



European Economic and Social Committee

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Environmental, social
and health claims

Brussels, 2 July 2015

OPINION

of the

European Economic and Social Committee

on

Environmental, social and health claims in the single market

(own-initiative opinion)

Rapporteur: **Mr Hernández Bataller**

On 22 January 2015, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on

Environmental, social and health claims in the single market
(own-initiative opinion).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 June 2015.

At its 509th plenary session, held on 1 and 2 July 2015 (meeting of 2 July), the European Economic and Social Committee adopted the following opinion by 135 votes to 17 with 14 abstentions.

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1. **Conclusions and recommendations**

- 1.1 Marketing communication is an important tool enabling companies to publicise their products and services in a transparent manner, ensuring that the internal market operates smoothly and offers a high degree of consumer protection. Some messages, however, are not reliable or contain inaccuracies, making environmental, social or ethical and health-related claims that are damaging to businesses that comply with all the rules and to consumers.
- 1.2 The environmental and social performance of products and services is currently measured and communicated using a range of channels and formats, under different initiatives, in differing formats and based on a variety of methodologies for assessment. The European Economic and Social Committee (EESC) believes it is important that the Commission put forward European methodologies for measuring and communicating the overall environmental impact of products and services. An inventory of official labels should also be compiled, specifying their meaning and the bodies accredited for awarding, validating and differentiating them. In any case, consumers have the right to have a clear and precise information on a product's origin.
- 1.3 The EESC hopes that, with a view to extending Directive 2005/29/EC, the Commission will revise the guidelines facilitating consumers' and businesses' access to reliable and transparent information and will clarify the use of environmental, ethical and health-related claims in marketing communications.
- 1.4 In the field of administrative cooperation, each Member State's consumer authorities should carry out a "sweep" of environmental, social, ethical and health-related claims, to be able to assess the situation today on the basis of real data.

- 1.5 The EU should equip itself with a coherent, comprehensive and consistent legal framework for regulating on-line marketing communications, which shows due regard for the right to personal privacy and for the protection of other public policy objectives.
- 1.6 The European Commission and the Member States, within the scope of their respective powers, should develop initiatives for surveillance, monitoring and sanctions in relation to existing self-regulation and co-regulation schemes in this area that cover environmental, social and health-related claims. It should be ensured, in particular, that national and European self-regulatory bodies in the field of advertising meet the standards set out in the Community provisions and recommendations, especially with the aim of securing a high degree of consumer protection. Consumer organisations should also be informed when codes of conduct are drawn up, so that they can be involved in the drafting process.

2. **Introduction**

- 2.1 There are a good many businesses in Europe that provide the consumer with comprehensive, accurate and transparent information on the essential characteristics of goods and services placed on the market. Nevertheless, the improper use of environmental, social and health-related claims is harming businesses that play by the rules, as well as consumers that purchase goods and services.
- 2.2 The right to information enables the workings of the internal market to be more transparent and redresses the obvious imbalances in the supplier/consumer relationship.
- 2.3 The consumer has the right to obtain comprehensive, accurate and transparent information on the essential characteristics of goods and services placed on the market.
- 2.4 Information is therefore a crucial factor in consumers' and users' purchasing decisions, both when acquiring a product on the basis of preferences and choices and when rejecting those that do not meet their needs and wishes to the same extent. In turn, technological developments make it increasingly easy for companies to cater to the demands of different consumer segments individually, making use of loyalty schemes, by customising their products. A clear example of this is "one-to-one" marketing.
- 2.5 In a social market economy model such as the one set out in the Treaty, the EU cannot be said to have a comprehensive legal framework governing marketing communications because it is unnecessarily complex, patchy, inconsistent and sometimes incoherent, being primarily based on:
- Directive 2005/29/EC¹ on unfair commercial practices, which only covers the relationship between consumers and businesses. This directive is without prejudice to EU and Member State rules on health and, with regard to financial services, Member States

¹ [OJ L 149, 11.6.2005, p. 22.](#)

may impose requirements that are more demanding or restrictive than those contained in the directive;

- Directive 2006/114/EC² concerning misleading and comparative advertising, which covers the relationship between businesses;
- Directive 2010/13/EU³ on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), which amended the directive generally known as the Television without Frontiers Directive;
- in the food sector, the relevant legislation is Regulation (EC) 1924/2006⁴, on nutrition and health claims made on foods and also in relation to other sectors in the field of health, such as cosmetics and personal care products, on which the Commission is already working;
- the Communication on Corporate Social Responsibility⁵ and the more recent Communication on A Digital Single Market Strategy for Europe⁶.

2.6 The Commission has published a number of communications, has opened a public debate and is working on, among other things, what is known as the environmental footprint of products, in order to guarantee reliable and accurate information on products' environmental impact throughout their life-cycle.

2.7 Although technological advances have given consumers greater access to information, the EU's regulation of on-line marketing communication is currently spread across a number of texts (the directives on electronic commerce, consumer protection, protection of privacy in commercial communication, unfair commercial practices, etc.). The EESC believes that in the future, a proposal should be made to build on the strategy that has been adopted. In the short term, however, there should be consolidation to draw the provisions in force together in a single recast text and to avoid contradictions in the messages sent out using this channel of communication.

