

MEMORANDUM



Guidance from the Consumer Ombudsman on the use of environmental and ethical claims, etc., in marketing, January 2011

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11. Evaluation of the Guidance

1. Purpose

Marketing containing environmental or ethical claims about a product or an activity is likely to appeal to some generally accepted positive statements or properties. When a trader uses this type of marketing to boost sales, such marketing must be assessed under the Danish Marketing Practices Act (*markedsføringsloven*).

The purpose of this Guidance is to protect consumers against misleading and unethical marketing and to support the provision of relevant and credible information for the benefit of consumers. The Guidance is further intended to help safeguard real and fair competition between traders. Accordingly, the Guidance aims to make it easier for traders to market positive environmental efforts and counter any attempts to greenwash own products. Similarly, the Guidance is to make it clearer for traders when they may lawfully use ethical marketing statements about the properties, conditions relating to the production of products and about the activities in general of their respective companies.

Guidance from the Consumer Ombudsman may be viewed as ‘general preliminary information’ by which the Consumer Ombudsman explains how the marketing rules are to be interpreted in relation to specific fields. This Guidance contains the requirements which, as a principal rule, may apply to the marketing of environmental and ethical claims, etc, according to the Consumer Ombudsman. It also provides general directions as to what typical aspects traders must be aware of if they want to use such marketing claims. The main focus is a review of the requirements that may apply to environmental and ethical marketing claims under section 3 of the Marketing Practices Act. In its interpretation of the provision, the Consumer Ombudsman looked at, *i.a.*, which documentation requirements traders must satisfy when using environmental and ethical marketing claims.

In general, statements about products or activities must be assessed against similar products, etc., in the market. Consumers must be able to trust, *e.g.*, that a product has a smaller environmental footprint than similar products if a trader markets his product as environmentally friendly, possibly supplemented by an explanatory statement of what makes the product environmentally friendly or less polluting.

When a trader markets a product using general statements, the Consumer Ombudsman finds that it is of vital importance that the product is among the top products in the market. If that is not the case, the trader may risk misleading the consumers. If the statement is specified by a more detailed

explanation, it is required instead that the emphasised environmental benefit may not be a general characteristic of similar products.

The assessment of marketing communication is based on the overall impression conveyed to the consumer through the marketing. A case-by-case assessment is made as to whether marketing comprising environmental or ethical claims satisfies the provisions of the Marketing Practices Act or whether such marketing must be considered misleading or contrary to good marketing practice, see sections 3 and 1 of the Marketing Practices Act.

If traders observe the directions of this Guidance in their marketing, the Consumer Ombudsman will not take measures against such marketing, unless special circumstances apply.

The Guidance is not exhaustive. Accordingly, if an instance is not described this does not mean that it is considered to be in accordance with the Marketing Practices Act. It depends on an assessment of the individual case. The Guidance is to be regarded as an elaboration on the provisions of the Marketing Practices Act. The examples given in the Guidance are intended as practical guidance for traders. The examples illustrate, *i.a.*, the requirements for adequate specification of a statement and must not be perceived as clear guidance as to what is permitted and what is not. The examples are supplemented by descriptions of the previous practice of the Consumer Ombudsman in the relevant field.

Ultimately, the courts decide whether there has been a violation of the Marketing Practices Act, including whether a criminal offence has been committed.

Terminology

The expression *must* in the Guidance refer to requirements that are made of marketing and must be observed unless particular circumstances can be established in the relevant situation which make an alternative solution more or equally acceptable in relation to the relevant trader or industry.

The use of *should* expresses a recommendation. The Consumer Ombudsman has not decided whether failure to observe the recommendation will be contrary to legislation in all instances. Traders should be aware that such instances may be considered misleading or contrary to good marketing practice depending on the circumstances.

2. Scope of application

2.1 Marketing to consumers

The Guidance is intended to help ensure that environmental and ethical claims, including labelling schemes, symbols, certificates, etc., used in marketing to consumers are in accordance with the requirements stipulated in the Marketing Practices Act.

2.2 Special legislation

If other legislation (special legislation) contains special requirements as to the properties, labelling and the like of a product or the marketing thereof, such requirements are not covered by the Guidance. Such special requirements must be observed in addition to the requirements that follow from the Marketing Practices Act.

Traders wanting to use environmental or ethical marketing claims must therefore examine whether special legal rules on marketing apply which must be observed. For example, such special rules may stipulate requirements on the information to be included in the marketing of a product or include a prohibition against misleading statements. To mention an example, special rules apply to the field of chemical substances and products.

Moreover, traders must also be aware that the general rules of the Marketing Practices Act on misleading or incorrect statements or omissions of material information may also apply in individual cases. In particular, questions may be raised as to whether the Marketing Practices Act has been observed in cases of misleading omissions, *e.g.*, if a trader fails to provide information on material factors relating to the product.

The regulatory authorities stated in the relevant act are responsible for enforcement of the special legislation.

Special fields may also be subject to EU legislation – regulations – that apply directly to traders. The EEC regulations on the use of the word ‘organic’ are examples of such EU legislation. Similarly, international conventions may apply to special fields.

3. Legal basis

This Guidance has been prepared on the basis of the Marketing Practices Act, more specifically sections 1 and 3 of the Act¹. Only these provisions are reproduced in this clause. Reference is made to the Annex for more detailed information on the legal basis, including Articles 6 and 7 of the Directive concerning unfair business-to-consumer commercial practices, in accordance with which section 3 of the Marketing Practices Act must be interpreted.

Section 1. (1) *Traders subject to this Act shall exercise good marketing practice with reference to consumers, other traders and public interests.*
(2) *Marketing in respect of consumers’ economic interests may not be designed to significantly distort their economic behaviour.*

Section 3. (1) *Traders may not use misleading or undue indications or omit material information if this is designed to significantly distort consumers' or other traders' economic behaviour on the market.*

(2) *Marketing whose content, form or method used is misleading, aggressive or subjects the consumers or traders to undue influence, and which lends itself to significantly distorting their economic behaviour, is not permitted.*

(3) *Where factual statements are made, these must be capable of being substantiated by documentation.*

(4) *The Minister for Economic and Business Affairs lays down more detailed regulations for specific forms of marketing which, pursuant to EU legislation, are considered in any circumstances to be unfair in respect of business to consumer matters.*

Violation of section 3(1) or (2) of the Marketing Practices Act or the Executive Order on Unfair Business-to-Consumer Commercial Practices² may be liable to a fine, unless other legislation prescribes a more severe punishment. The Consumer Ombudsman may also bring actions with a claim for prohibitory or mandatory injunctions and issue administrative orders in cases where the legal position is clear.

4. Definitions

Product

For the purpose of this Guidance, 'product' means goods, including any packaging, and services, including real property.

Similar products

For the purpose of this Guidance, 'similar product(s)' means products which satisfy the same need or serve the same purpose and are marketed in the part of the market with which the trader may compare himself to a reasonable and relevant extent, see also in this respect the definition laid down in competition law of 'relevant product market' with mutually substitutable products.

Standards

For the purpose of this Guidance, the term 'standards' means ISO/IEC standards, including European standards prepared by the CEN/CLC³ which have been implemented and issued as Danish standards. Standards may also refer to Danish standards prepared by Danish Standards.

Life cycle and life cycle assessment

The 'life' or 'life cycle' of a product refers to all the phases which the product goes through from 'cradle to grave'. The phases are consecutive and interrelated and may be associated with the product as such or elements thereof.

'Life cycle assessment' covers the mapping of the (environmental) conditions and assessment of any material (environmental) impact

throughout the entire product life cycle, from the acquisition of raw materials and manufacturing, to the use and disposal of the product and the transportation of the product during and between these phases. In the raw material phase, natural raw materials are extracted and processed, *e.g.*, through mining, forestry or agriculture. In the manufacturing phase, the product is produced from the raw materials, and the use phase refers to the use of the product by the end user. When the product has been used and worn out, it is handed over for recycling or end processing, which typically includes incineration and depositing. The calculation of the (environmental) impact of transportation may be made as a separate transport phase, but it may also be included as part of the other phases. All phases cover a wide range of processes, all of which are mapped in a life cycle assessment. The phases may be used to summarise the results. Reference is made to ISO 14040 and ISO 14044 on life cycle assessments⁴.

The life cycle phases of services will typically be mapped according to the following four phases: design of the service, marketing, delivery and disposal. ISO 14040 (the term ‘product’ also covers services) and ISO 14044 on life cycle assessment may serve as the basis for such analysis. Financial and social conditions and impacts are typically outside the scope of the life cycle assessment. However, the principles and methods applied in life cycle assessments may also be used in relation to social and financial aspects.

Independent expert

An ‘independent expert/body’ with recognised professional qualifications is defined as a body that may carry out a verification on a proper basis with adequate professional integrity and the technical competencies that may be required in the relevant field, and which is not dependent on the trader subject to the verification. Such experts must not participate in activities that may be contrary to their objectivity and integrity in connection with the verifications which they have been authorised to carry out. The experts must not be influenced by any form of pressure or incentive, particularly of a financial nature, that may affect their assessments or the outcomes of their verification. They must not be dependent on the number of assessments made or the outcomes thereof. For example, educational or research institutions with university status, approved technological service institutes or certification organisations may act as experts. Auditors may carry out the verification, provided that it is within the usual field of responsibility and competencies of auditors.

