced administrative costs and a potential for increased trade of environmentally-certified goods. This makes further harmonisation of criteria for self-reported environmental claims a real possibility. The ongoing pursuit of harmonisation regionally, or bilaterally, might be a first step forward in such a process.

Keywords: Ecolabels, Environmental claims, Environmental reporting, Information policy approaches, Product environmental footprints.

JEL classification: F18, Q56, Q58, L15

RÉSUMÉ

Le présent rapport décrit brièvement la façon dont les politiques publiques et les directives nationales encadrent et réglementent l'utilisation des dispositifs d'éco-étiquetage et d'information environnementale (DEIE) dans certains pays de l'OCDE. Le rapport s'intéresse pour commencer à la façon dont les directives et réglementations abordent la terminologie des allégations environnementales. Il distingue quatre grands types d'allégations environnementales potentiellement inexactes ou trompeuses, et examine les directives et réglementations mises en place par les différents pays dans ce contexte. Le rapport decrit aussi les mesures appliquées par les autorités dans différents pays pour contrôler la validité des allégations écologiques d'entitées privées. Des exemples d'actions en justice engagées dans plusieurs pays autour d'allégations environnementales sont décrits. Pourtant, les rapports dont on dispose ne permettent pas d'évaluer dans quelle mesure les procédures de vérification ont permis d'améliorer la qualité générale des allégations environnementales.

Le rapport note en outre que les directives nationales présentent de nombreuses similitudes. Ces similitudes tiennent sans doute au fait que les directives gouvernementales s'inspirent souvent de la série de normes ISO 14020 de l'Organisation Internationale de Normalisation. Le rapport évoque aussi plusieurs tentatives d'harmonisation des critères environnementaux entre pays. Il existe, semble-t-il, d'importantes incitations en faveur de ce type de certification internationale, notamment la possibilité de bénéficier de coûts administratifs réduits et de développer les échanges de produits certifiés. Il devient donc réellement possible d'harmoniser également les critères applicables aux autodéclarations environnementales. Les efforts déployés pour poursuivre l'harmonisation régionale, ou bilatérale, pourrait marquer un premier pas dans cette direction.

Mots-clés: Eco-labels, Allégations environnementales, Rapports environnementaux, Politique d'approches informationnelles, Empreintes environnementales des produits.

Classification JEL: F18, Q56, Q58, L15

FOREWORD

This report forms part of a larger project on the environmental, economic and international trade implications of the multiplicity in environmental labelling and information schemes. The work was conducted jointly under the OECD Working Party on Integrating Environment and Economic Policies (WPIEEP) and the OECD Joint Working Party on Trade and Environment (JWPTE), with inputs from the Working Party on Resource Productivity and Waste (WPRPW). The project benefitted from voluntary contributions from New Zealand and Switzerland. Other outputs from the project include OECD Environment Working papers numbers 62 and 106.

This report was authored by Professor Mikael Klintman of Lund University, Sweden. Andrew Prag of the OECD Secretariat provided overall guidance and final text editing. Delegates of the WPIEEP and JWPTE provided important comments on earlier drafts. OECD colleagues including Shardul Agrawala, Guillaume Gruère, Jehan Sauvage and Ronald Steenblik also provided valuable input. Pascale Rossignol and Katjusha Boffa provided editorial assistance. The authors are responsible for any remaining omissions or errors.

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EXECUTIVE SUMMARY

This report provides a brief review of how national government policies and guidelines apply to or regulate the use of environmental labelling and information schemes (ELIS) in OECD countries. In particular, this review provides a comparative analysis of national guidelines and other regulatory instruments concerning environmental claims made by private parties in OECD countries. It also considers international agreements and harmonisation efforts, where they exist. The review draws on examples from Australia, Canada, the European Union, Finland, France, Israel, Japan, New Zealand, Norway, Sweden, the United Kingdom and the United States. Parallel work under the same project looks at the impacts of the multiplication of ELIS, including its implications for environmental effectiveness and international trade.

First, the review considers how guidelines and regulations cover definitions relevant to environmental claims, divided into three categories. The first category comprises specific terms oriented towards environmental characteristics, such as “biodegradable”, “compostable” and “recyclable”. This category is the one with the least degree of inherent ambiguity concerning what the terms refer to. The terms in this category nevertheless need to be specified if they are to be used in a credible fashion to describe products. The next category refers to general terms oriented towards environmental consequences, such as “ecological”, “sustainable”, “environmentally friendly” and “green”. These terms imply a number of underlying components, and so the product packaging must be sufficiently specific about the environmental attributes of the product. The last category refers to terms about production principles and processes, such as “natural” and “organic”. Although the environmental and health benefits of products carrying these labels are not necessarily clear-cut, there have nonetheless been successful attempts at harmonising standards and criteria internationally, in particular for organic agriculture.

Second, four prominent types of potentially false or misleading environmental claims are elucidated and discussed in terms of how different countries have introduced guidance or regulations. One type refers to environmental claims about measures already required by mandatory regulation. Another refers to general environmental claims where only parts of the lifecycle are substantiated. For example, a product that is recyclable but that has not been proven to have environmental benefits in the rest of the lifecycle cannot make a credible claim about overall environmental performance. A third type of problematic claim includes those not backed up with data. Finally, the fourth type involves environmental claims made where in reality the product is merely the “lesser of two evils” in terms of environmental impact. Since few products are positive or fully neutral in environmental terms, several environmental claims that have previously passed as legitimate could perhaps be considered as falling within this category.

Third, the review covers regulations and guidance referring to placement and display of environmental claims and labels. The report finds that most government guides are not specific about the placement of environmental claims and labels, except in cases where qualifying terms must be made sufficiently prominent. In documents referring to certification trademarks belonging to independent labelling schemes, the requirements are generally more extensive, due to each scheme’s interest in promoting its trademarks in optimal ways.

Fourth, the report also reviews different approaches to the monitoring of compliance with rules or guidelines. Formal non-government labelling schemes with third-party certification tend to have their own strict internal processes for ensuring compliance of certified organisations and products, independently of

government policy. For environmental claims made by private parties outside of the framework of recognised ecolabels or standards, the validity of the claims can only be measured against government guidelines and, in some cases, specific regulations.

Fifth, the report reviews enforcement measures used by governments in different countries to verify environmental claims made by private parties. In many countries, there are long-standing legal requirements in place to ensure that general advertising and product claims are reasonable, verifiable, and so forth, with penalties in place should the requirements not be met. These are often applied to the use of environmental claims. Examples of court action relating to environmental claims in several countries are described. Based on the reports available, it is not possible to assess to what extent the enforcement processes have been effective in improving the overall quality of environmental claims. There is an increasing number of government guidelines and regulations relating to environmental labelling and claims in many countries. However, more evidence is required in order to assess whether these guides have been effective in reducing the number of misleading environmental claims and in increasing the number of valid claims.

The report also notes the extensive similarities among national guidelines for what types of environmental claims are correct, misleading or false. This similarity seems to be related to the fact that in many cases government guidelines are derived in part from the International Organization for Standardization's (ISO) 14020 series of internationally-agreed standards, at least for some types of environmental labels and claims. Moreover the report acknowledges that several attempts have been made towards harmonisation across countries concerning environmental criteria, mainly concerning eco-labelling schemes and organic agriculture standards. There appear to be strong incentives for this type of cross-country certification, including reduced administrative costs and a potential for increased trade of environmentally-certified goods.

The report also discusses the potential for increased harmonisation between countries, including rules for self-reported environmental claims, in addition to existing co-operation on eco-labels and organic standards. Self-reported claims are more directly related to domestic regulations and legal processes in the respective countries. However, many countries also base their environmental claim regulations on principles drawn from ISO standards. This, combined with generally clear advantages for the private sector to operate in a more internationally consistent environment, makes the harmonisation of criteria for self-reported environmental claims a real possibility. The ongoing pursuit of harmonisation regionally, or bilaterally, might be a first step forward in such a process.

The results of this review call for an in-depth analysis of the overall effectiveness of legal enforcement processes in improving the quality of environmental claims. Achieving effective enforcement, with substantial reductions of false and misleading environmental claims, is important to build the trust necessary for further international harmonisation of requirements for green claims is to be successful.

1. INTRODUCTION

1.1 Background

Environmental labelling and information schemes (ELIS) constitute a set of instruments aiming to provide institutional and private consumers with "green empowerment" by providing information on the environmental impacts of products and services (Moisander, 2007). The OECD, under the JWPTE and WPIEEP, is undertaking a multi-part project covering recent developments in ELIS and their on-going environmental effectiveness and potential impacts on trade. This review forms part of that project.

