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ANNEX D

**CERTIFICATION SCHEMES FOR AGRICULTURAL PRODUCTS AND
FOODSTUFFS¹**

¹ This paper is concerned with the private and national/regional certification of agricultural products and foodstuffs according to standards laid down in a specification. It does not concern the certification of seeds or the phytosanitary certificates or passports of plants.

ANNEX D – CERTIFICATION SCHEMES FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS

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D.1. INTRODUCTION

Recent years have seen a substantial growth in private and national certification schemes for agricultural products and foodstuffs (e.g., Bredahl et al. 2001; Dries and Mancini 2007).

A preliminary inventory done for the Commission in 2006 arrived at close to 400 different schemes², even though this figure has been disputed and is currently under revision.

Certification schemes for agricultural products and foodstuffs provide assurance (through a certification mechanism³) that certain aspects of the product or its production method, as laid down in a specification, have been observed. They cover a wide range of different initiatives, both public and private, that function at different stages of the food supply chain (pre- or post-farm gate, covering the whole chain or just a segment). They can operate at the business-to-business (B2B) level or at the business-to-consumer (B2C) level. They can make use of logos but, especially at the B2B-level, many do not.

Some schemes operate on the basis of a label or logo (often registered as a trademark, e.g. in the case of the Hungarian "Traditions – Tastes – Regions" scheme) without involving any certification mechanism. Adherence to these schemes is done by self-declaration or through selection by the scheme owner (often a public authority). While strictly speaking these are no certification schemes, they will nonetheless be included in the scope of this paper.

Certification schemes for agricultural products and foodstuffs in the EU range from compliance with compulsory production standards to additional requirements relating to environmental protection, animal welfare, organoleptic qualities, worker welfare, producer contractual arrangements (e.g., "Fair Trade"), climate change concerns, ethical, religious or cultural considerations, farming methods, and origin.

Scheme owners are equally varied, covering the whole range from farmers and producers, through NGOs, interest groups and retailers, to public authorities.

All of these schemes are voluntary. However, as will be explained below, some schemes may be required by powerful market actors and therefore function as an entry requirements for certain markets.

Because certification schemes are so varied, the legal framework governing their use is complex and spread across various policy areas. Certification schemes are subject to some EU legal provisions, namely:

- the rules of the internal market. Certification services should be freely available across borders. Schemes should also not result in de facto barriers to trade in goods in the internal market;

² see http://foodqualityschemes.jrc.ec.europa.eu/en/documents/inventory_FOAS_Nov_2006.xls

³ Defined as “the procedure by which a third party gives written assurance that a product, process, service or management system conforms to specified requirements” (ISO Guide 2, cited at http://www.eurogentest.org/web/info/public/unit1/qmanagement/definitions_v1.xhtml)
Accreditation is the “Procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks.” (ISO guide 2, cited at http://www.eurogentest.org/web/info/public/unit1/qmanagement/definitions_v1.xhtml)

- rules on competition. Certification schemes should not lead to restrictive horizontal or vertical agreements that abuse market power (e.g. buying power) or foreclose other competitors.
- consumer information and labelling requirements. Are consumers aware of what lies behind a label claim? Are they misled by the certification claim?
- specific legislation on the subject covered by the certification scheme (e.g. regulatory requirements for food safety and hygiene; animal welfare; environmental protection)

In addition, the internationally recognised rules for operating product certification schemes are set out in the International Standards Organisation (ISO) Guide 65, which is analogous to European Standard EN 45011. While product certification schemes are voluntary initiatives, compliance with EN 45011/ISO 65 is a statutory requirement for some schemes.

However, there is currently no legislation that specifically addresses rules or requirements for certification schemes.

1.1. Classification of certification schemes

Certification schemes for agricultural products and foodstuffs can be grouped into three broad clusters according to the general purpose/objective of the scheme and its place in the food supply chain:

1.1.1. Food safety and liability schemes (post-farm gate)

"**Food safety and liability schemes**" at the post-farm gate level were developed by the food industry and retailers to ensure the safety of their own branded products in order to protect their reputation and gain legal security. Under the UK 1990 Food Safety Act, the basis of food law changed from one of strict liability to a recognition that problematic incidents can and do happen no matter how diligent a manufacturer is. Since then, if a manufacturer can show that all reasonable precautions have been taken and all due diligence applied so as to prevent a food law offence occurring, then the courts will accept that as a sufficient defense (Turner, 1999). In principle, these schemes allow for efficiency gains for suppliers that should lead to improved supply conditions.