Claims

The term ‘claim(s)’ means the use of statements, information, symbols, images, labelling schemes and certificates, etc., used in the marketing of products and activities to boost sales, directly or indirectly.

Environmental claims

‘Environmental claims’ means the use of statements, etc., which convey the impression that a product or an activity of a trader has a smaller environmental footprint and/or less harmful impact on the climate than other products or activities. Environmental claims may relate to environmental impacts in general or to elements of the environment, such as air, water, soil or subsoil, as a consequence of specific emissions. Environmental claims may also relate to noise levels, etc.

Ethical claims

In the Consumer Ombudsman’s opinion, it is hardly possible to provide a clear and unambiguous definition of ethics, including sustainability, as the concept is relative and subjective and the content must be assessed over time. An assessment according to this Guidance of ethical marketing claims will include elements such as the following:

‘Ethical claims’ means in particular the use of statements, etc., which convey the impression that the manufacturing of a product or planning of an activity of a trader is made according to generally recognised and accepted standards, for example concerning child labour and general working conditions, nature protection, health, animal welfare, corporate social responsibility (CSR) initiatives and charity donations. Such claims are typically based on the trader’s wish to accommodate general or specific developments and trends that can be inferred from consumers’ behaviour.

Sustainability claims

‘Sustainable development’ is defined on the basis of the Brundtland Commission Report on Environment and Development of 1987 as a development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs.⁵

‘Sustainability claims’ means in particular the use of statements, etc., which – from the perspective of a life cycle assessment or product chain analysis – convey the impression that the manufacturing of a product or planning of an activity of a trader has been made with key focus on social and ethical conditions and on making the smallest possible environmental footprint (air, water, soil, subsoil and noise) and health impact in view of the technological and financial possibilities.

5. Who is liable for statements

5.1 Liability for the marketing – principal rule

The trader having made the marketing communication is responsible for ensuring that it complies with the Marketing Practices Act. Violation of the Marketing Practices Act or other special legislation may entail criminal liability if the matter is subject to punishment and the violation was intentional or committed through negligence. It is in general sufficient that the trader has demonstrated simple negligence.

Which party can be made liable depends on the relevant circumstances relating to the preparation and publication of the marketing material. In some cases, the manufacturer will be liable and the retailer in others. And in some cases, both may be made liable.

5.2 Liability of third parties

A third party, *e.g.*, an advertising agency assisting the trader with the marketing (drafting of advertisement or provision of advisory services, etc.) may incur joint liability for the marketing. The assessment is made under the general rules on complicity of the Danish Criminal Code (*straffeloven*) and the case law established in the field⁶.

5.3 Liability of editors

According to section 27(2) of the Danish Media Liability Act, editors of media covered by the Act are liable for the content of advertisements under the general rules of law. Accordingly, an editor may incur liability for complicity according to the Criminal Code.

An editor is liable for the content of the advertisement if (s)he fails to satisfy the duty of disclosure under sections 4 and 6 of the Media Liability Act. This applies even though the editor did not act wilfully or negligently.

6. General requirements of the use of environmental and ethical claims, etc., in marketing

The general requirements made of the use of environmental and ethical marketing claims are described in clause 6. The requirements that are also made of the use of environmental claims are then stated in clause 7 and those made of ethical claims in clause 8. The requirements made of the profiling and establishment of reputation, etc., by traders are stated in clause 9 and requirements of the use of labelling schemes, etc., in clause 10.

6.1 Clear and balanced message

Misleading and undue marketing is not permitted. This follows from section 3 of the Marketing Practices Act, which must be construed in accordance with Articles 6 and 7 of the Directive concerning unfair business-to-consumer commercial practices. Reference is made to the Annex.

In the Consumer Ombudsman's opinion, this means that marketing communications may be made subject to the following requirements:

All claims used for marketing purposes must be correct, accurate, relevant, balanced, clearly worded and easy to understand to avoid misleading consumers. This also applies to the message in environmental and ethical marketing claims.

The requirement that claims must be clear and accurate implies that it must appear in a clear and unambiguous manner whether the environmental or ethical claim applies to the company as such, to one or more activities or a product. It must be stated which matters the claim relates to, including properties or aspects, and as regards products whether the claim relates to the entire product, or elements thereof, the packaging, etc.

The requirement of relevance implies that the message must not emphasise properties or aspects that must be considered insignificant in relation to environmental impact or the ethical dimension.

The requirement of balance implies that overstatements about the trader's activities or the environmental impact or the ethical properties of the product are not permitted and that material information must not be omitted.

Accordingly, the marketing must enable consumers to make informed product choices, etc., based on environmental and ethical considerations. In that connection it must be borne in mind that claims which are not unambiguous and which may be interpreted in various ways easily become misleading if used without any further specification or explanation. These may be general environmental or ethical claims such as 'green', 'environmentally friendly', 'environmentally correct', 'gentle', 'an ethically correct choice', 'safeguarding welfare', 'sustainable' or 'fair'.

A specification or an explanatory statement accompanying the claim must satisfy the requirements stated above and the property or aspect emphasised must be of material significance to the product, activity or activities as such. The specification or explanatory statement must appear in immediate proximity to the general claim and must have more or less the same message impact.

In marketing, the following matters must also be taken into account:

The marketing must not be designed so as to exploit in an unfair manner consumers' concern for the environment or any lack of knowledge on their part about the environment or ethical matters.

Conditions or requirements that follow from legislation, *e.g.*, a prohibition against the use of certain substances in a product type, must not be used independently for marketing purposes⁷. A marketing communication emphasising that the product does not contain elements or possess properties which have never had any relevance to the product or product category may also be misleading. The same applies to

marketing containing unnecessary information that may conceal the material message.

Neutral and specific information about a product or a trader presented in an objective manner without emphasising environmental or ethical concerns will normally not be regarded as likely to mislead consumers.

Messages must be reassessed and possibly updated if necessary in view of the technological development, comparable products or other circumstances that may affect the accuracy of the message.

The Consumer Ombudsman recommends that in their marketing traders focus on providing as specific information as possible about the product, activity or the company to the consumers to enable them to make purchasing decisions on an informed basis.

6.2 Overall impression of the marketing

The marketing must convey a true, balanced and loyal overall impression of the product, the activities of the trader or the company as such being marketed. Marketing is assessed against the overall impression it is likely to convey to consumers.

Based on an overall assessment, the wording, layout, choice of colours, images, sounds, symbols, etc., may convey the impression that a product or activity of a trader possesses environmental or ethical benefits. The overall impression may also be influenced by the way in which the marketing is communicated. Aspects of relevance may be the type of media used and the connection in which the claim is presented. A concrete assessment is always made of whether the provisions of the Marketing Practices Act have been complied with.

6.3 Documentation of claims

Where factual statements are made, these must be capable of being substantiated by documentation. This follows from section 3(3) of the Marketing Practices Act. The requirement implies that environmental or ethical claims about a product and its properties or facts about a trader or his activities must be capable of being substantiated by documentation. The trader must ensure that such documentation is available before the claims are used for marketing purposes for the first time.

The documentation must be adequate, which normally implies that the claims must be capable of being substantiated by statements or studies by independent bodies with recognised professional qualifications. If expert studies give rise to significant disagreement or doubt as regards the environmental impact or the ethical dimension, the trader must provide information about this in a balanced manner or refrain from marketing the message altogether.

If a study was carried out by the manufacturer or the trader marketing the product, such study must be assessed by an independent body or it must be verified in an equally adequate manner that the study has been carried out correctly and that the assessment of the results is professionally sound.

The requirements of the content and scope of the documentation will depend on the specific content of the statement. The complexity of the product or activity will also be of relevance in this respect.

Documentation for general, isolated statements not accompanied by a further explanation must be provided in the form of life cycle assessments. These must be made according to recognised or generally accepted methods applicable to the relevant product type, thus comprising a review of the conditions (*e.g.* the environment) and an assessment of the material impacts. Reference is made to the definition under clause 4 of the Guidance. If such methods have not yet been developed in the relevant field, refraining from using general, isolated statements should be considered.

The more detailed requirements of the documentation of environmental and ethical claims will depend on the specific claims used in the marketing. Reference is made to clauses 7 and 8 of the Guidance.

The trader should retain the documentation for at least two years after the marketing claim was published. The reason is that the time limit for limitation of criminal liability is two years.

6.4 Access to information about environmental and ethical claims, etc.

In its capacity as supervisory authority, the Consumer Ombudsman is entitled to receive documentation verifying any factual statements in the claims used by a trader for marketing purposes.

According to the Consumer Ombudsman, the public is entitled to a reasonably detailed, intelligible explanation of environmental or ethical statements, etc., and information on how these have been documented, see section 1 of the Marketing Practices Act. Otherwise, consumers will be unable to understand or assess the validity of the special environmental or ethical conditions relating to a product before taking a possible purchasing decision. To give an example, this may be done by the trader providing a summary of the findings of the studies made or statements supporting the documentation. Where extensive studies, etc., have been made, the trader may choose instead to give an intelligible explanation supplemented by information about the nature of the study and who made it.

The Consumer Ombudsman recommends that traders consider the possibility of making the actual documentation supporting the environmental and ethical claims available to the public.