ELIS can be seen as contributing to a general development of what has been called "the audit society" (Power, 1999), manifested in, for example, systems for assessing and substantiating product claims that consumers cannot verify themselves. There has thus been a rapid increase in formal standards as well as accreditation systems for these standards, environmental claims on production, products, and services, following this pattern (Garsten & Boström, 2008). Since the first eco-labelling initiatives launched in the 1970s, the schemes have grown rapidly in number. During the last 20 years, they have increased in the variation of geographical scope as well as in the range of issues covered, with a certain slowdown in growth after 2010 (Gruère, 2013). Moreover, they vary in strategy, for instance in selectivity, where some schemes only certify products that are best in class as opposed to others that certify products that are not worst in class. In other areas of environmental standards – such as certain schemes for green mutual funds – companies may be awarded with an environmental seal if they only have the *potential* to improve their environmental record, before demonstrating any improvement (Boström & Klintman, 2011, p. 118).

In most cases, the use of ELIS has a strong social dimension: to support environmental claims that are valid and that therefore generate consumer trust. Eco-labelled products and services are "credence goods"; the information that labels provide refers to qualities that consumers cannot evaluate before having purchased them – and not even after purchase, in cases where the label refers to upstream processes and production methods. Although trust and trustworthiness are essential to environmental claims, there have been plenty of examples of exaggerated and misleading claims concerning environmental performance of certain products and services. As such cases of "greenwashing" have become public, there have been reports of reduced consumer trust in ELIS and standards (Daniells, 2013; OECD, 2010). Certainly, whilst consumer confidence is in principle higher for third-party-certified labels than for self-declared claims made by companies, consumers are often confused about the different types of ecolabels. The often-mentioned consumer confusion, along with a certain consumer cynicism as regards environmental claims, has led to apparent reduced purchases of products and services bearing environmental claims in some countries, according to the Greendex survey conducted by National Geographic Society and GlobeScan Inc. (OECD, 2011, p. 4).

The impacts of the recent multiplication of ELIS are difficult to assess with certainty. Previous OECD work within the current JWPTE project analysed 544 ELIS across OECD countries and noted a strong growth in ELIS between 2005 and 2010, followed by a slightly slowing growth level (Gruère, 2013, p. 24). A comparison with the quantity of registered trademarks using the terms "sustainable" and "green" also suggests a recent slow-down in introduction of new schemes.

Recently, initiatives have been taken at national and international levels to manage potential environmental and economic problems associated with multiplication of labels as well as with misleading

and dishonest environmental claims. Such initiatives exist in the private sector as well as in government circles. Nongovernmental organisations (NGOs), companies, governments and international organisations have responded to these problems. Various policy proposals have been suggested for voluntary and mandatory regulation, including regulations guiding the scope and content of private claims (OECD, 2010) or by providing meta-information to consumers to help them orient themselves in the jungle of environmental information (Overgaard, 2012). Most relevant to this report are government guides and regulations covering environmental claims, along with the legal processes used to enforce how companies may and may not use environmental labelling and information schemes.

A recent report by the OECD's Committee on Consumer Policy concluded on the need for a review of environmental claims policy: "A review of the types of policy instruments now in place and best practices in their effective use by governments and self-regulatory organisations is seen as beneficial as it could facilitate the development of improved policies" (OECD, 2011). In line with this conclusion, this report examines how the use of ELIS is handled in government policies, guidelines and legal documents, as an input to on-going work of the OECD on environmental labelling in an international context.

1.2 Aim and Research Questions

The aim of this report is to review how national government policies and guidelines apply to or regulate the use of environmental labelling in OECD countries. In particular, this review provides a comparative analysis of national guidelines and other regulatory instruments around the use of environmental claims in OECD countries. It also considers international agreements and guidance, insofar as these exist.

1.3 Delimitations

The OECD countries examined in this report have been selected in such a way that they cover regions around the globe. In addition, certain countries covered have been early adopters of various policies relating to environmental claims. This paper currently draws on examples from Australia, Canada, Finland, France, Israel, Japan, New Zealand, Norway, Sweden, the United Kingdom and the United States. In addition, the European Union is examined from the perspective of collaboration between EU member states on the harmonisation and regulation of environmental schemes.

The different sections in this report do not give a full description of the situation in each of these countries and at the EU level. Instead, the sections highlight the most important patterns of similarities and differences across the countries.

Government guidelines about environmental claims are one focus of this report, including Types II and III according to the traditional ISO classification.[1] Type II is given particular attention, since governments in general put more efforts into guiding Type II claims, namely private claims with only first party verification. For third-party-audited environmental "scorecard" schemes (ISO Type III), there is in general more government trust that the nongovernmental organisations involved will ensure that definitions, placements, and claims, do not deviate from their Type III-standard (usually based on ISO 14025), which in turn governments have often taken part in establishing.

[1] Environmental labels have traditionally been grouped into three types according to the ISO standards that are applicable to different types of labels. Type I comprises conventional eco-labels that are multi-criteria, life-cycle approach, third-party voluntary labelling schemes that focus on non-food products (ISO 14024). Type II covers self-declared claims by companies, privately made, that describe a product based on one or more characteristics following general guiding principles (ISO 14021). Type III focuses on environmental declarations, providing quantitative indicators of environmental performance based on life-cycle assessments and third-party auditing (ISO 14025). For more information see Gruère (2013).

In addition, insofar as they exist, the report covers guidelines or policies concerning widely used labels that do not fall into the ISO classification. These ELIS are in some ways similar to Type I, but tend to target specific sustainability attributes instead of overall environmental impact. This category includes for example the Forest Stewardship Council (FSC) for forestry products and Marine Stewardship Council (MSC) for seafood products.

As for Type I eco-labels (certified to ISO standard 14024), these have less emphasis in this report. Although governments often initiate or own Type I labels, it is important to distinguish a government-owned label from policy guidance or regulation issued by governments. For example, New Zealand's Type I label "Environmental Choice" is owned and, therefore, endorsed by the government. Yet this label is independent, and thus the documentation and standards involved are not considered to be a government environmental guide or policy in this paper.

1.4 Document Sources

This report focuses strictly on how government policies and legal documents in selected OECD countries handle the challenges described above. The appendix to this report provides an overview of the documents reviewed. The document types include:

- Government guidelines relating to environmental claims
- Government policy and regulatory documents
- Other legal documents about definitions, claims, placement, monitoring and penalties
- Internationally-agreed guidance documents (including bilateral), where available

2. ANALYSIS: GOVERNMENT-BASED GUIDELINES AND MEASURES

Some OECD member governments have issued voluntary guidelines that define which types of environmental claims are appropriate and those that are not, based on criteria of accuracy, clarity, relevance, substance, verifiability, comparability, and of not being misleading (OECD, 2011, p. 5). These guidelines are often aimed at the business sector.

Such guidelines tend to be largely formulated in terms of what *not* to do. However, certain countries also state explicitly that the purpose of their guidelines should be not only to help avoid unsubstantiated green claims, but also not to encourage actors to make valid green claims when such claims can be substantiated. Otherwise, there might be a "chilling effect", whereby even producers and marketers of environmentally beneficial products become overly cautious about making environmental claims. This is the case in Israel, for example, where the purpose of the guide on environmental claims "is to encourage the use of reliable environmental claims when marketing products and services" (Israel Ministry of Environmental Protection, 2014, p. 53).

Guides, by their nature, do not directly have the force of law. Still, they usually reflect the government position and can in some cases be used for legal enforcement. In the United States, for instance, the Federal Trade Commission (FTC) has issued revised Green Guides (Guides for the Use of Environmental Marketing Claims) that reflect the FTC's "views about environmental claims" and provide that the FTC can take action for claims that are inconsistent with the guides if the challenged claim is unfair or deceptive under section 5 of the FTC Act (FTC, 2012). In some cases, environmental claims are subject to general consumer protection and fair trading regulations, and guides exist to help companies not fall foul of those legal requirements. The United Kingdom, for example, has the Consumer Protection from Unfair Trading Regulations, prohibiting claims that do not follow good faith or honest marketing, including those relating to the environment (DEFRA, 2011, p. 5).

2.1 Definitions

The broad scope of ELIS means that a number of definitions are relevant to different types of environmental labels and claims. The rest of this section gives an overview of how government policies, regulations and other official texts handle definitions for environmental claims. This includes an examination of what terms are noted as being problematic due to their inherent vagueness. The definitions discussed in this report do not constitute an exhaustive list (more comprehensive lists may be found in the green guides referred to in this report and in the ISO standard referring to Type II claims, ISO 14021:1999). The purpose of this section is rather to indicate three categories of terms, which differ in the challenges they constitute to governments and policymakers.