Many different retailer control schemes were designed to meet this new legal obligation. Some liability schemes in Europe include the British Retail Consortium (BRC) standard and the International Food Standard (IFS), but SQF, Dutch HACCP and ISO 22000 also operate in the EU market (see annex 1 for a short summary of each of these schemes).

These schemes, most of which are owned and developed by groups of retailers and wholesalers (except Dutch HACCP and ISO 22000), operate almost exclusively at the business-to-business level for post-farm gate food processing. Their first and foremost concerns are food safety issues. They are normally not communicated to the final consumer by means of a logo or label and therefore certification does not result in a price premium. However, most retailers demand certification from their suppliers, thereby making it a de-facto requirement for market access (e.g., Bredahl et al., 2001; DG JRC/IPTS 2006 (a)). While the overall number of such schemes operating in the EU market is moderate, the number of certificates issued under these schemes is significant, especially considering that certificates are issued to food processing enterprises rather than primary producers (see Table 1):

Table 1: Certificates issued by the main food safety and liability schemes

	BRC	IFS	SQF 2000	Dutch HACCP	ISO-22000
Certificates	8607	8414	6000	2064	4000
Countries	80	80	50	40	80
Certification bodies	76	63	60	12	40

Source: modified from Groeneveld, 2008

Certification costs are based on company size, scope and complexity of operation. The cost structure is also based on the minimum audit time on site. It is therefore difficult to state exact fees. Costs differ from certifier to certifier but are estimated to lie somewhere between 1000 € and 2500 € for an annual audit of 1-2 days.

The Global Food Safety Initiative (GFSI) has introduced a benchmarking process for food safety management schemes. While some retailers, like Carrefour, Tesco, Ahold, WalMart, Metro, Migros and Delhaize, announced their recognition of all the GFSI standards (BRC, IFS, SQF, Dutch HACCP), this is not the case for the majority of other retailers. As a consequence, suppliers to more than one retailer are faced with a situation in which they have to comply with largely overlapping schemes (see table 2), each requiring its own certification and audit mechanism with the corresponding costs. However, the question to what extent this situation affects farmers and primary producers remains to be analysed.

Table 2: Overlap between the schemes

	BRC	IFS	ISO 22000	HACCP
BRC	X	90%	60%	100%
IFS	90%	X	60%	100%
ISO 22000	60%	60%	X	100%
HACCP	100%	100%	100%	X

Source: INTEGRA (<http://trust.taftw.org.tw/doc/prod/prod8.pdf>)

Thus, while a certain degree of consolidation has already been achieved at the level of these schemes, there is still a significant degree of overlap and therefore room for more harmonisation.

Some certification bodies have recognised this problem and are now offering audit packs in which several standards are combined and covered by a single audit. Certificates are issued for each desired standard separately.⁴

⁴ e.g.: http://www.foodsafety.sgs.com/foodsafety_v2/single_food_audit_pack_foodsafety.htm

The main competition concerns that could arise would be related to possible foreclosure of competing buyers (i.e. since such schemes would be capable of preventing access of competing/alternative retailers to agricultural supplies). A particular certification scheme applied by one or more undertakings with significant market power may have the effect of limiting access of competing retailers to certain categories of products and/or limiting the possibility for those retailers to differentiate their product range and procurement policies, thus losing a competitive edge over their stronger rivals.

In summary, food safety and liability schemes at the post-farm gate level mainly affect food processing and manufacturing enterprises supplying different retail chains. Their effects may be important for farmers if they lead to increased or decreased opportunities for sale.

1.1.2. Food assurance schemes (pre-farm gate and whole chain)

"**Food assurance schemes**" at the farm level, and sometimes covering the whole food supply chain, developed to give retailers and consumers assurance about product safety and certain aspects of production methods. The most prominent example in this category is GLOBALGAP (formerly EurepGAP), but a range of other schemes also exists in different EU countries (see annex 2). For example, the red meat sector in the UK began developing a number of logos in the 1990s to identify their products. By the end of the 1990s there was an increasing desire for a mark to identify 'assured' products from all commodity sectors (Kirk-Wilson, 2008). Such schemes have potential beneficial effects for competition since they can lead to improved production and supply whilst possibly providing EU farmers with important efficiency gains (for example reduced duplication of resources employed in terms of product characteristics, collective quality benchmarking, etc.)

These schemes often do not add any particular quality characteristic to the product or its production method but assure that all legal requirements have been complied with. Many of them use a logo to communicate this fact to the consumer, raising the question of whether this misleads consumers into believing that certified products are "better" than non-certified ones.