However, traders are not obliged to present confidential business information, *i.e.*, information on technical devices, methods or on operating or business matters, including know-how and patent rights.

If the verification of an environmental or ethical claim requires access to confidential business information, the trader is recommended to seek advice from an independent expert prior to publication of the marketing and to give such expert access to relevant information to the extent necessary to enable the independent expert to warrant the documentation of the claim made⁸. Any use of such advisory services should be mentioned in the explanation to the public, see the second paragraph of this clause.

If it is not possible to publish the explanatory statement and any documentation of the properties or benefits marketed on the packaging in the advertisement, etc., it must be stated where further information may be obtained, *e.g.*, on the trader's website or in brochures.

7. Special requirements of environmental claims

Reference is made to clause 4 of the Guidance for a definition of environmental claims. Clauses 1-6 and 9-10 of the Guidance apply to environmental marketing claims in general, whereas this clause contains the special additional criteria for the use of environmental claims.

This clause relates to the general requirements that can be made of the marketing of isolated, general environmental claims (clause 7.1), environmental claims with explanatory statements (clause 7.2) and claims about climate neutrality (clause 7.3) – particularly in light of section 3 of the Marketing Practices Act concerning misleading and undue marketing.

As a general rule, environmental statements must be relevant and up-to-date and must be reassessed as necessary according to developments. Reference is made to clause 6.1 of the Guidance.

7.1 Isolated, general environmental claims

Examples of general environmental claims are 'environmentally friendly', 'environmentally correct', 'gentle on the environment', 'green', 'blue', 'climate friendly', 'more environmentally friendly', 'smaller environmental footprint', 'more gentle on the environment', 'better for the environment', 'non-toxic', 'no chemicals', 'natural' or 'organic'.

Such claims are likely to convey the impression to consumers that a product or an activity of a trader mainly has a positive effect on the environment, is gentle on the environment or has no or only a limited

environmental impact. General claims are often likely to create confusion about the specific contents.

The Consumer Ombudsman also finds that isolated, general claims will generally be perceived as absolute statements about and recommendations of a product as such. This type of claims is therefore likely to mislead consumers if the environmental qualities of the product, etc., do not correspond to those of similar products of the best quality. Therefore, traders must:

- as a principal rule, be able to substantiate that the product generally has a significantly smaller environmental footprint than similar products; and
- normally have made a complete product life cycle assessment.

Reference is made to clause 4 above for a definition of life cycle and life cycle assessment and clause 6.3 above for a definition of documentation of claims.

Practice: If for environmental information (reduced discharge of chemicals) visual effects (colour and imagery) are used on packaging, etc., that convey or must be deemed likely to convey an overall impression to consumers that a product has a reduced environmental impact, they must be capable of being substantiated according to the same requirements as apply to the use of general environmental arguments⁹.

However, some fields may be subject to such detailed rules that the use of a general environmental statement may be justified. If a product is covered by a license to use the ecolabel of an official ecolabel scheme, such as the Nordic Ecolabel ‘the Swan’ or the European Union Ecolabel ‘the Flower’, see clause 10.2 of the Guidance, or it is verified by a recognised independent expert that the product satisfies all criteria for obtaining the ‘Swan’ or ‘Flower’ label¹⁰, the trader will normally be able to market the product using statements such as ‘smaller environmental footprint’, ‘more environmentally friendly’, ‘more gentle on the environment’, ‘better for the environment’, etc. If a product has been manufactured according to the rules on organic production¹¹ and labelled as organic, the trader will often be able to market his product accordingly¹².

Traders must be aware that special fields, e.g., chemicals¹³, may be subject to legislation and case law prohibiting the use of certain types of general claims. This applies even though the relevant product is covered by an ecolabel or the like. Reference is made to clause 2.2 of the Guidance.

Similarly, a trader licensed to use a label or certificate of a private, generally recognised ecolabel or certification scheme covered by clause 10.3 of the Guidance will, depending on the circumstances, as a rule be

able to market his products, etc., using more general statements provided that all the requirements listed in clause 10.3 are satisfied and the established criteria dictate a standard level ensuring that only the top one-third of the products of the category satisfy them.

In the assessment of the Consumer Ombudsman, the use of marketing claims about environmental benefits can hardly be made in practice without at the same time providing a detailed explanation of the properties to which the environmental claim relates.

Example: The product as such must not be marketed as recyclable if only parts of the raw materials used in the product are recyclable.

Practice: The use of the statement 'ENVIRONMENT, PLEASE' in connection with the sale of computers and referring only to working environment was a misleading marketing practice, because consumers would immediately think of the physical environment (soil, air and water) and not working environment¹⁴.

Practice: The statement 'Natural gas is clean energy and not a burden on the environment like oil' was perceived as a general expression that natural gas is non-polluting, which is not the case as natural gas, among other things, contributes to pollution by the emission of nitrogen oxides¹⁵.

Particular guidance on the use of the term 'organic' for non-food products

The rules on organic production mainly cover living or unprocessed agricultural products as well as food and animal feed.

It may be difficult to determine the extent to which a trader may market a non-food product not covered by the rules on organic production as organic without violating the provisions of the Marketing Practices Act, more specifically the prohibition of misleading marketing practices laid down in section 3.

According to the Consumer Ombudsman, the current Guidance should restrict the interpretation of the Marketing Practices Act in this respect to the marketing of textiles and cosmetics¹⁶, in which fields organic marketing statements are used to an increasing extent.

Special rules may be laid down or decisions made on a Danish or European level¹⁷ on the extent to which the term organic may be used for non-food products. If that is the case, traders must first of all observe such rules and decisions.

If no special rules apply in the relevant case, the Consumer Ombudsman finds that an assessment according to the Marketing Practices Act should be based on the notion that organic production is an overall system of

farm management and food production which safeguards several interests¹⁸. Accordingly, when a trader uses ‘organic’ statements, requirements must be made first and foremost of the raw materials of the non-food products.

The Consumer Ombudsman further finds that the proportion of raw materials/ingredients in the product which originate from certified organic production should be of a certain size¹⁹. For the determination of the size of the organic proportion, inspiration can be found in Article 23(4)(a)(ii) of Regulation (EC) No. 834/2007 and especially in Danish provisions on organic agricultural products used for non-food purposes²⁰. As a rule, there will be no basis for intervention under the Marketing Practices Act if the marketing of a product satisfies the following conditions:

- Textile products may be labelled organic when at least 95% of the total fibres of the product (including synthetic fibres) originate from certified organic plant and/or livestock production covered by Regulation (EC) No. 834/2007²¹. It is a condition that other substances used do not materially reduce or neutralise the benefits of the organic cultivation (*i.a.*, without pesticides), making a statement that the product is organic misleading even though raw materials from certified organic production have been used.
- Cosmetic products may be labelled organic when at least 95% of the total raw materials/ingredients in the product (added water not included) originate from certified organic plant and/or livestock production covered by Regulation (EC) No. 834/2007^{21 22}. It is a condition that non-organic substances/ingredients do not by their composition or effect on the processing unduly reduce or neutralise the benefits of the organic cultivation, making statements that the product is organic misleading²³.

Accordingly, products of both product groups must not contain an undue quantity of synthetic substances, etc., which consumers may reasonably expect not to occur in organic products. To give another example, products must not contain chemicals which are maybe not prohibited by law, but which have been identified as problematic, see clause 3.3.5 Environment of DS 49001 ‘Social responsibility management system’.²⁴ Traders must therefore be careful when selecting non-organic substances/ingredients and assess them and their effects in light of established technologies, among other things.

If, in connection with the use of organic marketing claims about a non-food product, a trader attempts to communicate more than the organic production method of the raw materials/ingredients, *e.g.*, that the product safeguards human and/or animal health, such marketing may also mislead consumers. Moreover, such products cannot be marketed directly as having, *e.g.*, a ‘smaller environmental footprint’ without substantiating

that the requirements of the use of isolated, general claims have been satisfied²⁵.

If a textile or cosmetic product does not directly satisfy the criteria stated, an assessment must be made in the individual case of whether general organic statements may be used to describe and market the product. In connection with such assessment, it may be considered whether the product is certified according to a private scheme (European or international) recognised in Europe or satisfies the requirements stipulated in such scheme. Focus may be had on the requirements of the scheme as to the proportion of organic substances in the finished product as well as requirements of the contents of any non-organic substances/ingredients. Where relevant, the processing method used may also be considered. As regards the general criteria of private, generally recognised labelling and certification schemes, reference is made to clause 10.3 of the Guidance.

In cases where the product may not be described and marketed as organic in general, a trader may state the percentage content of certified organic substances.

7.2 Environmental claims with an explanatory statement

Environmental marketing claims may be composed of a general claim and an explanatory statement, that is, the marketing of one or more specific environmental benefits intended to support and explain the general part of the claim. When a marketing claim is accompanied by an explanatory statement, a life cycle assessment of the product, etc., is generally not required as documentation for the claim as opposed to isolated, general environmental claims, see clause 7.1 of the Guidance.

Example: 'Think about the environment – take the bus instead of the car and help reduce carbon emissions, as a bus with at least X passengers emits less CO₂ than the corresponding number of cars carrying one person each.'

In general, this type of claims will be more informative for consumers than isolated, general environmental claims. When using statements containing an explanation, it will be easier for traders to provide documentation that their marketing is not misleading as such statements typically only relate to one environmental benefit.