2.1.1 Specific terms oriented towards environmental characteristics

This first category is the one with the least degree of inherent ambiguity. These terms tend to refer only to properties of the product itself, rather than upstream production processes. Examples include "biodegradable", "compostable", and "recyclable". As to "biodegradable", French government guidance, based on a national standard, refers to products and material that "can be broken down by living organisms (bacteria) into elements that are not environmentally harmful" (Republique Francaise, 2012, p. 4). If the

term biodegradable is used without qualification then the whole product and its packaging must meet the standard. Otherwise, it should be specified which part is biodegradable. Aside from this straightforward definition, there is room for various interpretations and disagreements as to the time needed for completing the decomposition process. In the United States, the FTC's green guides advise marketers that an unqualified degradable claim is unsubstantiated (and thus unlawful) unless the marketer has competent and reliable evidence that the "entire item will completely break down and return to nature (*i.e.*, decompose into elements found in nature) within a reasonably short period of time after customary disposal." The guides also provide that it is "deceptive to make an unqualified degradable claim for items entering the solid waste stream if the items do not completely decompose within one year after customary disposal." Overall, there appears to be little disagreement among policy makers concerning the goal and value of full decomposition within a reasonable time period. National standards are often developed on the basis of standards at the international level. For instance, in Finland, the use of the term "biodegradable" in the case of detergents should specify that their tensides (surfactants) are degradable, consistent with OECD norms (Kuluttaja Virasto, 2002).

As to products claimed to be compostable, there are national standards in some countries concerning what qualifies as high-quality compost (such as NF EN 13432:2000 in France). In the United States, the FTC green guides do not address the quality of composting, but do provide guidance on how businesses can avoid unlawfully marketing a product as compostable when it is not. Businesses are instructed to qualify compostable claims if a product cannot be safely and timely composted in a home compost pile or device. Moreover, if municipal or institutional composting facilities are not available to a substantial majority of consumers or communities where the item is sold, businesses need to qualify the claim as well. Otherwise, consumers could be misled about the environmental benefit of composting when the item is likely to be disposed of in a landfill due to limited composting facilities.

For use of the term "recyclable", a main concern is the possible ambiguity of whether it refers to the content or merely to the packaging. The Australian Competition and Consumer Commission exemplifies how the ambiguity could be removed, namely with the correct statement "packaged in recyclable material" (Australian Competition and Consumer Commission, 2011). To this the independent U.S. organisation TerraChoice (recently acquired by the Underwriter's Laboratory) maintains that the recyclable symbol (the Mobius loop) has become too confusing and widespread to be meaningful. If it is to be used, it should be followed by a statement specifying what is recyclable (TerraChoice, 2007). In some countries, including the United States, the government's green guides mainly focus on consumers' access to recycling facilities and unqualified claims regarding the availability of recyclability, along the same lines as for composting (see above).

2.1.2 General terms oriented towards environmental characteristics

The second category refers to terms with more general claims. These terms involve a deeper level of ambiguity, and thus higher risks of misleading claims as well as policy disputes over what the optimal definitions ought to stipulate. Examples include "ecological", "sustainable", "environmentally friendly", and "green". These terms often refer to production processes as well as product characteristics. Furthermore, consumers may attach multiple associations to such terms. For instance, the prefix "eco" may be associated with various types of savings, such as of electricity and water, as well as relating to ecology.

The principle for making claims about the environmental superiority of a product is that the claim must not imply other environmental advantages that cannot be clearly demonstrated. The environmental guidelines issued by the French government illustrate this with the following case: a water tap that helps consumers reduce the use of natural resources, in this case water, may not be permitted to use a general claim of being an ecologically sound product, unless the entire lifecycle can be shown to be of substantially higher environmental quality than generic taps. How the tap has been manufactured, what it is

made of, and whether its parts can be recycled are examples of environmental aspects that need to be substantiated. If these aspects are not environmentally superior to generic taps, its environmental advantages in terms of reduced water use must be specified, and the rest left aside (Republique Francaise, 2012, p. 13). In the Norwegian guidelines, the following conclusion is drawn, which represents well the international view on general, environmental claims:

> *"In practice, it will be quite difficult to use claims of environmental superiority in marketing without also giving a more detailed explanation of the properties to which the environmental claim relates. Examples of isolated environmental claims which will in practice be misleading: 'Green electric razor', 'Environmentally friendly sofa'"* (The Consumer Ombudsman, 2009, p. 10).

Since there are several components implied in terms such as "ecological", "green", and "environmentally friendly", and since an additional requirement is that consumers should not be misled to believe that a product is doing more good for the environment than no use of that product would do, the product packaging must specify the environmental attributes of the product.

As multi-faceted as the above-mentioned terms may be, a still more challenging one is "sustainable". This term denotes not only ecological but also social and economic sustainability as well as the interrelation between these three pillars (Hopwood, Mellor, & O'Brien, 2005). Since it can be very difficult for a company to substantiate such superiority for all three pillars of sustainable development, environmental guidelines and regulatory texts in some countries stress that companies should use an independent, third-party ELIS as a means to verify the sustainability claims of the company, for example in the UK (DEFRA, 2011, p. 21).

2.1.3 Terms referring to specific production principles or processes

The third category of terms concerns whether products and production processes are consistent with specific production principles, rather than whether their environmental consequences are superior to conventional products and production processes. Two key examples are "natural" and "organic" claims.

For "natural" claims, it could be argued all products originate in the natural world, even if they have undergone significant transformation. Some green guides therefore specify that "natural" claims can only be used where a product closely resembles its original state, with minimum artificial transformation (e.g. for France, see République Française, 2012). In terms of environmental benefits, many natural scientists hold that it is an open, case-by-case issue whether "natural" substances and processes are better or worse for the environment or for health.

In the case of organic agriculture, certification is based on a detailed specification and a control process which is regulatory in nature. Studies show that consumers often trust organic food more than conventional food in terms of environmental and health-oriented benefits (for data on France see CSA Agence Bio, 2014). This has led to a willingness to pay considerable price premiums for organic products among some consumer groups. Still, organic principles have been subject to substantive studies where they have been compared with conventional production.

A number of studies have focused on the environmental benefits of organic production. Benefits that are often mentioned include biodiversity and nutrient losses that are lower in the soil than conventional farming (Gomiero *et al.* 2011). On the other hand, organic farming has lower yields and thus necessitates more land for the same level of production. Moreover, the potential for eutrophication and acidification per product unit can be higher (Tuomisto *et al.*, 2012). Regardless of the overall environmental impact of organic agriculture, claims that a production is organic cannot be falsified if it turns out that a certain

production has entailed certain environmental harm, for instance higher greenhouse gas emissions, than conventional agriculture. As opposed to terms specifically oriented to environmental impacts, LCA analyses of environmental consequences are not usually necessary for organic claims, or for claims of naturalness. The difference is that requirements to make "organic" claims are general more strictly codified and controlled than for "natural" claims.

Despite these uncertainties around environmental benefits, there has been some international policy convergence. This is tied to the fact that there is a clear consumer demand for "organic" and "natural" products, as well as a demand to know about how their products have been produced (Klintman, 2006). Furthermore, the high market and trade potential of organic and natural products have for a couple of decades motivated governments and industries using these terms to clarify as well as harmonise internationally definitions of such products. As a consequence, formulations and requirements have become more similar across various countries and regions.

In 2012, harmonisation efforts between the European Union and the United States were formalised through "the US-EU Organic Equivalency Arrangement", which aims to reduce burdens of administration and to offer new trade possibilities on both sides. This arrangement built on earlier harmonisation, such as the requirement that a minimum of 95% of the ingredients be "organic" for the term to be used unqualified (cf. EC Regulation No. 834/2007). However, prior to the 2012 agreement both sides had to provide separate certifications, entailing inspections, paperwork, and fees. As preparation for the new arrangement, the two sides conducted audits on site in order to ensure compatibility in organic criteria and claims. Such controls and reviews of each other's programmes are set to continue in future. Since the arrangement was established, the U.S. Department of Agriculture (USDA) National Organic Program (NOP) has recognised the EU's organic conditions as equivalent to their own scheme, and vice versa. A limit of the arrangement is, however, that it only covers organic products originating, produced, or finally processed and packaged in the United States (Global Agricultural Information Network, 2012; cf. US Department of Agriculture, 2013).[2]

In discussions about whether to fully harmonise definitions of organic at a global scale, there have been concerns that this would force consumers in certain countries to settle with lower standards of organic than they might prefer. Still, a consumer survey across the United Kingdom, Canada, and the United States from 2008 indicates that consumers do not strongly share these concerns, and that they would accept international harmonisation of organic standards (Sawyer, Kerr, & Hobbs, 2008).