In a review of UK food assurance schemes conducted in 2002, a number of problems were highlighted that led to the development of guidelines by the UK Food Standards Agency. Uptake of these guidelines by UK food assurance schemes is discussed in a 2008 report (Kirk-Wilson, 2008) which concludes that while there has been significant improvement in almost all areas that were previously considered problematic, improvements can be made particularly in the area of transparency and inclusion of consumers in the standard setting procedure.

The main competition concerns are related to possible foreclosing of competing suppliers of agricultural products (i.e. since such schemes would be capable of preventing access of competing suppliers to the distribution channels). However, this is probably a low risk.

In summary, the main concerns related to these types of schemes are related to:

- ⇒ The lack of inclusiveness in standard setting / the dominance of industry in their governance structure

- ⇒ The de-facto mandatory status in some markets, combined with a significant degree of overlap with legal requirements, leading to duplication of official controls
- ⇒ The potential misleading of consumers as regards the “higher” quality of products covered

1.1.3. Differentiation schemes

By far the largest (and growing) group in terms of number of existing schemes (e.g., DG JRC/IPTS 2006 (a)), differentiation schemes aim to distinguish certified products from others by highlighting certain product or process attributes (e.g., observance of strict animal welfare or environmental requirements; organic farming; social standards; high organoleptic product quality; origin; etc.) and communicating this fact to the consumer by means of a logo or label. Farmers and producers can use such schemes to improve their marketing position and obtain higher prices for their products. Similar schemes may be put forward by national or regional authorities to support producers in their constituency, or by NGOs/interest groups advocating certain political or social goals. Examples of such schemes are the following:

- ⇒ LeafMarque (UK; focus on environmental protection)
- ⇒ Neuland (DE; focus on animal welfare)
- ⇒ Label Rouge (FR; focus on high organoleptic quality)
- ⇒ Fair Trade (international; focus on payment of guaranteed premium prices to participating producers in developing countries)
- ⇒ Air freighted (UK; focus on carbon emissions during transport)
- ⇒ Demeter (international; focus on biodynamic agriculture)
- ⇒ Prodotti della Campagna Romana (IT; focus on origin)

Differentiation schemes offer consumers the possibility to make better choices as regards the product and process characteristics of their purchases. In addition they help farmers and producers to differentiate their products from other competing goods and provide them a competitive edge which can enhance their chances to enter and/or expand on the market. It must be borne in mind that differentiation schemes are in particular very useful for EU farmers in terms of better marketing and negotiating their product both with large retailers and alternative distribution channels, whilst increasing consumer choice. Thus a multiplicity of such schemes could be beneficial to EU farmers from a competition point of view.

However, the sheer number of labels and claims is threatening to undermine the benefits of increase choice. Consumers are no longer able to keep track of the various schemes without making a considerable effort, and even then it is not always possible to find clear and transparent information. Confusion and potential deception of consumers is a very real problem in this group of schemes.

Possible competition concerns are related to the need to ensure openness and transparency of the objective of the certification or product characteristics and farming attributes (i.e. ensuring that all market operators that comply with the respective pre-requisites can adhere to the scheme).

In addition, internal market issues arise for differentiation schemes that either highlight the origin of certified products or where certification services are limited to certain certification bodies (see annex 3 and box 1). Numerous existing schemes operate in a grey area in the sense that they carry the name of a country or region while at the same time allowing, at least in theory, the participation of outsiders if they fulfil the requirements of the scheme. This latter point will in most cases not be known to consumers, who are likely to expect products from the specified area when they read the label.

Box 1: Certification services for organic products – are they compartmentalising the internal market?

Organic products are governed by European legislation. Council Regulation (EC) 834/2007 defines and protects the use of the terms organic, ecological and biological in relation to agricultural products. It also obliges Member States to set up a control system for this sector. In most countries public authorities recognise and supervise private control bodies that certify the products as organic.

Despite this harmonised EU legal framework, the market for organic food in the EU remains largely divided along national lines. The preference of organic consumers for locally produced food could partly explain this. The private or national certification logos traditionally used in most markets also contribute to this phenomenon. In a number of countries consumers are very much used to this logo and supermarkets are eager to have this logo on all their products, whatever their origin is. This mechanism is even more amplified because of the legislation that requires a reference on the label to the control body in charge of the controlling the last step in food chain, often the packaging, which is often done in the country where the product is sold and for which a local control body is chosen.

The effect is that operators wishing to sell their products in another EU Member State than their own may currently need to require an additional logo that will be recognised by consumers, or that in some cases will even be required by the players in these markets. Obtaining such additional logos can be burdensome and create difficulties in trading organic products between Member States.