According to the Consumer Ombudsman, it follows from the prohibition of misleading marketing practices laid down in section 3 of the Marketing Practices Act that such statements must satisfy the requirements stated in items 1-4 below in particular. As a rule, if these requirements are not satisfied, questions may be raised as to whether the statement is contrary to section 3 on misleading marketing:

1. The reduced environmental impact emphasised must be one of the most important environmental benefits of the product and be of material importance to the environmental impact

On the one hand, the specifying part of the marketing claim must be sufficiently accurate and relate to material aspects of the environmental impacts of the product and, on the other, it must point to an environmental impact of the product or the trader's activities which must be regarded as material to the overall environmental footprint. An example could be a statement that the positive effect relates to air, soil, subsoil, water, noise, etc., over the entire life cycle of the product. The application of the life cycle perspective ensures that impacts are not merely transferred from one area of the environment to another, including in terms of geography.

If properties with only marginal environmental effects are emphasised, the marketing of the product, activity or the trader's company may be misleading. The trader must also make sure that the claim and the explanatory statement are read together. Reference is made to clause 6.1.

Practice: The statement 'Throw away the old energy consuming machine and save up to DKK 2,102 before tax each year on water, detergent, electricity, etc., on the new washing machines' was considered misleading and an unfair omission of information because part of the savings was to be obtained through less tumble drying, which had not been stated²⁶.

2. The environmental benefit marketed must not have been obtained through efforts which cause damage to the environment in themselves.

Example: 'Pressure treated wood is environmentally friendly because it does not require paint or finish - it simply doesn't rot.' However, the reason is that toxic substances have been added to the wood and are released to the environment over time, and the wood must therefore be deposited at a landfill when it is worn out.

3. Other environmental aspects of the product must not significantly reduce or neutralise the benefit

Marketing messages must be balanced. This means that other environmental aspects of the product must not represent an environmental burden large enough to affect its overall environmental impact, making it a misleading statement.

4. The environmental benefit must not be a general characteristic of similar products

Environmental benefits of a product which are marketed in connection with a general environmental claim must normally be compared with similar products as such environmental statements will tend to be presented as though they are qualitative benefits of the product which do not apply to other similar products. An environmental claim may be considered misleading if a considerable proportion of the similar products in the market have the same or smaller environmental impact with regard to the specific environmental benefit(s) marketed.

In the Consumer Ombudsman's opinion, the requirement of clause 4 will, as a rule, be regarded as satisfied if the trader

- a. is able to substantiate that the product represents a significantly smaller burden on the environment than similar products as regards the environmental benefit emphasised; or
- b. is able to substantiate that the product is among the top one-third compared with similar products measured by its overall environmental impact (depending on the content of the claim, official labelling schemes, see clause 10.2 of the Guidance, may, for instance, serve as sufficient documentation if the criteria laid down in such scheme constitute documentation for the statement); or
- c. is able to obtain verification by a recognised independent expert that all criteria for using an official ecolabel, such as 'the Swan', have been met for the relevant product group²⁷, and the criteria established constitute documentation for the statement; or
- d. is able to substantiate that a private, generally recognised labelling or certification scheme satisfies the requirements stated in clause 10.3 of the Guidance, and the criteria dictate a standard level that ensures that only the top one-third products of the category satisfy them, and that the criteria established constitute documentation for the statement.

Even if a trader is unable to substantiate as stated above (a-d) that the environmental benefit is not a general characteristic of similar products, the marketing may not necessarily be misleading according to section 3 of the Marketing Practices Act. However, the trader must substantiate this by other means. And the trader cannot simply expect that the marketing will be considered lawful as a rule.

The assessment of whether the content and scope of the documentation (substantiation) is sufficient relative to the said general requirements is made according to a principle of proportionality which takes into account the specific content of the statement, the nature of the product, etc. Reference is made to clause 6.3 and to the principle that factual statements must be capable of being substantiated by documentation.

7.3 Claims about climate neutrality

If a trader uses climate neutrality claims, a calculation must be made of the total emissions of climate gases from the product, activity or the company marketed. The total emissions must be nil.

The six greenhouse gases covered by the Kyoto Protocol²⁸ must be included in the calculations, which must be made according to recognised scientific methodologies, *e.g.*, according to the IPCC Emission Factor Database, the Greenhouse Gas Protocol or relevant ISO standards²⁹.

The trader must seek to reduce his emissions of greenhouse gases by taking steps to reduce emissions from production or from the company, depending on the marketing claim³⁰. The trader must make a plan for reducing the relevant emissions, which must be verified by an independent body, and submit emission accounts. Such accounts must provide information on the calculation of the emissions and the values used for translating the gases into CO₂ equivalents.

If the total emissions do not equal nil, the trader may purchase issued EU quotas for the residual emissions. Such quotas must be purchased before the claim is marketed or, if that is not possible, in connection with the ongoing supply of products in order to ensure a constant balance between the amount of products sold and the quotas purchased. Documentation must be provided that the quotas have been erased and thus cannot be sold to third parties.

A trader may also compensate for residual emissions by purchasing carbon credits from international carbon reducing projects. These may be JI project credits³¹ or CDM project credits³². The compensation must be made before the claim is marketed or, if that is not possible, in connection with the ongoing supply of products in order to ensure a constant balance between the amount of products sold and the credits purchased. Documentation must be provided that the JI/CDM credits will be erased and thus cannot be sold to third parties once the credits have been recorded as received by the trader in the quota register³³.

In addition, a trader may support tree planting projects in developing countries provided that this is done under controlled conditions so that the compensation for any residual emissions can be verified by an independent body in an equally adequate manner as that for the purchase of quotas or credits.

Reference is made to clause 6.4 of the Guidance regarding publication of plans for reducing climate gases and emission accounts.

8. Special requirements of ethical claims

Reference is made to the definition of ethical claims in clause 4 of the Guidance. Clauses 1-6 and 9-10 of the Guidance apply to ethical

marketing claims in general, whereas this clause contains special additional criteria for the use of ethical claims.

8.1 Isolated, general ethical claims

As a general rule, traders enjoy commercial freedom of expression and are entitled to use ethical claims in marketing. But general ethical claims used in the marketing of a product or an activity – without a further explanation of the ethical benefit set out in the claim – may be considered misleading.

Example of a misleading claim: ‘Make an ethical choice – buy product xx.’

In practice, the use of claims about ethical benefits in marketing will therefore be problematic if such claim is not accompanied by a more detailed explanation of the properties or aspects to which the ethical claim relates.

However, depending on the specific claim, a trader wishing to use general ethical claims must normally provide documentation that the product or activity is significantly better than similar products measured over its entire life cycle.

It may, however, be very difficult to carry out a life cycle assessment of ethical conditions. For that reason, traders may apply globally oriented social responsibility guidances as a basis for the required documentation, e.g., the UN Global Compact or ISO 26000 ‘Guidance on social responsibility’, while at the same time making sure that relevant activities in the company’s supply chains and sphere of influence as a whole are also taken into account in connection with the use of isolated, general ethical claims. Danish guidances, such as DS 49001 ‘Social responsibility management system’ and DS guidance 49004 ‘Social responsibility’, may also serve as point of departure for the actual documentation substantiating the claim if they provide an equally adequate basis for documentation.

The Consumer Ombudsman recommends that traders exercise caution in using isolated, general ethical claims in marketing.

8.2 Ethical claims with an explanatory statement

A general ethical claim may be supplemented by an explanatory statement, that is, the marketing of one or more specific ethical benefits intended to support and explain the general part of the claim. When a marketing claim is accompanied by an explanatory statement, a life cycle assessment of the product, etc., is generally not required as documentation for the claim as opposed to isolated, general ethical claims, see clause 8.1 of the Guidance. It is only required that the conditions stated in this clause are satisfied.

The explanation must be sufficiently accurate. In other words, it must appear in a clear and unambiguous manner whether the ethical claim relates to working conditions, child labour, animal welfare, improved conditions for local manufacturers, etc. The ethical benefits of the product or activity must not be overstated. Moreover, the claim must relate to material ethical aspects of the product or activity. If properties or improvements of completely marginal importance from an ethical point of view are emphasised, the marketing of the product or activity may be misleading. As far as possible, the benefit emphasised should be assessed as part of a life cycle perspective, see clause 8.1.

The use of ethical marketing claims may convey the impression that the product is not contrary to other ethical values. This type of claims must therefore only be used to the extent that such use is not misleading relative to other generally accepted ethical standards, *e.g.*, concerning working conditions.

Example: 'Over the last ten years, we have built schools for the children at our five production sites in India.' (But the company fails to mention that the children work eight hours a day at the factories).

Practice: It was misleading to use claims such as 'eco fur' or 'organic furs' in the marketing of fake furs³⁴.

The ethical benefit emphasised in the marketing must also be assessed against similar products offered in the market. If it is established that a significant proportion of such products are of similar or higher ethical standard as regards the benefit(s) emphasised, the use of the ethical marketing claim may be considered misleading, depending on the circumstances.

8.3. Sustainability claims

On the basis of the deliberations made in 1987 about sustainable development, claims about sustainability must be based on the observance of requirements that regard must be had to social and ethical conditions and requirements of reducing the environmental and health impacts as much as possible, see clause 4 of the Guidance. It is an ongoing process, for which reason traders are under an obligation to gradually reduce the impacts over time as facilitated by future technological and financial possibilities³⁵.