In some cases, definitions relevant to environmental claims are also covered by agreements and regulations concerning chemicals substances. For claims relating to the term "natural", the European regulation of chemicals (REACH) defines natural substances as follows:

> *"Substances which occur in nature: means a naturally occurring substance as such, unprocessed or processed only by manual, mechanical or gravitational means, by dissolution in water, by flotation, by extraction with water, by steam distillation or by heating solely to remove water, or which is extracted from air by any means"* (Regulation (EC) No. 1907/2006 of 18 December 2006).

Importantly, "natural" substances should not be described or implied as per definition equating safe substances and products. This fact is reflected in the scope of REACH: Natural substances are not subject

[2] There are two further conditions: one that concerns specific substances to control fire blight in fruit, and another that concerns the need for import certificates issued by a certifying agent accredited by NOP ensuring compliance with the criteria within the Arrangement.

to registration under REACH, unless they are dangerous or have been chemically modified (REACH, 2008)

2.2 False or misleading environmental claims

This section gives an overview of the criteria used by governments to determine valid as well as false or misleading environmental claims. Criteria include ensuring that labels and claims are, *inter alia*:

- truthful
- specific
- relevant
- substantiated by competent and reliable evidence

It should be mentioned that the extensive research that preceded this report found that many of the assessed government guidelines derive at least in part from the ISO 14020 series of standards. There are therefore commonalities between the guides. The similarities between ISO guidance and environmental guidelines by governments are often clear. In the case of the European Commission, these similarities are formulated as follows in the EU *Guidelines for Making and Assessing Environmental Claims:*

> *This document [by the European Commission] presents Guidelines, consistent with ISO 14021:1999, aimed at helping anyone wishing to make an environmental claim ensure that it will be a good, acceptable claim, as well as providing guidance to any party or authority wishing to evaluate existing claims* (European Commission, 2000).

However, the ISO standards focus not only on preventing misleading claims, but also on encouraging the demand for, and supply of, products that have lower environmental impact. On the other hand, green guides such as those issued by the U.S. FTC tend to focus only on preventing deceptive environmental benefit claims. Still, the FTC guidelines draw on ISO standards where possible. For example, the green guides section on “free of” claims was drafted to closely align with the relevant ISO standard.

In reviewing government documents about how to minimise the risk of misleading or false claims in these types of schemes, the categories described below are prominent.

2.2.1 Environmental claims about measures required by mandatory regulation

As mandatory environmental regulation progresses into new product sectors, one particular category of misleading claims becomes especially difficult for consumers to be aware of. This concerns claims attributing particular environmental advantages to a certain product, even though regulation already requires that the environmental measures in question be taken.

One manifestation of this category could be in cases where a mandatory minimum quality standard (MQS) has been introduced, but a claim is made that a product meeting the standard carries environmental benefit. Another case could be where environmental information disclosure is mandatory, but a company claims that disclosure is an environmentally-friendly action. For example, in the United Kingdom, the Department for Environment, Food & Rural Affairs (DEFRA) exemplifies this category of misleading claims in the following way:

> *"If the law requires the disclosure of information, or if a statement is needed to educate consumers or encourage action by consumers, this should be presented in the context of the requirement – not claimed as an additional benefit" (DEFRA, 2011, p. 14).*

However, this category has also a more subtle side. A company should also be explicit about what future legal, environmental requirements it has aimed to meet. Consequently with the above, such environmental claims should be removed once this requirement has come into force (DEFRA, 2011, p. 14). This can be difficult to enforce because one of the drivers for firms to take up voluntary ELIS and to improve their environmental performance is to anticipate future regulation (RESOLVE, 2012).

2.2.2 General environmental claim with only parts of the lifecycle substantiated

The second category of false or misleading claims is related to the general environmental terms discussed above in section 2.1.2. This concerns claims that appear to demonstrate overall improved environmental performance when in reality either only part of the life-cycle is covered or all life-cycle phases are treated but for only limited dimensions of environmental impact. This is a concern in all investigated countries, with regard to most types of ELIS. For instance, in Japan, businesses recognise the importance of quantification of environmental impacts of products certified by EcoLeaf (a Japanese Type III based environmental declaration) and CFP (the Japanese Carbon Footprint Program). At the same time, they have the opinion that it is not clear how "eco-friendly" these ELIS are, due to the nature of ISO 14025 (type III) or ISO/TS/14067 (carbon footprint technical specification), and that the businesses need a way to effectively utilise these ELIS as a basis of environmental information. Even though EcoLeaf and CFP both cover the life-cycle of products, they do so in very different ways, focusing on different environmental impacts. Some businesses associate such clarity with the potential for increased consumer demand for the labelled products (communication from the Japan Ministry of the Environment, 2013).

In general, claims should not imply substantially reduced negative impacts along the entire lifecycle, unless this comprehensive reduction has been made and can be demonstrated. For example, the UK codes for advertising (CAP:11.4 and BCAP:9.5), make this clear, indicating the obligation of companies to clarify the limits of ecological adaptation at specific stages of the life cycle. This is in line with ISO 14021 (for Type II claims), stating that environmental claims made by companies about their own performance "shall take into consideration all relevant aspects of the product life cycle in order to identify the potential for one impact to be increased in the process of decreasing another" (ISO 14021:5.7h). In France, a new law requires that environmental claims in the field of building and construction must be backed-up by information provision in a public database about the full life-cycle environmental impact of the products, consistent with the environmental standard on this subject (French Decree No. 2013-1264 of 23 December 2013).

In the United States, the guidelines provided by the FTC for environmental claims in marketing (the "green guides") state that companies should avoid general environmental benefit claims because it is highly unlikely that companies can substantiate all reasonable interpretations of these claims, rendering the claims deceptive and unlawful. Instead, the guides recommend that companies qualify their environmental claims by, for example, specifying where in the product lifecycle the environmental benefits are located (US FTC, 2012).

2.2.3 Environmental claims not backed up with data

Another type of misleading claim refers to claims not properly backed up by empirical data. Credible claims should reflect measurable evidence of substantial environmental benefits. Importantly, the burden of proof is on the producer or company making the environmental claims. Marketing and trading acts in the countries examined for this report regulate this practice.

In New Zealand, the Fair Trading Act prohibits businesses from making misleading or false environmental claims. Recent law changes, effective from June 2014, require the producer or company to be able to substantiate any environmental claims. However, the burden of proving that those claims are misleading or unsubstantiated remains with the Commerce Commission. In Canada, the Competition Bureau as well as the Canadian Standards Association state that all environmental claims must be supported by "readily available data" (Naish, 2008).

In the United States, the FTC protects consumers from unfair or deceptive advertising and marketing practices, including advertising and marketing practices concerning environmental claims. Under FTC law, general truth-in-advertising requirements apply to environmental claims, which mean that such claims must be truthful, fair, and supported by reasonable evidence. In the context of environmental marketing, reasonable evidence is often interpreted as requiring competent and reliable scientific evidence. Competent and reliable scientific evidence generally consists of tests, analyses, research, studies or other scientific evidence that have been conducted and evaluated in an objective manner by qualified persons, using procedures that are generally accepted in the professional field to yield accurate and reliable results. A marketer must have appropriate substantiation for all expressed and implied claims, including all reasonable interpretations of the claims, for an advertisement to be truthful, fair, and supported by reasonable evidence.

The European Commission adopted the Directive on Unfair Commercial Practices in 2005 (Directive 2005/29/EC), providing a legal basis to ensure that firms use environmental claims in a credible and responsible manner. Under the directive, firms must present their green claims in a specific, accurate and unambiguous manner, and must have scientific evidence to support their claims in the case that it is challenged. It covers both objective misleading practices, when the claim contains false information, and subjective misleading practices, when the claim is likely to deceive the average consumer even if the information contained is factually correct. Finally, the directive lays down the conditions under which comparative advertising on the environmental benefits of different products is permitted. In order to promote a convergence of practices at EU level, the European Commission and national enforcement agencies have developed a guidance document in 2009 that is currently under revision.

2.2.4 Claims involving a product that is the "lesser of two evils"

The final category of misleading or false claims that several environmental guidelines cover refers to claims of environmental benefits that only actually imply marginal benefits in a product type that is inherently harmful to the environment. Defining the limits to this type of claim is a contested issue. A less restrictive stance would contend that environmental improvements in the most environmentally problematic sectors, such as fossil-fuel-based transportation, could be considered important reductions of environmental harm. A more restrictive stance would argue that environmental claims on such products and services tend to hide heavily negative environmental impacts and are therefore misleading.