In addition some of the private logos refer to private organic standards that contain some additional elements when compared to the EU legislation. Such logos attract certain groups of consumers that value the additional requirements, for instance the biodynamic logo or logos owned by grass-root organisations.

The overall conclusion seems to be that private organic labels referring to additional standards have a role to play, but that the lack of mutual recognition between these schemes appears to split up the market.

D.2. PROBLEM DEFINITION

A problem tree charting problems, drivers and effects can be found in annex 4 of this paper.

Following the discussion of the different groups of schemes above, three core problems can be identified as concerning

- ⇒ the transparency of schemes' requirements, the credibility of the claims made, and whether these are understood by consumers (**asymmetric information**);
- ⇒ their possible effects on commercial relations, including undue burdens on farmers and producers, also in developing countries (**missing or weak competition at certain levels of the supply chain**); and
- ⇒ the functioning of the internal market (**implementation and enforcement failure**).

These three broad concerns affect each particular group of certification schemes differently:

- ⇒ **the transparency of schemes' requirements, the credibility of the claims made, and whether these are understood by consumers:** mostly an issue for differentiation schemes; also for food assurance schemes which are communicated to consumers. Not for liability schemes.
- ⇒ **their possible effects on commercial relations (including undue burdens on farmers and producers):** mostly for schemes where overlap and duplication exists, either among schemes or between schemes and official controls. Thus, this mainly concerns liability schemes (for processing and manufacturing enterprises) and food assurance schemes. Indirectly also an issue for some differentiation schemes if the situation arises that non-participation in a scheme can lead to exclusion from certain markets (a concern that has been raised in the context of "Fair Trade" schemes, e.g. by Renard (2005)).
- ⇒ **the functioning of the internal market:** mostly an issue for differentiation schemes (either the schemes themselves or certification providers requested by national customers); also for food assurance schemes which could be associated with a certain origin (Red Tractor; Geprüfte Qualität - Bayern; etc.). Not for liability schemes.

However, it should be noted that it is not always possible to draw clear lines between the different groups of schemes, which sometimes combine elements from two or even three groups (e.g., assurance schemes incorporating elements of product differentiation). The complexity of the standards setting for high-value foods is likely to increase in the future given the emerging tendency, especially within the private sector, to package together safety, quality, environmental, and social standards (Worldbank, 2005).

2.1. What are the underlying drivers of the problems?

Annex 5 outlines the rationale for food safety and quality standards at a very general level.

A number of more specific factors contributed to the emergence of the currently existing wide variety of certification schemes, and again we need to distinguish between the three broad groups of schemes outlined above when looking at each driver.

(a) Food scares:

A number of food scares (BSE, dioxin, salmonella, listeria, E-coli) starting in the later 1980s lowered consumer confidence for a period in official food safety systems and controls⁵ (see Table 3).

⁵ The Commission's White Paper on Food Safety of 2000 states that "The European Union needs to re-establish public confidence in its food supply, its food science, its food law and its food controls." and "The principal objective of a European Food Authority will be to contribute to a high level of consumer health protection in the area of food safety, through which consumer confidence can be restored and maintained."

Table 3: Examples of major food safety “events” in industrialized countries

Year	Event	Country
1987/88	Beef hormone scare	Italy/European Union
1988	Poultry salmonella outbreak/scandal	United Kingdom
1989	Growth regulator (<i>alar</i>) scare for apples	United States
1993	E.Coli outbreak in fast-food hamburgers	United States
1996	Brain-wasting disease linked to BSE	United Kingdom
1996/97	Microbiological contamination—berries	United States, Canada
1995-97	Avian flu spreads to humans	Hong Kong, Taiwan
1999	Dioxin in animal feed	Belgium
2000	Large-scale food poisoning—dairy	Japan
2001	Contaminated olive oil	Spain
2006	Rotten meat scandal	Germany
2008	Melamine in dairy products	China
2008	Dioxin in pork	Ireland

Source: Worldbank, 2005 and own additions

While several of these events involved serious illness and loss of life, it should be noted that the adverse effects of these and other events were amplified by the way they were handled in public, further lowering consumer confidence. This situation then gave the impetus to the private sector to develop their own standards. According to a report produced by the Worldbank,

"Both the mainstream and tabloid media seized on the events, often magnifying public concerns by emphasizing the potential threats to human health, the influence of vested interests unconcerned with consumer protection, and the alleged ineptitude of governments. Each new event further eroded the confidence of consumers in the safety and integrity of certain food products, in national and regional systems of regulation, and (at least in Europe) in the broader scientific community supporting the agri-food system. Many came to believe that the existing regulatory apparatus was more geared toward protecting the interests of farmers and food distributors rather than consumers. Public disagreements among scientists in different countries about food risks further sapped consumers' confidence.