A claim that a product, an activity or a company is sustainable may be difficult to formulate in a sufficiently accurate manner without misleading consumers. In addition, no general criteria or requirements have been laid down by the legislature concerning the use of the term 'sustainability', nor has any general methodology been defined to measure sustainability.

In view of this, the Consumer Ombudsman finds that general requirements of the marketing of sustainable products, activities or companies can hardly be made at present. Where certain fields are subject to specific Danish or European rules of law, etc., traders must observe such rules. These will often be a result of established strategies or overall targets and action plans for sustainability in Denmark and the European Union which have not yet been completed.

However, if a trader uses the term 'sustainable' in his marketing of a product or an activity, the Consumer Ombudsman will make a specific assessment against an overall impression of the marketing of whether the statement is misleading and whether it is capable of being substantiated by documentation. As sustainability relates to both the environment and ethics, the requirements stated in clause 7 on environmental claims and clauses 8.1 and 8.2 on ethical claims must be satisfied. It may also be of importance to the assessment whether the trader meets generally accepted high environmental, health, social and economic requirements and safeguards ethical considerations in a wide sense. Among other things, it may be relevant to examine whether the product is manufactured under proper manufacturing and working conditions and conditions that safeguard a sustainable development of the local community as regards climate, the environment, living conditions, ethical considerations, health, etc.

The assessment may also include an evaluation of whether the requirements apply to the entire product chain, including primary suppliers.

The Consumer Ombudsman will emphasise the interaction between the environmental, health, social and economic aspects, and as a minimum requirement one aspect may not be neglected due to focus on other aspects. Further, the product, etc., must be improved/developed on a continuous basis.

The Consumer Ombudsman is aware that private initiatives may result in the development of sets of criteria that dictate stringent requirements of the use of sustainability claims in product marketing. To give an example, the Danish Council for Sustainable Business Development is preparing a guidance paper on principles for sustainable products. When the guidance paper has been completed, the Consumer Ombudsman will positively consider whether observance of the guidance principles may serve to substantiate that the products marketed by a trader are sustainable. In that case, the substantiation must be based on stringent requirements which have been verified by an independent expert as giving the product group a high ranking in the market. The trader must also be able to provide documentation that the marketing satisfies the stringent requirements.

9. Traders' business profiling and establishment of reputation, etc.

The general principles of clauses 1-8 and 10 of the Guidance also apply to the profiling and establishment of reputation, etc., of a trader's business. This clause states special, additional criteria for traders' use of environmental or ethical claims to profile their business and establish a reputation.

9.1 General information about business profiling and establishment of reputation, etc.

Traders marketing the environmental or ethical profile of their company by using catchphrases, mottos, visions, collaboration with charities or similar organisations may risk misleading consumers or otherwise contravening the Marketing Practices Act.

The overall impression conveyed to consumers through a marketing communication intended to profile and/or establish the reputation of a trader is of decisive importance to determining whether the Marketing Practices Act has been observed. In this connection, the use of images, sounds, symbols, colours and similar effects is of relevance, see clause 6.2 of the Guidance.

Reference is also made to clause 6.1 of the Guidance for information about the requirement that the message must be communicated in a clear and balanced manner. It should also be noted that:

- In connection with their profiling and/or establishment of reputation, traders should focus on making specific marketing claims rather than general statements that their company is concerned about the environment or safeguards ethical standards. Accordingly, information about specific initiatives taken or plans launched for the sake of the environment or for other purposes is more useful for consumers than vague and unclear statements about commitment and values.
- Traders must view the marketing in relation to the scope of their environmental or ethical initiatives. Overstated marketing claims must be avoided. If specific initiatives or individual activities are emphasised in a way that is likely to portray a better environmental or ethical profile of the trader than what is justified based on an objective overall assessment of the company, such marketing may be misleading and considered to omit material information. The extent to which the marketing covers the supply chain may be taken into account in such assessment.

Example of a general and vague claim: 'We are working to create a more just world.'

Reference is made to clause 8.3 of the Guidance for information about sustainability.

If a trader uses environmental or ethical statements in his company name, a product name, etc., and the name is used for marketing purposes, such marketing is subject to the same documentation requirements as those which apply to other environmental or ethical argumentation in marketing communications.

Example: 'The green cleaning squad.'

Practice: The use of the company name of 'XX Ecofruit' and publication of a leaflet with the word 'environment' printed in large letters on the front page meant that the trader was required to submit a life cycle assessment of the manufacturing process³⁶.

Practice: In a case of the marketing of an 'eco coffin' made of paper fibre the trader was required to submit a life cycle assessment documenting that the product had a significantly smaller environmental footprint measured over its entire life cycle than other products in the same category³⁷.

As a rule, the name of an event or product which has existed for a number of years and become well known to consumers will not be likely to mislead consumers even if the name includes a general environmental statement.

9.2 Particular guidance on visions, objectives, etc.

A trader may wish to market visions, objectives, etc. In that connection, the trader must pay special attention to section 1 on good marketing practice of the Marketing Practices Act. However, section 3 on misleading marketing may become relevant, particularly if the marketing is made for the purpose of selling goods or services.

Claims about objectives must normally only be used for marketing purposes if the trader has and focuses on clear and specific action plans to achieve that objective. The action plans must have been launched or just about to be launched and must be measurable.

The claim must be worded as specifically as possible and should also include information about any results already achieved. It should be stated whether the action plans cover the primary suppliers. Claims about objectives which the trader is far from able to achieve when the marketing is published and vaguely worded claims about environmental and ethical objectives may be regarded as misleading or unfair to consumers. The marketing of visions without concrete action plans may be regarded as misleading, depending on the circumstances.

Care should therefore be taken when using information in marketing about a trader's visions, objectives or other future conditions.

Example of a too general claim: 'Before 2020, we will build schools in all our production areas for the children of the factory workers.'

Example of a claim that may be more informative, depending on the specific situation: ‘Over the next two years, we will reduce our overall power consumption by 40%.’

And an even more informative claim: ‘Over the past two years, we have reduced our overall power consumption by 40%. Over the next five years, we will reduce it by a further 5% a year.’

The safeguarding of ethical and other social considerations may form part of a trader’s CSR efforts.

The Danish Council on Corporate Social Responsibility has expressed a common understanding of social responsibility as follows: ‘Businesses demonstrating social responsibility and creating value for the business as well as society by addressing social, environmental and ethical challenges through dialogue with its stakeholders in accordance with internationally recognised principles^{38 39}.’

The UN Global Compact, ISO 26000 ‘Guidance on social responsibility’, the OECD Guidelines for Multinational Enterprises and DS 49001 ‘Social responsibility management system’⁴⁰ may be used as guides to examples of ethical and social considerations. Traders may also find guidance at www.samfundsansvar.dk

If a company wishes to market its CSR efforts to consumers, for example by focusing on special aspects, such marketing must be made according to the above paragraphs of this clause.

Reference is made to clause 8.3 of the Guidance for information about sustainability.

9.3 Particular guidance on support for good causes and collaboration with charities, etc.

Information used in marketing that a trader supports good causes or collaborates with charities may have an effect on consumers’ emotions, conscience, etc., which must be taken into account.

If such information is used for marketing purposes, it must be supplemented by clear information about the nature of the trader’s support or collaboration. For example, if an amount is donated for each product sold, information must be provided as specifically as possible, preferably stating the exact amount, on the proportion of the price being donated to the purpose (relief work, a specific aid agency or other cause). It should also be stated where further information is available, *e.g.*, a telephone number or a website. Reference is made to clause 6.3 of the Guidance for information about documentation.

Example: ‘We collaborate with the Zealand Environmental Activists for a better environment.’ (Inaccurate description – the consumer is not informed of the nature of the collaboration or what it means to the environment or the product marketed.)

Example: ‘We support the Zealand Environmental Activists with 0.14 kroner per kWh. The money is used for the Activists’ work for more bicycle tracks.’ (Clear information is provided on the amount donated, the association it is donated to and for what purpose.)

Having established a framework for the collaboration with a charity already before the collaboration commences will be expedient. The parties should therefore determine the exact nature of the collaboration, including how the trader may use the collaboration in his marketing. Inspiration can be found in ‘Partnership Practice’⁴¹. The purpose of this website is to share information and experiences about collaboration possibilities.

If sponsorship agreements are used in marketing and such marketing provides more than neutral information about the sponsorship, the recommendations in this Guidance must be followed.

9.4 Particular guidance on collaboration with NGOs, trade associations, etc.

A trader may collaborate with particular NGOs, trade associations, etc., for the purpose of having specific products recommended or praised to consumers. Such collaboration means that the organisation or association gives the product a stamp of approval, so to speak. Because it was made by the relevant organisation or association, such recommendation will appear more trustworthy to consumers than if the trader himself had recommended the product. If the organisation or association receives payment or other compensation for the collaboration, this must be stated and the requirements of the Marketing Practices Act (*e.g.*, section 1 on good marketing practice and section 4 on advertising identification) and of this Guidance must be satisfied, including the documentation requirement.