In Norway, where advertising guidelines are stricter than most, the consumer ombudsman targets companies producing or selling fossil-fuel-based automobiles and who claim these cars to be "eco-friendly", "clean" or "green", even if they use more petrol than average. This applies regardless of whether the terms are used in isolation or with detailed explanations in the marketing. The following quote by the ombudsman representative Bente Øverli is illustrative: "Cars cannot do anything good for the environment except less damage than others" (Doyle & Correspondent, 2007). Therefore, if good environmental properties are to be advertised, it should be possible to document that the vehicle is in the top third of the market in respect of the properties being promoted. In Norway it is recommended that companies use objective claims about a vehicle's environmental properties, such as emissions, noise, engine type etc. This is a stricter position than in most other countries. Neighbouring Sweden, for example, allows for terms

such as "super environment car" for automobiles that emit significantly lower amounts of CO_2 than average (Teknikens Varld, 2012).

Examples of strict enforcement in this category exist in other countries also. In Australia, a manufacturer of air conditioners made a claim stating "environmentally friendly HFC R407C added" as well as "for a new ozone era – keeping the world green." In court, this claim was deemed misleading and in breach of the Australian Trade Practices Act, since gases used in these units are still harmful to the environment, even if they might be less so than previously used gases (Australian Competition & Consumer Commission, 2008).

In the United States, the FTC's green guides, which set forth the FTC's views about environmental claims and compliance with the general prohibition against deceptive advertising, warn that marketers should not overstate environmental attributes or benefits, or state or imply environmental benefits when the benefits are negligible. The green guides provide the example of a manufacturer's website advertising "eco-smart gas-powered lawn mower with improved fuel efficiency!", even when the fuel efficiency improved by only 0.1%. Although the manufacturer's claim that it has improved its fuel efficiency is technically true, it likely conveys the false impression that the manufacturer has significantly increased the mower's fuel efficiency. Avoiding such false impressions is also important in the context of comparative advertising. In the United States, where comparative advertising is permitted, the U.S. FTC green guides address comparative claims by requiring marketers to avoid causing consumer confusion through comparisons and requiring substantiation that the marketed item really is significantly less environmentally harmful than items to which it is compared. Comparative claims cover both a company's claims regarding its previous or other product lines and claims comparing its products to a competitor's products.

2.3 Placement and display of environmental claims

In some countries there are also rules referring to the environmental label itself, including how it is designed and displayed on packaging. Requirements can be found in some countries' environmental claims guidelines, such as visibility and placement and use of certain terms on the package. Such requirements are described in more positive terms as rules about how to reduce consumer confusion and improve consumer choices. In the United Kingdom, for example, DEFRA mentions the importance of optimising visibility of valid environmental claims, and of promoting such products as effectively as possible, for instance with loyalty rewards or price discounts (DEFRA, 2011, p. 7). In the case of mandatory energy labelling at the EU level, the European Commission is extending its mandatory energy label to cover Internet sales, so that the label must be displayed on retail websites as well as on the product.

Concerning the Nordic Ecolabel (Type I), its managing organisation stresses the importance of placing its label, the Nordic Swan, in a manner that minimises the risk of confusion or ambiguity. This risk may be minimised by not making the label too small, by including the licence number, and in some cases the product group name (Nordic Ecolabel, 2011, p. 13). Usually, failures to meet such rules are not considered as amounting to misleading or false environmental claims. However, there are exceptions. The Canadian Standards Association, for example, points out the following example, where label design runs the risk of implying misleading claims: "If a label is to illustrate that a product has not been tested on animals, a use of a rabbit on such a label, without a qualifying statement, could be wrongfully interpreted as the product being less harmful to the environment. Thus, a clarifying statement is preferred, according to this association" (Canadian Standards Association, 2008, p. 15).

In the United States, the FTC green guides require companies to place any qualifications or disclosures regarding environmental claims in a manner that is clear, prominent, and understandable. To comply with this requirement, qualifications and disclosures should be written in plain language, in a sufficiently large type, and should be placed in close proximity to the environmental claim they qualify or

otherwise clarify. Marketers should not include any inconsistent statements or other distracting elements that would undercut or contradict the qualification or disclosure.

Private and NGO labels can be much more specific about placement. For example, guidelines from FSC cover some 15 pages specifying how certified products can use the logo (see FSC, 2010). The guidelines include rules about the logo design and proportions, its colour and background, its relationship and proximity to other logos, and so on.

Overall, the issue of placement and display is one of the least discussed issues in government guidelines researched, and appears as an issue that has caused a lower degree of concern than the issues of misleading and false claims.

2.4 Monitoring of compliance

Monitoring and transparency are fundamental to ensuring the validity of environmental claims. However, in most cases these factors are discussed mainly in the context of independent eco-labels and standards, where third parties, be they informed observers or auditors, are involved. Once a company uses a third-party-based scheme for certifying the validity of environmental claims, there are usually clear, voluntary rules established by the particular eco-label concerned as to what factors should be monitored, and how. However, even in the case of general environmental claims, auditing by a third party, such as an NGO or certification company, is important for the credibility of the company's environmental claims (Gruère, 2013, p. 16).

In the case of Type I eco-labels, the organisation responsible for the scheme will generally visit the manufacturer prior to licensing, and the manufacturer or company is obliged to keep all complaints made by consumers and others concerning the products that are eco-labelled. In some cases, follow-up inspections are made by the eco-labelling organisation (see for example Nordic Ecolabel, 2011, p. 5). These are examples of rules established by particular labels (Type I or otherwise), rather than government policy or guideline documents per se.

However, monitoring does also raise issues at higher administrative levels. In some countries there are government discussions about how to guide third-party-based schemes. The UK Environmental Agency (in England and Wales) as well as the Northern Ireland Environment Agency agree that measures are needed that ensure compliance between third-party certification audits and regulation. Such measures have mainly been discussed in terms of government procedures, and not the content of certification criteria. The role of government would accordingly be, for instance, (A) to clarify its expectation for how environmental management systems (EMS) standards should be used, including what degree of environmental performance should be expected of EMS-using organisations; (B) initiate and facilitate collaboration across certifying bodies, environmental agencies, and the UK Accreditation Service; and (C) to develop and update a framework for how EMS certification bodies should be accredited. The standard of reference is the framework of ISO 17021 (Sniffer, 2013).

2.5 Enforcement

The above overview of definitions, guidelines, and monitoring of environmental claims raises the issue of how to enforce or punish instances of non-compliance with guidelines and regulations. This section examines what enforcement provisions have been used in government regulation or legal texts. In particular the section looks at what such policy texts and legal documents say about types of penalties and enforcement actions, and what differences exist between countries in terms of how government regulation treat enforcement and penalties. For scholarly work analysing such documents, see Basu, Chau, & Grote, 2003; Bottega & De Freitas, 2009; Feinstein, 2013; Woolverton & Dimitri, 2010.

In many countries, there are long-standing legal requirements in place that general advertising claims be reasonable, verifiable, and so forth, with penalties in place should the requirements not be met (e.g. see EU Directive 2005/29 on unfair commercial practices). Authorities responsible for trade, commerce, marketing, competition, consumers, or the like usually enforce these requirements. Still, this long institutional history has covered marketing claims in general, and not specifically environmental claims. The recently issued Israeli Guide to Reliable Environmental Claims clearly states the starting point of that country's Consumer Protection Law (from 1981), and indicates that recent environmental marketing issues are not fundamentally different from the issues the law was established in order to handle. The purpose of the Consumer Protection Law is simply to reduce the power gap between the marketer and consumer, and thus enable consumers to make free and informed decisions. The law includes an open-ended list covering items substantive for consumer transactions, including price, delivery date and the place where the asset has been produced. Whereas environmental claims are not specifically in this list, since environmental claims were rare back in 1981 when the law was issued, consumer issues around environmental claims are not substantially different to those for other types of transaction. Therefore,

> *"[…] since the list is not closed and since more and more consumers base their purchases on environmental claims, an environmental claim may be considered a substantive item in the transaction"* (Israel Ministry of Environmental Protection, 2014).

Several other countries are in the process of tailoring environmental claims requirements more specifically (OECD, 2011). This process may necessitate collaboration between, for instance, a public agency specialising in trade and another agency with expertise on environmental issues. In the United States, the original green guides were created through collaboration between the FTC and the U.S. Environmental Protection Agency (EPA) (Muse, 2010, p. 88). Although a violation of the green guides is not a violation of the FTC Act, the FTC can take action against companies for making environmental claims if it can prove that the claim violates the FTC Act. Since 2012, the FTC has brought at least 12 enforcement actions alleging that companies violated the FTC Act by making deceptive and unsubstantiated environmental claims.