"Governments and the private sector have responded to these developments in various ways. At the official level, regulations have been revised and significant institutional changes have been made in food safety oversight. Standards have been tightened on foods that have long raised concerns, while new standards have been developed for previously unknown or unregulated hazards. Governments are increasingly adopting a production-to-consumption (or farm-to-table) perspective, requiring traceability of animals, products, and raw materials, while national systems for border inspections of food and plants have been scaled up.

"Spurred by these regulatory changes and the business cost of food scares, supply-chain leaders such as food retailers and major food manufacturers have led the private sector in making adjustments to food safety and quality

management systems and demanding similar changes on the part of suppliers. In addition to laying down and enforcing their own safety and quality requirements, the leaders are increasingly consolidating their systems of procurement, entering into longer term relationships with a more limited number of “preferred suppliers.” Many different schemes are being promoted or imposed at the level of individual companies, specific supply chains, national industries, regional groupings of firms, and even, internationally.” (Worldbank, 2005)

The schemes having emerged in reaction to the above-mentioned food scares mainly belong to the group of pre-farm gate assurance schemes (the most prominent example here is the UK Red Tractor Scheme; see Kirk-Wilson, 2008), but to a certain extent also the food safety and liability schemes have their roots in private sector reactions to food scares. While differentiation schemes may have experienced a certain boost due to the loss of consumer confidence in “traditional” supply chains, it is unlikely that new differentiation schemes have emerged in reaction to food scares.

(b) Societal demands:

Even though the share of income spent on food has been shrinking in all industrialised countries over the last decades (e.g., EUROSTAT), absolute expenditure on food is larger than ever. This indicates a change in the pattern of consumption towards agricultural and food products with higher income elasticities of demand (fish, poultry, fresh produce), and it implies that consumers are willing and able to pay higher prices for products with certain desirable characteristics (Bredahl et al., 2001).

Differentiation schemes have emerged in response to the perceived demand for products with particular characteristics or resulting from particular farming methods. Some of the main drivers of innovation for this type of schemes include:

- a desire for consumers to reconnect with agriculture and give preference to local and seasonal products from farming systems that sustain both nature and society;
- the environmental concerns of combating climate change, managing natural resources such as water and soil more efficiently, and preserving biodiversity;
- promotion of nutritional qualities of foodstuffs;
- social concerns: the Fair Trade label is an example of a scheme based on the strategic intention to help producers and workers (chiefly in developing countries) move from a position of economic and social vulnerability to one of security and economic self-sufficiency (see box 2 below);
- animal welfare concerns: private schemes promoted by animal welfare groups and farmers working with retailers and the scientific community. These animal welfare schemes generally certify that higher than the minimum requirements are met, for marketing purposes.
- New technologies in agriculture and food production (e.g., GMOs) which may be officially allowed but not desired by many consumers. Differentiation schemes can guarantee the absence of food produced with those new technologies, thereby respecting consumers' right to choose.

Consumer demands are continuously evolving, as can be illustrated by the example of schemes trying to address climate change concerns (see annex 6). For producers, certification is a way of meeting these demands by communicating certain aspects of products or production methods to potential buyers. Whether or not such schemes will be successful in the long run depends on the development of effective market demand.

Box 2: "Fair Trade" labels

Fair and ethical trade is an approach that addresses the contractual conditions of production in developing countries. Fair Trade labelling is one distinct concept within this broader category and is generally understood to apply to the dozen or more commodity items eligible for certification by Fairtrade Labelling Organisations [FLO]⁶. FLO is in some ways the mainstream interface for a distribution system inspired by a reaction against traditional supply chains and an attempt to supplant them by alternative models. The rules for producer participation are laid down both generically and geographically and by product, but participation is also limited by the availability of consumer uptake. Many of the rules are comparable to those contained in mainstream CSR-driven supply-chain codes, but what distinguishes the Fair Trade contractual relationship is

- the existence of progress standards, where improvement is more important than absolute attainment;
- a guaranteed price with a pre-determined floor, and a premium above the usual market price,
- the assurance of long-term relationships.