10. Use of labelling schemes, symbols and certificates

10.1. General information

The use of labelling schemes, symbols or certificates for the purpose of emphasising the environmental or ethical properties or aspects of a product or an activity constitutes a special type of environmental and ethical claims.

Where labelling schemes, etc., are used in marketing, information about their meaning must be provided on the packaging, in advertisements or other marketing material, possibly also stating where detailed or

supplementary information on the labelling scheme or symbol may be obtained. The trader's website could be one such place.

Practice: In a case concerning the labelling scheme 'Eco-Tex', the Consumer Ombudsman expressed the opinion that a label of this nature should state in clear and unambiguous text and visual effects what is controlled (the maximum content of formaldehyde, etc.)⁴².

The criteria for the use of labelling schemes, symbols and certificates must be capable of being verified and controlled. This applies to both official and private labelling schemes and certificates. Traders must be able to provide documentation that the criteria are satisfied. As a rule, the Consumer Ombudsman will deem the documentation requirement to be satisfied if a product, etc., has obtained an ecolabel of one of the official labelling schemes, see clause 10.2 of the Guidance. The same applies to certificates which are subject to similar requirements and controls.

Even though the trader satisfies the criteria for the use of labels, symbols or certificates, any use thereof for marketing purposes must be in accordance with the Marketing Practices Act and this Guidance.

Example of a statement that may not be used (see clause 6.1 of the Guidance): 'Buy XX-labelled bananas and eat bananas with a better conscience.'

The marketing message must not be overstated. This means that the trader must not use marketing statements that exceed what is justified based on the content of the scheme.

Moreover, the use of labelling or certification schemes in marketing must not be misleading, *e.g.*, by referring to an entire range of products if only one product is covered by the ecolabel or other scheme (greenwash of the entire product range). It must be stated in an unambiguous manner what product(s) of the trader has/have obtained the label. Certification relating to the company or its management, etc., must not be used in the marketing of the company's products.

10.2 Official labelling and certification schemes

The use of official labelling schemes, symbols or certificates in marketing may serve as important information about the properties of a product or a company.

Official labelling or certification schemes are schemes that are approved or managed by public authorities or managed on behalf of public authorities and for which, on the basis of legislation, clear criteria have been established for the use of the label or certificate.

Such labels include 'the Flower' (the official ecolabel of the European Union) and 'the Swan' (established by the Nordic Council of Ministers), which are both managed by Ecolabelling Denmark (more information

available at www.ecolabel.dk. Other examples include the ecolabelling of agricultural products and food and certificates which, *e.g.*, serve as documentation for a good working environment.

There may be official certification schemes that do not in themselves express stringent environmental requirements and which therefore cannot be compared with 'the Swan' or similar schemes. Traders with such certificates must satisfy the general documentation requirements stated in this Guidance if the certificate is used in connection with environmental or ethical marketing claims.

The Consumer Ombudsman recommends traders to make a clear distinction between products, activities and company.

The Marketing Practices Act and this Guidance also apply if a trader uses official foreign labelling schemes in his marketing. Where official labelling schemes apply in other EU or EEA countries which satisfy equally stringent requirements as those made of official Danish labels, the Consumer Ombudsman will as a basis consider such schemes on an equal footing with the Danish schemes.

10.3 Private, generally recognised labelling and certification schemes

For schemes to be considered generally recognised, they must be well-documented and have been applied over number of years. Private labelling schemes, etc., may be recognised by different NGOs and semi-governmental organisations and developed in cooperation with public authorities or with the support of authorities. NGOs are non-governmental, legally constituted interest groups, etc., which pursue social aims and are financially independent of governmental and commercial interests. Their aims include, for instance, consumer protection, environmental protection, nature protection, sustainable development, ethical trade or protection of employees. Political parties, religious communities and trade organisations are not NGOs.

According to the Consumer Ombudsman, this type of schemes should satisfy the following conditions:

- The body responsible for the labelling scheme must be clearly identified;
- Relevant stakeholders must be involved in the development of clear criteria;
- The criteria must be established and reviewed on the basis of a complete life cycle assessment of a product or an activity ('cradle to grave') and cover relevant categories of (environmental) conditions and impacts, etc., based on scientifically approved calculation methodologies, etc. (reference is made to clause 4 of the Guidance for a definition of life cycle and to clause 6.3); and
- The scheme must be subject to independent third-party controls as regards the assessment and establishment of criteria as well as the

use of the label. The company's self-inspection may form part of the overall control system.

The principles of ISO 14020 and descriptions of ecolabel schemes (ISO 14024) or ecolabels and declarations (ISO 14025)⁴³ may serve as inspiration for the development of private ecolabels, etc. Moreover, the label may not be likely to be confused with other labels, including labels of official labelling schemes.

10.4 Other private labelling schemes, etc.

These may be labelling schemes, etc., adopted by a trade organisation or a trader's private labelling scheme, etc. Traders must bear in mind that the use of many different private labelling schemes, symbols and certificates may make it difficult for consumers to understand their meaning. This applies in particular to fields covered by official labelling schemes or certifications.

If a trader or industry chooses to use own labelling schemes, symbols or certificates for marketing purposes, the product or the trader must possess qualitative benefits compared with similar products or traders. Otherwise, the labelling may be misleading in itself. In addition, the Consumer Ombudsman finds that clear criteria must be met to achieve and/or use a label of a labelling scheme and that such label must not be likely to be confused with other labels, including own labels of a labelling scheme with multiple ratings or labels of official labelling schemes. Reference is also made to clause 10.1 above.

11. Review of the Guidance

The Guidance is reviewed when deemed necessary, but not later than three years after publication.

ANNEX

Legal basis

The Danish Marketing Practices Act

This Guidance has been prepared on the basis of the Marketing Practices Act⁴⁴, specifically sections 1 and 3 of the Act.

*Section 1. (1) Traders subject to this Act shall exercise good marketing practice with reference to consumers, other traders and public interests.
(2) Marketing in respect of consumers' economic interests may not be designed to significantly distort their economic behaviour.*

In the assessment of whether a marketing communication is covered by section 1(1) it is important that the marketing does not violate taste, decency or cultural conditions falling within the concept of general society. Examples include environmental and ethical claims that play on consumers' fear or ignorance.

According to case law of the European Court of Human Rights, traders' commercial right to freedom of expression is protected by Article 10(1) of the European Convention on Human Rights⁴⁵ as a rule. The Convention was incorporated into Danish law by Act No. 285 of 29 April 1992 on the European Convention on Human Rights, cf. now Consolidated Act No. 750 of 19 October 1998 as amended.

It follows from Article 10(2)⁴⁶ that the freedom of expression may be restricted by law. Section 3 of the Marketing Practices Act is an example thereof.

*Section 3. (1) Traders may not use misleading or undue indications or omit material information if this is designed to significantly distort consumers' or other traders' economic behaviour on the market.
(2) Marketing whose content, form or method used is misleading, aggressive or subjects the consumers or traders to undue influence, and which lends itself to significantly distorting their economic behaviour, is not permitted.
(3) Where factual statements are made, these must be capable of being substantiated by documentation.
(4) The Minister for Economic and Business Affairs lays down more detailed regulations for specific forms of marketing which, pursuant to EU legislation, are considered in any circumstances to be unfair in respect of business to consumer matters.*

The Unfair Commercial Practices Directive

Section 3 of the Marketing Practices Act must be construed in accordance with Articles 6 and 7 of the Directive concerning unfair business-to-consumer commercial practices (see below) as this is a total harmonisation directive. According to those provisions, a commercial

practice (marketing) containing false information and a commercial practice omitting material information are both considered misleading.

Pursuant to Article 6 (misleading actions), a commercial practice is regarded as misleading if it contains false information and is therefore untruthful or otherwise likely to mislead consumers in relation to specific elements listed in the Article, including the existence or nature of the product or its main characteristics.

Pursuant to Article 7 (misleading omissions), a commercial practice is regarded as misleading if the trader in his marketing omits or hides material information or provides the information in an unclear, unintelligible, ambiguous or untimely manner.

The Directive states that commercial practices are unfair in particular if they are misleading pursuant to Articles 6 and 7. This follows from Article 5 of the Directive.

Consumers must be defined in accordance with Article 5 of the Directive, which refers to the average consumer. The benchmark is a reasonably well-informed and reasonably observant and circumspect average consumer, taking into account social, cultural and linguistic factors. The term is not statistical.

If a commercial practice is aimed at a particular group of consumers, the marketing is assessed in relation to an average member of that group. If it is a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity, the marketing is assessed from the perspective of an average member of that group.

For the provision on misleading practices to apply, the marketing must also have a commercial effect which implies that the unlawful act must influence or be likely to influence the consumer's economic behaviour. This means that the marketing must be likely to influence the consumer to make an economic decision, *e.g.*, to purchase the product, that he would not have made otherwise.

If the trader communicates his marketing using a medium which imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means must be taken into account in deciding whether information has been omitted. This follows from Article 7(3) of the Directive.

Incorporation of the Unfair Commercial Practices Directive

The European Union Unfair Commercial Practices Directive has been incorporated into the Marketing Practices Act by Act No. 1547 of 20 December 2006 amending the Marketing Practices Act and by Executive Order No. 1084 of 14 September 2007 on Unfair Business-to-Consumer Commercial Practices, which both entered into force on 1 December 2007.