A common international pattern, however, is that environmental claims guides are not easily enforceable by law. Such guides are rather "administrative interpretations", as in the United States (see 5 U.S.C. § 553(b); see also 16 C.F.R. § 1.5, 2010, as in Minneti, 2010, p. 1330). In some instances, this gap may make it challenging to identify exactly where guidelines and strict regulation overlap (entailing penalties for not meeting the requirements), and what parts of the guidelines are mere recommendations.

At the same time, governments have lately become stricter in requiring substantiation of environmental marketing claims. Misleading and false claims lead increasingly to criminal or civil fines and injunctions. Here follow examples from a few countries:

In the United States, the FTC filed five enforcement actions in 2013, addressing claims of biodegradable plastic. In one action, the company produced an additive which it claimed could make plastic products biodegradable. Moreover, the company allegedly issued its own "Certificates of Biodegradability of Plastic Products" to convince its customers and end-use consumers that the additive created this environmental benefit. The FTC charged the company with violating the FTC Act because the bags were unlikely to biodegrade and completely breakdown within a reasonably short time period after disposal (nor were they likely to biodegrade in a landfill) and because the company did not have substantiation for its claims (US FTC, 2013). In another action, the company made false and unsubstantiated claims that its paper products were biodegradable, compostable, or both. The FTC alleged that these claims were false and unsubstantiated in violation of an earlier consent order that barred the company from representing that any product or package is biodegradable unless it had competent and reliable scientific evidence supporting the claim. The company agreed to settle the FTC's charges by

entering into a new order that contains the new language and update definitions from the 2012 revisions to the FTC green guides and to pay a USD 450 000 civil penalty. The other three cases concerned claims about the biodegradability of their plastic products.

In Australia, the Trade Practices Act provides strengthened jurisprudence for the government having had at least 30 court actions in recent years against environmental claims considered misleading (OECD, 2011, p. 6). The Act includes punishment for misleading environmental claims, where a company found guilty faces fines up to AUD 1.1 million. A company found guilty must also pay for all expenses for correcting the company's environmental claims (Naish, 2008).

In Canada, the Consumer Packaging and Labelling Act and the Competitions Act are two laws under which environmental claims need to be substantiated and made available to enforcement agencies. The Competition Bureau is one such agency. Under labelling laws, false or misleading environmental claims may lead to a jail sentence of up to twelve months and fines that amount to CAD 10 000. The tendency in Canada is one of increased enforcement of laws that are aimed at protecting competition and consumers (Environmental Compliance Canada, 2013).

In New Zealand, penalties and remedies for false or misleading environmental claims are based on the Fair Trading Act, as mentioned above. Anyone can take private action under the act. Most offences under the act can be brought as criminal prosecutions and are punishable by fines. Sections 14(2) and 23 in this act refer to civil proceedings that may lead to injunctions but not fines. The District Court deals with criminal proceedings. Court action can lead to NZD 200 000 fines for a company, per offence. From June 2014 this penalty increases to NZD 600 000. Moreover, extensive remedial orders, including compensation and damages, may be granted by the court under section 43 of the act (New Zealand Commerce Commission, 2008). One example of court action in this type of cases is where a maker of rubbish bags was fined NZD 60 000 in 2013 for making claims that the bags were biodegradable within a short time period. The company claimed that the bags were suitable for home-composting since this claimed biodegradability included disposal in a landfill. The Auckland District Court found the company guilty of "giving the impression of environmental friendliness" (Fletcher, 2013).

In France, the National Consumer Council has issued the main environmental claims guidelines as recommendations. If a company does not meet the terms set out in the guidelines, this is likely to be interpreted as non-compliant. Yet, non-compliance is not necessarily considered to be as serious as misleading or false claims. In order for claims to be considered misleading, the *Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes* (DGCCRF) needs to analyse evidence and determine whether this is the case, after which the courts make the final decision. If the decision is made that the claims have been misleading or false, this is punishable by a prison sentence of up to two years, and a fine of up to EUR 37 500 (Republique Francaise, 2012, p. 41).

Also in France, on the side of advertising, the *Autorité de Régulation Professionnelle de la Publicité* (ARPP) was established in 2009 to replace the *Bureau de Vérification de la Publicité*. This reform has made it possible to better take into account the views of non-government stakeholders. Moreover, it has helped strengthen the monitoring of sustainability claims. During the same year, the ARPP formulated ethical recommendations on sustainable development claims, with a public jury to assess complaints made against advertisements. ARPP publishes an annual report in collaboration with the *Agence de l'Environnement et de la Maîtrise de l'Energie* (Ademe). Since the establishment of ARPP, the reports show that the number of advertisements using an environmental argument has remained stable (3.5% in 2012, 3% in 2011). However, in 2012 deficiencies were noted in 21 cases, corresponding to 5% of the advertisements relating to the environment.

The United Kingdom has an independent co-regulator of misleading and false advertising, the Advertising Standards Authority (ASA). This is self-regulatory and funded by the advertising industry itself. The advertising standards codes are abbreviated CAP and BCAP, and have a section on which complaints about environmental claims are assessed. Moreover, the UK has consumer protection from Unfair Trading Regulation (as previously mentioned), enforced by the Office of Fair Trading (OFT). The ASA can refer difficult or repeated cases to the OFT which has legal power to issues fines and bring legal actions against companies.

In addition to national regulation, the EU member states share a consumer code at the EU level, as adopted in the Unfair Commercial Practices Directive. It defines misleading advertising, providing for penalties in cases where practices fail to comply with the consumer code. Importantly, whereas self-regulation is a permitted enforcement method, and it is the task of code owners at community or national level to deal with false or misleading environmental claims, this task should be conceived as a supplement and not a substitute for legal action. Each EU member state has the responsibility to ensure effective and adequate measures to handle false or misleading environmental claims, as written under Article 11 of the Unfair Commercial Practices Directive.[3]

[3] See *https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.guidance.showArticle&elemID=29*

3. HAVE THE ENFORCEMENT MEASURES BEEN EFFECTIVE?

The enforcement measures mentioned above are partly a response to public criticism of "green washing" by companies, with criticism contending that ineffective regulation has contributed to the problem. This raises the question of whether enforcement measures have themselves been effective at discouraging misleading environmental claims (Dahl, R., 2010). Understanding what makes an enforcement measure effective is challenging, and existing reports do not allow an assessment of enforcement effectiveness. For instance, in the case of advertising, complaints in the United Kingdom filed with ASA indicate that complaints increased between 2006 and 2007 from 117 to 561 (concerning about 83 to 410 ads) (ASA, 2008). However, these figures do not reveal whether the number of false or misleading claims has increased overall or whether the ASA has merely become more active in attracting complaints. Although there is an increasing number of government guidelines and regulations relating to environmental labelling and claims in many countries, more information would be required in order to assess whether these guides have been effective in reducing the number of misleading or false environmental claims, and in increasing the number of correct ones.

In addition to direct enforcement, governments can help influence the market by instigating rules for green public procurement by government agencies, thereby helping establishing the reputation and create market demand for higher-quality labels. For example, the EU has its Green Public Procurement (GPP) initiative. GPP in the EU is a voluntary instrument. Yet, there are strong incentives and pressure within separate countries as well as for the EU as a whole to adopt GPP principles in national government procedures. Moreover, GPP has strong potential for generating the critical mass of demand needed in order for production of less environmentally harmful goods and services to become more attractive for companies. In terms of rules and criteria for GPP, many of those are still at the member state (national) level. However areas where harmonisation of procurement rules have been initiated include office IT, wastewater infrastructure, sanitary tap-ware and imaging equipment.

Due to the large financial value of public procurement and pressure from taxpayers for resource efficiency and "value for money" (with environmental as well as economic benefits), there is a need for a good level of control and monitoring of the environmental and economic gains from GPP measures. This can involve specifying procurement criteria that can be met using particular ecolabels, including the EU "flower" ecolabel and more specific labels. For example, ENERGY STAR, originally a U.S. government label but since adopted in the EU also, is used for GPP in office IT in Stockholm, Sweden, and at the national and local level in several other countries (European Commission, 2012). Using public procurement to create a market for robust, third-party labels can act as an incentive for producers to use those labels rather than pursue uncertified Type II claims.