Certain elements from Fair Trade, such as progress standards, long-term relationships, but generally not the price guarantee in exactly the same form, have been taken over by other schemes that do not pass for “Fair Trade”. Other schemes that are not Fair Trade at all sometimes use the words fair, fairly, and trade or traded by themselves or in combination with other terms, which can create uncertainty for consumers about the origin and production of a product. Despite that, public recognition and broad understanding of the Fair Trade concept is high and increasing (see <http://www.fairtrade.net/figures.html>).

The European Commission is addressing the issue of Fair Trade and other non-governmental trade-related sustainability assurance schemes in a Communication to be adopted in 2009. The Communication seeks to provide an up-date on developments and issues that have been raised since the last Commission Communication on the subject in 1999⁷. The Communication will also take account of a number of broad interests that have been articulated, most notably in the European Parliament Report on Fair Trade and other independently monitored trading initiatives contributing to raising social and environmental standards⁸.

⁶ Fair Trade Labelling Organisations International, created in 1987 (divided in 2004 into FLO-1 for standard-setting, and FLO-Cert Ltd for certification and auditing activities).

⁷ COM(1999) 619 of 29.11.1999.

⁸ European Parliament Report on Fair Trade and Development 2005/2245(INI).

(c) The changing legal framework:

Partly due to events such as the food scares mentioned above, the official rules and regulations governing food safety, announced in the European Commission's "White Paper on Food Safety" in 2000 have been prepared and set up, either by tightening existing rules or by introducing new ones.

Some fundamental changes in food safety regulation and management were introduced, including⁹:

- ⇒ greater institutional independence (creation of independent food safety agencies, both at European and Member State level)
- ⇒ full supply-chain perspective (introduction of farm-to-fork approaches in addressing food safety hazards; growing attention to the traceability of animals, raw materials, and products)
- ⇒ increased emphasis on the adoption of HACCP systems (Various EU member states have HACCP requirements, and all suppliers of dairy, meat, and fish products are required to have such systems, with oversight provided by national authorities and periodic inspections by EU technical experts).
- ⇒ increased use of scientific risk assessment (e.g., in the SPS Committee, in CODEX and other standard-setting organisations, in order to determine the need for new regulations or standards)
- ⇒ intensified border inspections
- ⇒ greater transparency of risk assessments and other measures
- ⇒ greater stringency and broader application of standards (e.g. in the field of pesticide use and residues)

These measures constitute the framework in which private standards and certification schemes operate. The impact that changes in legislation can have on certification schemes is clearly illustrated by the UK Food Safety Act of 1990 (see box 3) introducing "due diligence" requirements for retailers, which in turn has led to the development of "food safety and liability" certification schemes (BRC, IFS) (e.g., Kirk-Wilson 2008 UK food assurance review).

⁹ This section is based on Worldbank 2005, pp. 18-23 , which in turn is based on upon Roberts and Unnevehr (2003) and Caswell (2003).
http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_challenges_synthes_isreport.pdf

Box 3: The UK Food Safety Act (1990)

This Act, passed in the wake of food scares related to Salmonella and other issues in the mid-to-late 1980s, was a major watershed event in the United Kingdom, one that foreshadowed future legislation at the EU level. The Food Safety Act radically transformed quality management systems in Britain's food sector and established greater clarity in control, enforcement, and responsibilities for food safety. It made firms responsible for the safety and quality of their food inputs, the conduct of their suppliers, and the safety of consumers. Both reputation and financial resources were at stake if firms failed to prove due diligence in detecting and preventing problems in the food chain. Under the Act, any supplier of a branded product would be liable for the safety of that product unless they could show due diligence. All fresh produce sold in unpackaged form was considered to bear the brand of the retailer. These liability provisions went further than those that would subsequently appear in continental Europe. As a result, they provided a strong stimulus for private, self-governing actions that subsequently took the form of: (1) a set of good agricultural practices (for example, the Assured Produce Scheme); and (2) a protocol of good hygiene practice (the BRC Technical Food Standard). These, in turn, became part of the foundation for wider food safety initiatives by the private sector in Western Europe.

Source: Worldbank, 2005

(http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_challenge_s_synthesisreport.pdf), based on Loader and Hobbs (1999); Henson and Caswell (1999); Holleran and others (1999)

(d) Public support:

Finally, the eligibility of producers for receiving public support may be tied to participation in certification schemes fulfilling specific criteria. For example, EU rural development funds are available for farmers who participate in certain types of food quality schemes (Council Regulation No. 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), Article 20(c)). While this may not contribute to the emergence of new schemes, it certainly serves as an incentive to participate in existing ones. The existence of public support opportunities for participation in certain types of certification schemes is at least partly linked to recent reforms of the Common Agricultural Policy (and therefore with point (c) – changing legal environment, above) with a greater emphasis on market-oriented production.