2.8 Furthermore, a framework for cooperation between the Commission and the Member States already exists, in Regulation (EC) No 2006/2004 on consumer protection cooperation, which should explore these areas further, in order to assess any infringements that may be committed.

2.9 Where existing remedies are concerned, these vary widely from one Member State to another because, while some provide the courts directly with effective means of ensuring compliance with the rules, others have developed various self-regulation and co-regulation initiatives for

2 [OJ L 376, 27.12.2006, p. 21.](#)

3 [OJ L 95, 15.4.2010, p.1.](#)

4 [OJ L 12, 18.1.007, p. 3.](#)

5 [COM\(2002\) 347 final.](#)

6 [COM\(2015\) 192 final.](#)

advertising, through codes of conduct and through out-of-court dispute settlement bodies that complement legislation and existing administrative and judicial enforcement mechanisms.

2.10 There are also other variables that complicate the matter further, and include:

- the option of voluntary labelling;
- the footprint of corporate social responsibility policies;
- more selective consumer demand for products with specific characteristics addressing a particular concern;
- the frequent inadequacy of effective monitoring mechanisms; and
- the difficulties faced by consumers in differentiating and verifying information.

2.11 Finally, a number of promotional techniques, such as branded content, emotional marketing and storytelling, product placement or so-called neuro-marketing applications, while helping suppliers to achieve their business targets more effectively, hamper rational the public's decisions in relation to their purchasing decisions, uses and consumption, based on a real assessment of actual profits of goods and services and the appropriateness of their pricing. Among other things, because they often eliminate the traditional distinction between advertising and non-advertising content, cheating recipients of the message of their right to know the nature and commercial purpose that might exist behind a message that appears merely to be providing information, and are therefore likely to mislead more vulnerable consumers, such as young people, the elderly and people with disabilities.

2.12 In short, the EESC supports the existence of higher-quality products and services that are ethically produced, or which are distinguished by their better environmental and/or social performance, and the existence of environmental, social and health-related claims focusing this opinion on claims and marketing communications that are false, inaccurate or lead to confusion.

3. **General comments**

3.1 The impact of marketing communications based on questionable, inaccurate or hard-to-verify claims that lead to errors and confusion is diverse and of varying severity, but is always of significant detriment to consumers, to businesses that observe the rules and by extension, to the workings of an ethical and transparent market in goods and services.

3.2 The implications include the following:

- distortion of supply, as a result of the claims' effect on prices;
- creation of non-transparent markets with a major imbalance between supply and demand;
- constraint on consumers' purchasing power by undermining their ability to make informed choices, due to a lack of accurate information enabling them to compare their needs and wishes with the nature of what is on offer;

- deterrence and frustration for committed consumers who factor responsibility into their decisions (environmental, social, health-related claims) where the information received is misleading, false or unverifiable;
- the promotion of "free-rider" behaviour, which hampers the establishment and expansion of responsible consumption, by suppliers who benefit from the growing interest of consumers in such factors but who are not willing to pay for them, which also damages businesses that do act properly;
- loss of consumer confidence in the market and in the oversight exercised by the public authorities.

3.3 The information must meet consumers' real needs and expectations and should therefore be assessed to see whether it reflects, to a sufficient degree, the purpose, content, presentation, context, and identification of the advertising message, the basic requirements for which are the following: reliability, topicality, impartiality, accuracy, relevance, succinctness, comprehensibility, clarity, readability and ease of access. The EESC maintains that a product's label should state the product's origin, because this increases the level of protection and prevents consumers from being misled or confused, thus serving to make their choices easier.

4. **Environmental claims**

4.1 Environmental claims focus mainly on the impact on the environment of the products' composition or use, often related to climate change and pollutant emissions. But this may also extend to other areas, such as the rational use of natural resources, deforestation, species diversity, or energy efficiency and, ultimately, to the environmental footprint of company activity and the consumption of products on our environment.

4.2 Using such claims as a mere formality or for the sake of appearances but in a way that has no bearing on the reality of the product or its manufacture creates a phenomenon known as "greenwashing", which can be defined as the selective promotion of environmentally-positive information through advertising, giving consumers a distorted impression of the facts, in which these "green" aspects are over-emphasised. The Commission also defines this practice in its guidance on implementing Directive 2005/29/EC⁷.

4.3 From the environmental point of view, information on a brand's impact (either positive or negative) creates a certain image in consumers' minds. In turn, this image influences aspects such as purchasing decisions or political opinions. By punishing "bad" behaviour and rewarding "good" behaviour, in the form of purchasing decisions, the system achieves a certain dynamic equilibrium.

⁷ [SEC\(2009\) 1666 final](#). See point 2.5.1 op. cit.