In the United States, an executive order requires that 95% of public procurement follows sustainability criteria (US Federal Register, 2015). To date, the principal means of demonstrating sustainability has been through the use of federal government-run ecolabels. The challenge EPA sees is that not all products are covered by federal ecolabel systems. Therefore, new draft guidelines have been developed by the EPA to address how public procurers may establish the validity of non-governmental eco-standards and labels. Although proposed to be voluntary, such guidelines may add pressure on non-government ecolabels and standards to improve processes and criteria in order for federal agencies to use non-governmental standards and ecolabels to meet their sustainability acquisition objectives (US EPA, no date).

4. EXISTING INTERNATIONAL AGREEMENTS AND DOCUMENTS

Most of the documents covered in this report are national in scope, constituting either guidance or regulation covering a particular jurisdiction. Other than the harmonisation efforts mentioned above (for both Type I and other ecolabels), there is limited multilateral international agreement relating to environmental labelling.

A key exception to this is the group of standards that have been agreed internationally by the members of ISO. The most relevant are the ISO 14020 series mentioned earlier, but other environmental standards (14000 series) and standards relating to accreditation (17000 series) are also relevant. The agreements and documents that have informed this report are in many cases closely connected to the ISO standards. National guidelines and standards are often designed to be either compliant with ISO standards or at least built on the same principles.

Non-government organisations working internationally also base their guidance and internal standards closely on the ISO standards. A typical formulation by such an organisation, in this case written by the International Chamber of Commerce (ICC), is the following one:

> *"The chapter draws from national and international guidance, including, but not limited to, certain provisions of the International Standard ISO 14021 on 'Self-declared environmental claims,' relevant to the marketing communication context, rather than technical prescriptions* (ICC, 2011, p. 36)."

For the case of Type I eco-labels, a significant amount of international coordination and harmonisation has been achieved. The Global Ecolabelling Network (GEN), an association of Type I eco-labelling organisations, works towards facilitated international trade by stimulated dialogue across countries and regions to foster co-operation, information exchange, and harmonisation of ecological criteria among its members. In the case of GEN, this includes the European Commission Environment Directorate General (EU flower label), Germany's Federal Environmental Agency (Blue Angel), the U.S. Green Seal, the Nordic Ecolabelling Board (Nordic Swan), and SSNC (Swedish Good Environmental Choice). In addition, there is an interest in promoting international harmonisation of ecological definitions across Korean (Korean Eco-label), Japanese (Eco-Mark), and Chinese (China Environmental Labelling) eco-labelling schemes, amongst others. Common criteria are presented as a necessary means to achieve mutual recognition of environmental labels, in turn reducing expenditures of companies and increased trading of certified products across these countries (communication from Japan Ministry of the Environment, 2013). Type I labels in several other countries have agreed on mutual recognition with the Japanese Eco-Mark: Taiwan's Green Mark, Thailand's Green Label, New Zealand's Environmental Choice, and the Nordic Swan (see Boström & Klintman, 2011, p. 206 for further examples of harmonisation efforts).

On the other hand, there are fewer examples of harmonisation for guidance relating to other types of environmental labels and claims. Differences between countries concerning environmentally related definitions and claims exist, with a generally shared principle that claims should not be misleading or false (OECD, 2011, p. 5).

More generally, the United Nations Environment Program (UNEP) is active in Product Sustainability Information, a programme aimed at generating common principles surrounding, among other things, environmental claims on products. UNEP also aims to influence government procurement through the Sustainable Public Procurement Programme, launched at Rio+20 in 2012. This initiative promotes public procurement as a tool for sustainable development and also supports implementation. Part of the implementation aspect aims to help improve sustainability information on products, including by engaging the private sector in overcoming challenges in the incorporation of ELIS through training and knowledge sharing. Also within the UN framework, the UN Forum on Sustainable Standards (UNFSS) was launched by five UN bodies in 2013. The purpose was to inform and analyse voluntary sustainability standards, especially their value for developing countries in reaching their goals of sustainable development (Gruère, 2013). In a similar vein, the UN Marrakech Task Force on Education for Sustainable Consumption started a campaign on how to handle the confusion that exists in the market as regards environmental claims, a campaign particularly concerning developing countries (OECD, 2011, p. 5). Initiatives such as these constitute third-party input and may facilitate issues of how to prevent as well as handle misleading and false environmental claims.

5. CONCLUSIONS

This review has drawn on examples of guidance and policy from Australia, Canada, Finland, France, Israel, Japan, New Zealand, Norway, Sweden, United Kingdom, and United States. From the documents reviewed in this report, the following conclusions can be drawn:

- The guidelines and documents from different countries describing criteria for making valid environmental claims show very few contradictions. A reason for this is most likely that most of those government documents derive in part from the ISO 14020 series of international standards.

- In addition, there have been several attempts to harmonise the criteria and standards relevant to environmental labelling at an international level. These mostly include harmonisation of organic certification standards and criteria for Type I eco-labelling schemes, which are mostly closely tied to the ISO 14024 standard. There are strong incentives for this kind of harmonisation, including reduced administrative costs and a potential for increased international trade of environmentally-certified goods. However, the existence of Type I eco-labels is uneven across product categories, and so the prevalence of the types of misleading claims described in this paper may be higher in some sectors than in others, particularly those for which Type I labels do not exist.

- There are currently fewer examples of international harmonisation in guidelines and enforcement processes concerning self-reported environmental claims. Self-reported claims are more directly controlled by regulations and legal procedures in the respective countries than eco-labelling schemes. However, many countries base their environmental claim regulations on principles from ISO standards 14020 and 14021. This, combined with generally clear advantages for the private sector to operate in a more internationally consistent environment, points to the possibility of harmonisation of criteria for self-reported environmental claims.

- However, before pursuing harmonisation it is important to ensure that enforcement against misleading claims is effective at penalising false environmental claims, avoiding future false claims and encouraging valid claims. The literature reviewed suggests that evidence is currently lacking to assess the effectiveness of guidance and regulations in different countries, and this could be a useful area of further research. Still, given the mutual interests involved in increasing trade in environmental goods in general, harmonisation of criteria for self-reported environmental claims may be a productive way forward. To follow the example of harmonisation regionally or bilaterally between trade partners, might be a first step forward in such a process.

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APPENDIX: OVERVIEW OF DOCUMENTS REVIEWED

1. Country documents

CANADA: Environmental claims a guide for industry and advertisers

Source: Canadian Standards Association (2008)

This guide has been written by the Canadian Standards Association in collaboration with the Competition Bureau Canada. The guide encourages the use of environmental claims, but nevertheless stresses the importance of making use of the current, internationally accepted practice information on how to correct environmental claims. This is the aim of these guidelines. As most, if not all, the other guidelines examined for this report, the Canadian guidelines are written explicitly in close correspondence with ISO 14021. In this case, ISO statements are followed by or introduced with an explanation for clarification where appropriate. Preferred and discouraged statements are provided to illustrate appropriate interpretation of the ISO clause. The preferred examples indicate a best practice approach. The legal text that these guidelines are intended to assist advertisers and industry to comply with are the (Canadian) Competition Act, the Consumer Packaging and Labelling Act, and the Textile Labelling Act. These laws are administered and enforced by the Competition Bureau.

FINLAND: Guidelines on the Use of Environmentally Oriented Claims in Marketing

Source: Kuluttaja Virasto (2002)

Issued by the Consumer Agency and Ombudsman of Finland, these concise guidelines are founded on section 2 of the Finnish Consumer Protection Act as well as on former rulings of the Market Court and the Consumer Ombudsman. The document emphasises that generalisations about environmental friendliness, naturalness, or the like, should only be done only when there are substantial, environmental benefits throughout the whole life cycle, benefits that are known and where evidence is available. The guidelines exemplify with the inappropriate generalisation that a car would be “for a cleaner environment”. In most of the cases it is, according to these guidelines, not appropriate to make a general environmental claim, since they run the risk of constituting misleading or at least vague signals to the consumer. Precision of the environmental properties throughout the entire lifecycle is imperative, according to these guides. The guide also covers concepts such as composting, recycling, and biodegradability, specifying how these terms should, and should not, be used.

FRANCE: A Practical Guide to environmental claims for traders and consumers

Source : République Française (2012)

In this guide fifteen of the most frequent environmental claims are explained. It refers to various relevant regulations based on products types. Most often it refers to EU directives and ISO standards. In the case of ecodesign, for instance, the guide refers to the EU Directive 2009/125 as well as the ISO standard 14062 on ecodesign as its basis. More generally, it refers to EU Directive 2005/29 on unfair commercial practices as the basis for the French consumer code. The latter defines false and misleading business practices. Moreover, it provides for penalties in cases where businesses have failed to comply (Articles L.121-1 et seq.). All EU member states have these provisions in common, since they are based on the above-mentioned EU directive.