2.2. Who is affected, in what ways and to what extent?

(a) **Consumers** are directly affected by schemes which are communicated to the general public by way of a label or logo. These represent the vast majority of differentiation schemes as well as some assurance schemes. The significant growth of the number of schemes in this group, combined with the corresponding growth in the number and diversity of logos and labels, can be seen both as a blessing and a curse.

On the one hand, labels and logos should enable consumers to make an informed choice concerning the product they buy or the way in which it has been produced. More labels and logos imply greater choice and greater attention by retailers to the wishes of consumers for certain product or process characteristics. Many of those characteristics can be considered as 'credence' attributes, the presence of which cannot be detected by the consumer, not even after the purchase and consumption of the product (such as,

“pesticide-free”, “grass-fed” or “produced and bottled in Saint Emilion”). This presents a situation of asymmetric information between retailer and buyer of the product, a typical case of market failure where additional efforts on the part of the producer (e.g. higher animal welfare through more extensive production methods) will not be rewarded by the consumer as long as he/she has no guarantee that these efforts have indeed been made. An independent and trusted certification mechanism and corresponding label is one way of addressing this market failure.

On the other hand, a plethora of schemes with labels on widely differing subjects has given rise to consumer confusion, to the extent that they are likely to ignore these labels. Such confusion can arise because of unclear scheme claims, where the name of the scheme may contain unclear terms (e.g., “integrated agriculture”, a term which can be defined in different ways) or where the name suggests something that the scheme itself does not provide (e.g., in the area of assurance schemes, terms such as “assured quality” can be understood to mean higher quality than legally required; “Geprüfte Qualität - Bayern” may suggest that the product actually comes from Bavaria where in fact the scheme is/has to be open to all producers complying with the specification). Information on the specific scheme requirements is not always readily available or requires significant research which only the most dedicated consumers may be willing to engage in. Furthermore, different schemes may promote contradicting objectives (for example, labels promoting reductions in CO₂-emissions may be damaging to development objectives; improving animal welfare could lead to increased energy consumption). And finally, it is often not clear to what extent the various schemes are controlled by independent bodies, thereby guaranteeing the independence and objectivity/neutrality of the scheme. This is particularly critical for the labels promoted by different retail chains (e.g., Tesco’s Nature’s Choice; Filière Qualité Carrefour)¹⁰.

Box 4: The situation of organic farming labels

The EU organic logo as well as private and national logos are used to supplement the labelling and increase the visibility of organic food and drink for consumers. So, consumers buying products bearing the EU logo can be confident that:

- at least 95% of the product's ingredients of agricultural origin have been organically produced;
- the product complies with the rules of the official control scheme;
- the product has come directly from the producer or is prepared in a sealed package;
- the product bears the name of the producer, the preparer or vendor and the name or code of the control body

The placement of the EU organic logo is currently voluntary, but a new EU organic logo will become mandatory on EU product on 1 July 2010 as regards pre-packaged food. It will continue to be voluntary for imported products after this date. Where the Community logo is used in the future, an indication of the place where the agricultural

¹⁰ Tesco’s Nature’s Choice is independently audited (see <http://www.tescofarming.com/tnc.asp>). For Carrefour, suppliers’ production sites are audited by Carrefour, its service providers or certification agencies, see <http://www.carrefour.com/cdc/responsible-commerce/product-safety-and-quality/>.

raw materials were farmed should accompany it. This indication can mention 'EU', 'non-EU' or the name of the specific country, in or outside the EU, where the product or its raw materials were farmed.

However, a wide variety of privately-owned organic logos has existed for many years in the EU. While all of them belong to schemes that comply with the requirements of the EU regulation, some have their own additional requirements which are often not clearly communicated to consumers. Making the use of the EU organic logo mandatory is a move that intends to offer pan-EU recognition, thereby facilitating trade in the single market and reducing the need for multiple logos.

In a study conducted in 2005 for DG SANCO¹¹, many consumers claimed that, while they welcome as much information as possible on the product, they experience the following problems (amongst others):

- Confusion between “real” and “objective” information and advertising and “marketing”- type information.
- Difficulty in locating the genuinely useful aspects one is looking for, “drowned out” as they are in the midst of all the information given.
- Suspicions of there being information missing: ingredients or additives not mentioned; possible presence of GMO concealed or difficult to find; information not given on cultivation or breeding methods, the ethical character of production conditions, the exact origin of the products, etc.
- Occasional suspicions of deliberate impenetrability of the information provided.