- 4.4 The most commonly-used greenwashing techniques are the following:
- making a polluting process appear to be greener than it really is. Suggesting that a product is "green" based on a limited set of attributes while ignoring other important environmental issues. The final product might be very green but the process that has created it may be highly polluting. Greenwashing can also include poor practices in the supply chain linked to unhealthy working conditions with harmful products;
 - lack of evidence. An environmental claim that cannot be corroborated by readily available supporting information or by reliable third-party certification;
 - vagueness: a claim which is so poorly defined that its real meaning is likely to be misinterpreted by consumers;
 - "false" labels or awards that the product has not in fact received.
- 4.5 The criteria used should ensure that the consumer receives accurate information and should prohibit the misuse of environmental claims in marketing communications.
- 4.6 One measure to make the workings of the market more transparent might be to introduce harmonised European methodologies, such as the so-called “environmental footprint”, making it possible to establish the environmental traceability of products and organisations. These methods should be based on commonly-used international standards, such as ISO 14201, on Environmental labels and declarations: Self-declared environmental claims, or the International Chamber of Commerce Code.

5. **Ethical and social claims**

- 5.1 In the same way that claims abound in the environmental sphere, there is also a kind of "greenwashing" that applies to the "ethical and social qualities" of companies and products. The aim here is to transform the acquisition of a product into an opportunity for charitable or inclusive action which is social in nature insofar as it would implicitly benefit groups or communities that have specific needs or vulnerabilities.
- 5.2 It is currently common to see brands associated with socially-minded projects, using a type of campaign based on promoting sales. These are known as "charity promotions" or sales promotion campaigns linked to social action, which have achieved a degree of success as a result of the economic crisis. When such actions use inaccurate claims just to make sales, they can confuse the consumer and cause him or her to make purchasing mistakes, and are therefore particularly harmful.
- 5.3 Such measures focus on campaigns entailing solidarity, humanitarian aid or social support for certain communities or population groups, or even support for short-term causes arising from emergency situations, or from a structural issue involving discrimination, segregation, inequality, etc.

- 5.4 Other cases of social washing or social greenwashing, occur when a company is portrayed as being socially responsible without there being sufficient evidence of this, or where a promotional and social quality is given an exaggerated role in the company's core business.
- 5.5 Social or ethical claims are sometimes combined with others of an environmental nature, but also extend, in line with current trends, to other aspects such as employment, promoting local life, public participation and any other area that triggers consumers' desire to make associated purchases.
- 5.6 Account should also be taken in this regard of the hidden behaviour of pseudo “ethical, social and environmental affairs consultants”, who confuse consumers and cause them to make purchasing mistakes, because they operate on the market as traders or brokers, abusing the good faith and credulity of consumers, and who seek to profit from marketing goods or services on the basis of fallacious arguments.
- 5.7 Financial operations that use ethical, social or environmental arguments in seeking to market financial products and instruments, while failing to meet the solvency requirements and supervisory checks that are mandatory for financial institutions, are particularly detrimental to the workings of the internal market. The European Banking Authority has recently adopted an opinion putting forward a number of measures to reduce risks and to establish requirements for advertising and recommendations to protect participants from potential conflicts of interest.
- 5.8 "Social washing", or the use of inaccurate information in order to present a socially committed image, should be prevented.

6. Health claims and claims of other types

- 6.1 The recent wave of consumer concern about healthy lifestyles and the expansion of technology into the production of food, cosmetics and other health-related products has also triggered the use of health-related claims in areas ranging from food and nutrition, benefits for beauty and weight-loss, to enhanced physical and cognitive functions.
- 6.2 Alongside environmental claims, the upsurge of consumer concerns about healthy eating also provides an opportunity to make claims relating to organic farming, or to the presence or absence of food ingredients such as vitamins, Omega 3 fatty acids, sugars, salt or alcohol and even transgenic substances.
- 6.3 The progressive ageing of the population and increased life expectancy represent fertile ground for even greater use to be made of unlawful claims.
- 6.4 Similarly, so-called “healthy marketing”, which makes use of such claims to provide added value to boost marketing campaigns, has been done for food supplements or herbal products but also for mass-consumption goods, also contains misuse of alleged health benefits, garbed in pseudo-scientific arguments.

7. **Specific comments**

- 7.1 It should be noted that the options of voluntary labelling and the design of logos and pictograms creates rather vague associations in the cognitive and emotional processes that lead consumers to make a purchasing decision. Statements or pictures must not be used to clearly and firmly claim anything unless it can be proved beyond doubt. Specific steps should be taken to check claims.
- 7.2 However, verifying claims must be carried out in accordance with the type of media used, since each one has its own specific features. To summarise, claims can be made, in schematic form, using the following (among others):
- texts;
 - messages and slogans;
 - logos
 - symbols and signs;
 - pictograms;
 - images and photos;
 - graphs and data;
 - ranges of colours;
 - faces and names of familiar and highly-reputed individuals and organisations.
- 7.3 It is permissible to ask that information containing unprovable claims and serving commercial purposes not be used or that it be corrected.
- 7.4 The EESC therefore calls on the European Commission and the Member States to take the appropriate steps, in keeping with the provisions of Regulation (EC) No 2006/2004, in the form of administrative cooperation and in particular promoting joint activities, to eradicate the fraudulent use of inaccurate ethical, environmental or health claims, working closely with European Consumer Centres, which play a crucial role in such situations.

Brussels, 2 July 2015.

The President
of the
European Economic and Social Committee

Henri Malosse