ISRAEL: Guide to Reliable Environmental Claims: Preventing Greenwash

Source: Israel Ministry of Environmental Protection (2014)

This guide has its main focus on producers' and marketers' self-declarations of products and services. It furthermore stresses that guidance may be needed even where third party environmental labelling is used. The aim of this guide is formulated in positive terms, namely "to encourage the use of reliable environmental claims when marketing products and services". Three principles are stated as key with regard to reliable environmental claims: relevance (by reflecting real environmental benefits during the main impact points of the product lifecycle); clarity and accuracy (e.g., by using explanatory statements, clarifying the scale of the environmental benefit, avoiding mix-ups with third-party certification); and verification capability (through substantiated environmental claims fully documented for future verification). The guide refers to the Consumer Protection Law of 1981 as its regulatory basis. Since the above-mentioned three principles of environmental claims making in its core concerns the relation between the producer, marketer and consumer (where consumers are in a disadvantaged position), this is argued to make the Consumer Protection Law of 1981 no less relevant in environmental issues than in more "traditional" consumer protection issues. The guide is written in Hebrew, with an executive summary in English.

JAPAN: Environmental labelling activities in Japan

Source: Japan Ministry of the Environment (2008)

This document presents Japanese environmental labelling activities, particularly the EcoLeaf (a Japanese Type III-based Environmental Declaration, and the Japanese CFP). Similar to documents from other countries on ELIS, this one points out the challenge of how to handle the vagueness of claims of "eco-friendliness". The solution mentioned in this document is that ELIS must become easy to understand. This should probably be interpreted as a recommendation for specifying and explicating in what aspects and product stages such products are substantially less harmful to the environment than conventional products. Such efforts seem to be made concerning the CFP, which is aimed at rigorous quantification of CO_2 emissions.

JAPAN: Promoting International Harmonisation of Environmental Labelling

Source: communication from the Japan Ministry of the Environment (2013)

By exemplifying efforts towards promoting international harmonisation, this document can be seen a guideline that could be used in other regions as well. Here, the focus is on international harmonisation of ecological definitions across Korean (Korean Eco-label), Japanese (Eco-Mark), and Chinese (China Environmental Labelling) ecolabelling schemes. The document presents common criteria as necessary for mutual recognition of their respective environmental labels. Benefits that are mentioned include reduced expenditures for companies, and increased trading of eco-certified products between involved countries. According to this document, labelling schemes in several countries, in addition to the above-mentioned ones, mutually recognise the other schemes of this collaboration: labelling schemes, Taiwan's Green Mark, Thailand's Green Label, New Zealand's Environmental Choice, and the Nordic Swan.

NEW ZEALAND: The Fair Trading Act: Guidelines for Green Marketing

Source: New Zealand Commerce Commission (2008)

These guidelines aim to educate businesses about how to meet the obligations under the Fair Trading Act 1986. The guidelines stress that failing to meet the requirements for correct green claims making leads to serious penalties for individuals and businesses. The document notes that it is irrelevant whether the claim actually has misled anybody, or whether a company has intended to mislead. After giving examples of where misleading or false claims have entailed penalties, the guidelines indicate how companies could prevent such outcomes. In addition to a checklist for marketers, the guidelines strongly encourage companies to make use of a compliance programme. Such a programme may help businesses when developing a legal defence in the event of prosecution under the Fair Trading Act.

NORWAY: The Consumer Ombudsman's Guidelines on the Use of Environmental and Ethical Claims in Marketing

Source: The Consumer Ombudsman (2009)

The guidelines are developed on the basis of the Marketing Control Act, mainly sections 2, 6, 7 and 8. The purpose of these guidelines is to prevent consumers from being misled as well as to influence businesses to comply with the act with respect to environmental and ethical claims making. The guidelines express how the Consumer Ombudsman will enforce the Marketing Control Act. Moreover, they describe the possibility for businesses to get help by the Consumer Ombudsman with guidance for how to fully comply with the act. The guidelines clarify the legal context of the act as follows: "Through this Marketing Control Act, the Unfair Commercial Practices Directive (Directive 2005/29/EC … is implemented."

UNITED KINGDOM: Green Claims Guidance

Source: DEFRA (2011)

These guidelines address mainly self-declared environmental claims, thus not third-party certification. Still, much of the descriptions and prescriptions concerning good practice hold for third party labelling and certification as well. It is aligned with a number of codes, standards, and guidances, such as the UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP code), the UK Code of Broadcast Advertising (BCAP), the European Commission Guidance for Making and Assessing Environmental Claims, and the Guidelines on the EU Unfair Commercial Practices Directive. Similar to other guidelines, it is highly drawn from ISO 14021. The guide presents correct environmental claims making as a three-step procedure that should begin with ensuring that the content reflects a genuine environmental benefit in a relevant way. This should lead to a clear and accurate presentation of the claim, followed by a check that the claim is substantiated. In terms of regulation, it explains that environmental claims concerning consumer goods are subject to the Consumer Protection from Unfair Trading Regulations 2008.

UNITED STATES: Guides for the Use of Environmental Marketing Claims ("Green Guides")

Source: US FTC (2012)

The Green Guides are designed to help marketers ensure that the claims they make about the environmental attributes of their products are truthful and non-deceptive. Industry guides, such as these, are administrative interpretations of the law. Therefore, they do not have the force and effect of law and are not independently enforceable. The Federal Trade Commission, however, can take action under the FTC Act if a marketer makes an environmental claim inconsistent with the guides. In any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive. The Green Guides outline general principles that apply to all environmental marketing claims and provide guidance regarding many specific environmental benefit claims. The guides explain how consumers likely interpret each claim. Furthermore, the guides describe the basic elements necessary to substantiate it, and present options for qualifying it to avoid deception. Illustrative qualifications provide guidance for marketers who want assurance about how to make non-deceptive environmental claims, but are not the only permissible approaches to qualifying a claim.

2. EU and other inter-governmental documents

EUROPEAN UNION: Guidelines for Making and Assessing Environmental Claims

Source: European Commission (2000)

This document is based on ISO 14021:1999, for instance by providing guidelines of how to make a dozen specific environmental claims, from "compostable" to "waste reduction". In line with other guidelines for environmental claims making, this document states that such self-declared claims and its information should: (1) be accurate, verifiable, relevant, able to be substantiated and not misleading; (2) be

based on scientific methodology that is sufficiently thorough and comprehensive to support the claim and that produces accurate and reproducible results; (3) be available and provided upon request to all interested parties; and (4) take into consideration all relevant aspects of the life cycle of the goods or service.

EUROPEAN UNION: Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices

Source: European Commission (2009)

This document was published in 2009 and was developed in cooperation between the European Commission and national enforcers. It aims at developing a common understanding and a convergence of practices when implementing the Directive on Unfair Commercial Practices (Directive 2005/29/EC). The work of the European Commission on unfair commercial practices intends to boost consumer confidence and facilitate cross border trading by enabling national enforcers to curb unfair practices such as providing untruthful information to consumers including inter alia misleading green claims. The guidance document is currently under revision and an updated version taking into account recent EU member states' experience in the implementation of the directive is expected by autumn 2014.

SCANDINAVIA: Regulations for the Nordic Ecolabelling of Products Nordic Ecolabel

Source: Nordic Ecolabelling Board (2011)

Adopted in 2011, these regulations apply to companies which hold or apply for a license to use the Nordic Ecolabel. Each of the Nordic countries has its own organisation that administers the Nordic ecolabelling scheme, with authority assigned from the respective governments. A business makes the license application to the national organisation. The application is valid for one year. Should the ecolabel be misused, for instance by a former license holder continuing to use the label without a new, valid license, the former holder may need to pay a financial compensation, usually not below EUR 3 000.

3. NGO, private sector and other documents

FSC: FSC International Standard Requirements for use of the FSC trademarks by Certificate Holders

Source: FSC (2010)

This document sets mandatory standards for the use of the FSC trademark. FSC certificate holders need to follow these standards whenever they use the trademark as a communication tool on their products, for the promotion of their products, and for the promotion of the company's status as an FSC certificate holder.

ICC: Advertising and Marketing Communication Practice: Consolidated ICC Code

Source: ICC. (2011)

The International Chamber of Commerce (ICC) code on advertising and marketing communication practice promotes self-regulation as the major principle in product marketing. Chapter E of the code deals with environmental claims. It mainly refers to the ICC Framework for Responsible Environmental Marketing Communications. The ICC's Interpretation Panel is available as a special resource to ICC members in case they have questions on how to make correct environmental claims.