Executive Order on Unfair Business-to-Consumer Commercial Practices

It is laid down in section 2 of the Executive Order that the forms of marketing listed in the Schedule to the Executive Order must be considered in any circumstances to be unfair in respect of business-to-consumer matters and are thus prohibited.

The examples of unfair commercial practices listed as Nos. 1-4 of the Schedule are particularly relevant in relation to the marketing of environmental and ethical claims:

- 1) *A trader claims that he has signed a code of conduct even though that is not the case.*
- 2) *A trader presents a quality certificate, quality label, etc., without having obtained the required permission.*
- 3) *A trader claims that a code of conduct has been approved by a public authority or other authority even though that is not the case.*
- 4) *A trader claims that a trader (including his commercial practices) or a product has been approved or permitted by a public or private body even though that is not the case or makes a claim to that effect without satisfying the conditions for obtaining such approval or permission.*

Provisions on punishment

Any violation of section 3(1) and (2) of the Marketing Practices Act and the provisions of the Executive Order are punishable by a fine, unless other legislation prescribes a more severe punishment, see section 30(3) and (5) of the Act. The Consumer Ombudsman may also bring actions with a claim for prohibitory or mandatory injunctions and issue administrative orders in cases where the legal position is clear.

Other legislation

Certain specific fields are subject to EU legislation and international conventions, etc., which have been incorporated into Danish law or apply directly. Such regulation may be relevant to the interpretation of the

Marketing Practices Act and the requirements stated in this Guidance, *e.g.*, the Directive and Danish legislation on sustainable biofuels.

Guidances and self-regulation

For the interpretation of section 1 of the Marketing Practices Act, more inspiration is available in international guidances and self-regulatory instruments on the use of environmental claims, etc., in marketing, such as

- The unofficial European Union ‘Guidelines for Making and Assessing Environmental Claims’, report No. 67/94/22/1/00281 (published by the European Commission, December 2000). The Guidelines contain directions that accord with the international ISO standard on self-declared environmental claims (ISO 14021:1999⁴⁷);
- COM(2007) 621 ‘Agenda for a sustainable and competitive European tourism’;
- ISO/IEC and CEN/CLC standards and Danish standards published by Danish Standards; and
- The Consolidated ICC Code of Advertising and Marketing Communication Practice (adopted in 2006 by the International Chamber of Commerce (ICC)), containing rules in Chapter E on environmental claims in marketing communication. According to the information available, the international standard ISO 14021 on environmental claims has been incorporated by reproduction and adaptation of selected parts of obvious relevance to marketing communication, while various technical rules have been omitted. In January 2010, the ICC published its ‘Framework for Responsible Environmental Marketing Communications’.

As a rule, if a trader’s marketing accords with guidances and self-regulatory instruments similar to those listed above, the marketing will be presumed not to violate section 1 of the Marketing Practices Act.

¹ Consolidation Act No. 839 of 31 August 2009 on marketing as amended.

² Executive Order No. 1084 of 14 September 2007 on Unfair Business-to-Consumer Commercial Practices.

³ Standards of the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), European Committee for Standardization (CEN) and CENELEC (CLC).

⁴ ISO 14040, 'Environmental management – Life cycle assessment – Principles and framework', and ISO 14044, 'Environmental management – Life cycle assessment – Requirements and guidelines'.

⁵ The definition of sustainability laid down by the Brundtland Commission has been interpreted in various contexts. The European Commission emphasises development which aims at the continuous improvement of the quality of life and well-being for present and future generations, see Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2008) 397 final version of 16 July 2008 on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan.

⁶ Advertising agencies may incur criminal liability if they realise or should have realised that an advertisement, etc., implies a violation of the Marketing Practices Act. An unpublished decision of the Danish Maritime and Commercial Court of 13 January 1993 (*Ikea A/S and Wibroe, Duckert & Partners A/S*) is an example thereof. The publisher of an advertisement booklet or the like (not covered by the Danish Media Liability Act, see clause 5.3) is under a certain duty to review advertisements before they are published. The publisher may thus incur criminal liability for complicity in violation of the Marketing Practices Act where there has been a clear violation which should have been established by the publisher, see as an example the Danish Weekly Law Reports, 1996, p. 209, Supreme Court (*U 1996.209/2 H*).

⁷ The use of CFC for insulation has not been permitted since 1 January 1994 and the use of CFC as a cooling agent in dual temperature refrigerators has not been permitted since 1 January 1995. In the beginning of 1993, manufacturers of dual temperature refrigerators began marketing these products as CFC free. Their claim was substantiated by documenting that the new replacement substances were more eco friendly as regards the impact on both the ozone layer and the greenhouse effect. Having regard to the gradual implementation of the prohibition of CFC, the Consumer Ombudsman decided that the use of 'CFC free' without reservations in the transition period in 1994 could probably not be regarded as misleading when the statement evidentially referred to facts that went beyond the requirements provided by law. Use of the statement was therefore permitted in 1994. At the same time, the Consumer Ombudsman recommended that traders include in information material a brief notice stating that the use of CFC for

insulation was illegal and that the manufacturer already at that time satisfied the future supplementary prohibition of the use of CFC as a cooling agent (Case No. 1993-411/5-24).

⁸ It appears from clause 6.5.1 of ISO 14021 'Environmental labels and declarations – Self-declared environmental claims (Type II environmental labelling)' that self-declared environmental claims can only be considered verifiable if such verification can be made without access to confidential business information and that environmental claims should not be made if their verification requires inclusion of confidential business information. Similar conditions are stated in the unofficial European Union 'Guidelines for Making and Assessing Environmental Claims', Report No. 67/94/22/1/00281 (published by the European Commission, December 2000).

⁹ In a case about a compact detergent with the following statement printed on the packaging: 'ENVIRONMENTAL INFORMATION: Reduced emission of chemicals[...]', the Consumer Ombudsman expressed the opinion that the use of visual effects on packaging, etc., which convey or must be regarded as likely to convey the overall impression to consumers that the product has a smaller environmental footprint must be capable of being substantiated according to the same rules as apply to the use of general environmental statements. The dominant colour of the packaging was green and imagery depicting a landscape with a bright, shining sun was placed in connection with the information which evoked associations of a product without any material impact on the environment (Case No. 1993-444/5-6).

¹⁰ Traders must be aware that referring to 'the Swan' and 'the Flower' in the marketing of the underlying product is not permitted, unless the product is covered by a valid licence issued by Ecolabelling Denmark.

¹¹ The Consumer Ombudsman expressed the opinion in a case that certification as an organic farmer and permission to use the 'State-Controlled Organic' label to market products implied that the products were considered to have been produced by methods that were gentler on the environment than traditional production methods. The Ombudsman assumed that consumers in general perceived organic products as 'environmentally friendly' and found that, based on the current rules on organic farming and the marketing of organic agricultural products, producers may use more general environmental statements in their marketing (Case No. 1995-7121/-15).

¹² Reference is made to the Danish Act on Organic Agricultural and Aquacultural Production (*økologiloven*) (Consolidated Act No. 196 of 12 March 2009), in particular section 2(ii) on the object of the Act which contains the following provision:

'[The object of the Act is]

[...]

(ii) to protect consumers' interests and accommodate consumers' demand for products manufactured by means of processes with special focus on the environment, nature, biological diversity and the health of plants, animals and humans and animal welfare, [...]'.

¹³ See Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures and Executive Order No. 329 of 16 May 2002 on Classification, Packaging, Labelling, Sale and Storage of Chemical Substances and Products and www.mst.dk.

¹⁴ Advertisements for computers carried the statement: 'ENVIRONMENT, PLEASE'. It also appeared from the text that the advertised models satisfied stringent environmental rules on PC workstations which had been introduced by the European Union. Further down, it was stated in the advertisement that the type of environment referred to was working environment. In the opinion of the Consumer Ombudsman, when reading the word 'environment' the recipient of the message would immediately think of the physical, natural environment (soil, air and water) and not working environment. Using the word environment about working environment was therefore misleading (Case No. 1993-4031/5-79).

¹⁵ The Danish Environmental Protection Agency found that the statement 'Natural gas does not pollute' was not correct as natural gas contributes to pollution, *i.a.*, by emission of nitrogen oxides. The company argued that the statement 'Natural gas is clean energy and not a burden on the environment like oil' was justified as natural gas must be considered one of the cleanest forms of energy as regards pollution and taking into account the fact that natural gas is clean to work with. The Consumer Ombudsman expressed the opinion that the slogan was a very general statement that natural gas is non-polluting, but as that is not the case, the use of the statement was a violation of section 2(1) (now section 3(1)) of the Marketing Practices Act (Case No. 1992-324/5-36).

¹⁶ Cosmetics are defined in accordance with section 3 of Executive Order No. 422 of 4 May 2006 on Cosmetic Products: 'For the purpose of this Executive Order, cosmetic products means any chemical substance or product designed to be used in physical contact with different external parts of the human body (skin, scalp hair and other hair growth, nails, lips and external genitalia), the teeth and mucous membranes of the oral cavity exclusively or mainly to clean them and perfume them, to change their appearance, to protect them or to keep them in good condition, or to correct body odour. Schedule 1 provides an indicative list of products regarded as cosmetic substances.'

¹⁷ For example, Commission Decision of 9 July 2009 establishing the ecological criteria for the award of the Community Ecolabel for textile products (notified under document number C(2009) 4595) (Text with EEA relevance) (2009/567/EC).

¹⁸ It follows from recital No. 1 of the preamble to Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91 that organic production is an overall system of farm management and food production that combines best environmental practices, a high level of biodiversity, the preservation of natural resources, the application of high animal welfare standards and a production method in line with the preference of certain consumers for products produced using natural substances and processes.

¹⁹ In this respect regard has been had to section 3 of the Act on Organic Agricultural and Aquacultural Production (Consolidated Act No. 196 of 12 March 2009), which lays down that in connection with the administration of the Act special focus must be had on safeguarding the credibility and reputation of organic products and production with consumers. It appears from the explanatory notes to the provision that this overall consideration of credibility will generally apply in connection with the administration of the Act, including in laying down general rules under the Act, establishing guidances and standards as the framework and guidelines for the authorities' practice and in making specific decisions under the Act. Accordingly, although the organic label cannot be used for textiles and cosmetic products under the Act on Organic Agricultural and Aquacultural Production, the Consumer Ombudsman finds that importance should also be attached to this overall consideration in the determination of the proportion of raw materials/ingredients originating from certified organic production.

²⁰ Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91: 'at least 95 % by weight, of its ingredients of agricultural origin are organic'. It appears from section 1(1)(i) of Executive Order No. 1053 of 6 September 2010 on the Use of the Organic Control Label (*Ø-label*) on Organic Agricultural Non-Food Products: 'Agricultural products to be used for non-food purposes may be labelled with the Organic Control Label (*Ø-label*) provided that at least 95 per cent by weight of all ingredients in the product are produced according to the production provisions of Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91 (Council Regulation) and Executive Order on Organic Agricultural Production, etc. (Executive Order on Organic Production)'.

²¹ When providing documentation that the ingredients/raw materials used are of certified organic origin, the principles laid down in Articles 9, 32 and 33 of Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91 and Article 66 of Commission Regulation (EC) No. 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control must be observed.

²² However, if the product contains a large amount of water, it may not make sense to refer to the product as organic, and the designation may therefore become misleading based on an overall assessment. Due to the lack of case law in this field, however, the specific water content accepted in products cannot be determined, but according to the Consumer Ombudsman, the guiding principle of this assessment will be that at least 20% of the entire product (*i.e.*, including added water) consists of certified organic plant and/or livestock ingredients. The Consumer Ombudsman intends to invite the relevant parties to discuss the matter when more experience and case law have been obtained in this field. If the trader is in doubt as to whether the water content in the cosmetic product is too large for the product to be referred to as organic, the Consumer Ombudsman

recommends instead that the trader states the percentage content of organic raw materials/ingredients in the product (added water not included).

²³ The Consumer Ombudsman acknowledges that the processing may reduce the proportion of organic raw materials/ingredients to less than 95% in the finished product. However, the processing must not imply that the organic content is reduced to an unnecessary extent, and the finished product must contain a significant proportion of organic substances. At present, however, there is no case law governing these matters. The Consumer Ombudsman therefore intends to invite the relevant parties to discuss the matters when more experience and case law have been obtained in this field. The trader will always be entitled to state the percentage content of organic raw materials/ingredients in the product (added water not included).

²⁴ If relevant, see also DS guidance 49004 'Social responsibility'.

²⁵ Special rules on cosmetic products have been laid down in Executive Order on Cosmetic Products (Executive Order No. 422 of 4 May 2006), which will be replaced by Regulation (EC) No. 1223/2009 of the European Parliament and of the Council as from 11 July 2013.

²⁶ The distributors' advertisement did not state that the savings obtainable by using the new washing machines presupposed that clothes were tumble dried. Because the marketing material did not state that part of the savings was to be obtained through less tumble drying (due to less water remaining in the clothes as a result of higher spin-drying speed in new washing machines), the court found that the savings stated were misleading and an unfair omission of information (Case No. 1992-441/5-9 and Maritime and Commercial Court judgment of 18 November 1994, case P 3/93).

²⁷ Traders must be aware that referring to 'the Swan' and 'the Flower' in the marketing of the underlying product is not permitted, unless the product is covered by a valid licence issued by Ecolabelling Denmark.

²⁸ Executive Order ratifying the Kyoto Protocol of 11 December 1997 to the United Nations Framework Convention on Climate Change, Executive Order (International Instrument) No. 35 of 27 October 2005.

²⁹ DS/ISO 14064-1 'Greenhouse gases – Part 1: Specification with guidance at the organization level for quantification and reporting of greenhouse gas emissions and removals';

DS/ISO 14064-2 'Greenhouse gases – Part 2: Specification with guidance at the project level for quantification, monitoring and reporting of greenhouse gas emission reductions or removal enhancements'; and

DS/ISO 14064-3 'Greenhouse gases – Part 3: Specification with guidance for the validation and verification of greenhouse gas assertions'; as well as ISO/CD 14067-2 'Carbon footprint of products - Requirements and guidelines for quantification and communication'.

³⁰ Traders can visit the Climate Compass at www.climatecompass.dk for inspiration on the preparation of a climate strategy.

³¹ JI is the abbreviation of Joint Implementation and refers to projects in industrialised countries which have made a commitment under the Kyoto Protocol to reduce their emissions of greenhouse gasses.

³² CDM is the abbreviation of Clean Development System. CDM projects are developed in countries which have not made a commitment under the Kyoto Protocol to reduce their emissions of greenhouse gases.

³³ More information about the projects is available on the website of the Danish Energy Agency at www.ens.dk.

³⁴ It was misleading to market fake furs as 'eco fur' or 'organic furs'. According to the advertisers, the industry used the expressions about fake furs to indicate that the furs were animal friendly. The Consumer Ombudsman expressed the opinion that, according to the Marketing Practices Act, a product made of artificial materials must not be referred to as organic or use the abbreviation 'eco'. Organic production was described as the science of the adaptation of living creatures to animal life conditions in relation to nature, climate, other organisms, etc. The Consumer Ombudsman observed that for a product to be referred to as organic it must be manufactured using natural raw materials in a manner which leaves the smallest possible environmental footprint or which does not upset the ecological balance (Case No. 1993-615/5-5).

³⁵ Inspiration may be found in ISO 26000 'Guidance on social responsibility', DS 49001 'Social responsibility management system' and DS 49004 'Social responsibility'.

³⁶ A fruit producer had named his company 'XX Ecofruit' and published a leaflet on the front page of which the word 'environment' was printed in large letters. The producer was requested to submit an account of the general statement 'environment' in the marketing, including submission of a life cycle assessment of the production process. The producer was unable to provide such assessment as the production was based on so-called integrated production, which does not build on life cycle analyses. The Consumer Ombudsman found that documentation had not been provided that the products were grown and bred using production methods which could justify the use of general environmental marketing statements (Case No. 1995-7121/5-15).

³⁷ In connection with the marketing of an 'eco coffin' (*i.a.*, the statement that '[...] is our industry's contribution to a better environment') made of paper fibre, the Consumer Ombudsman emphasised that the manufacturer may only use the word environment in marketing or when referring to a product provided that he is able to provide documentation that the environmental claim relates to the product in general and not only to some of the properties. The Consumer Ombudsman expressed the opinion that such requirement can only be satisfied by submission of a life cycle assessment (LCA) documenting that the product has a significantly smaller environmental footprint

measured over its entire life cycle than other products in the same category (Case No. 1996-289/5-4).

³⁸ Minutes of the meeting on 14 April 2010 of the Danish Council on Corporate Social Responsibility.

³⁹ The social responsibility of enterprises is described in section 99 a of the Danish Financial Statements Act (Consolidation Act No. 395 of 25 May 2009) as the voluntary integration by enterprises of human rights, social, environmental and climate concerns and anti-corruption measures into their business strategy and activities.

⁴⁰ Companies may obtain certification according to DS 49001. If relevant, see also DS guidance 49004 'Social responsibility'.

⁴¹ Available through this link <http://www.partnershippractice.dk/sw47149.asp>

⁴² The Consumer Ombudsman received an inquiry concerning the labelling scheme 'Eco-Tex'. Textiles that satisfy a number of requirements of an 'Eco-Tex Standard' may obtain a label to that effect. According to the information received, it was not an ecolabel scheme or an organic labelling scheme as such. The scheme was based on controls at which analyses were made to confirm that the requirements of the maximum content of formaldehyde, chemical residues, pesticides, the preservative PCP and heavy metals and other requirements dictated by the standard had been met. When presenting the text to the Danish version of the label, the Consumer Ombudsman expressed the opinion that a label of this nature should state in clear and unambiguous text and visual effects what is controlled (Case No. 1993-610/3-3).

⁴³ ISO 14020 'Environmental labels and declaration – General principles'; ISO 14024 'Environmental labels and declaration – Type 1 environmental labelling – Principles and procedures'; and ISO 14025 'Environmental labels and declarations – Type III environmental declarations – Principles and procedures'.

⁴⁴ Consolidation Act No. 839 of 31 August 2009 on marketing as amended.

⁴⁵ Article 10(1): 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. [...]'

⁴⁶ Article 10(2): 'The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

⁴⁷ ISO 14021 'Environmental labelling and declarations – Self-declared environmental claims (Type II environmental labelling)'.