In 2003, the National Consumer Council (NCC) of the UK carried out a study of consumers' views on voluntary food labelling, including food assurance schemes. It concluded that the proliferation of labels and logos has caused **confusion and information-overload among consumers**. The NCC's research showed that consumers did not understand what the majority of labels and logos mean, and that food assurance schemes were most often used as a marketing tool rather than a way of informing consumers and offering real choice (House of Commons, 2005).

Gellynck et al. (2006) reported that despite the abundant rise of information through labelling, traceability systems and quality assurance schemes, the effect on consumer trust in meat as a safe and wholesome product is limited. The overload and complexity of information on food products results in misunderstanding and misinterpretation.

Are consumers also affected by the business-to-business schemes which are not communicated to them? Only to the extent that these schemes have an effect on final prices or, conceivably, on the quality of the product. On the one hand, liability and assurance schemes may lead to higher prices due to higher requirements for quality management within the supply chain, plus certification and control costs. On the other hand, broad adoption of these schemes can reduce transaction costs (costs of searching, testing prior to purchase etc), limit the risk of failed contracts because of sub-standard deliveries, and facilitate technology transfer (DG JRC/IPTS 2006 (b)). Empirical evidence on this issue is scarce.

¹¹ OPTEM 2005; http://ec.europa.eu/consumers/topics/labelling_report_en.pdf

Business-to-business schemes may also affect consumers when they become de-facto requirements for sales to the main retailers in a market. In such a situation, small-scale producers and their products may effectively be excluded from the market, leading to a loss of product diversity and thereby reduced consumer choice.

In summary, consumers would benefit from

- ⇒ Better information on scheme claims and requirements, including a clear indication of whether and how a scheme goes beyond minimum legal requirements
- ⇒ Independent control of schemes
- ⇒ Reduction in the number of schemes with similar requirements operating in the same market (although past experience shows that this can be a difficult process)
- ⇒ Greater involvement in scheme development

(b) **Farmers and producers** are affected by all schemes that require them to produce according to certain standards and procedures, regardless of whether these are communicated to consumers or not. However, a fundamental difference exists between those schemes that are required by actors further down the food supply chain (thus, most liability and assurance schemes) and those that are initiated by farmer and producer groups, NGOs or public authorities with the aim of differentiating certified products from others.

In the latter case, the whole aim of certification is to secure an economic advantage: additional sales and/or higher prices. Differentiation schemes use the fact that consumers are heterogeneous in their preferences and in their willingness to pay for different product characteristics and farming attributes. It is thus the degree of the consumers' willingness to pay, balanced against the additional costs caused by scheme participation (needed investments, higher production costs plus certification and control costs) that determines to a significant extent the success of such schemes. Since differentiation schemes are by nature voluntary, they present an opportunity for farmers and producers to realise higher incomes.

On the other hand, farmers and producers cannot expect consumers to pay premium prices for products by reason of participation in liability and assurance schemes, especially those not communicated to consumers. The main benefit of scheme participation lies in the ability to access certain (mostly very important) markets. As described above, farmers and producers are faced with a situation where in order to be able to sell their products they need to participate in one, and sometimes more, certification schemes.

This situation is compounded by the ongoing concentration process at certain segments of the food supply chain. In Europe, it is mainly the retail level which shows a high degree of concentration. According to a study undertaken by London Economics for the Consultative Commission on Industrial Change of the European Economic and Social Committee (London Economics, 2008), the combined market share of the top-5 firms (known as the "C5") in the food retail market varies significantly between countries. The main findings of the study are:

- ⇒ Germany and the UK are the most concentrated markets with over 70% of the market controlled by the largest five firms.

- ⇒ The French market is also comparatively concentrated, with a C5 of around 60%.
- ⇒ In Italy, Spain and the Czech Republic, the C5 is between 30% and 45%.
- ⇒ There have been significant increases in market concentration in the UK, the Czech Republic, Romania and Spain over the last three years.

A study conducted by the JRC-IPTS on behalf of DG AGRI in 2005 in a different set of countries comes to similar conclusions (JRC-IPTS 2005):

“[...] in the food distribution sector a particularly high degree of concentration has been reached in the Scandinavian countries and in France. In all these countries, and also in Spain, large-scale retail chains, with their typical outlets (hyper- and supermarkets; hard discounts), have come to dominate the sector, at the expense of traditional small-scale retailers. In the Czech Republic and in Poland, for which comparable concentration data were not available, the expansion of large-scale retail at the expense of traditional retail operators is also underway.” (JRC/IPTS 2005, p. 14)

In contrast, and despite an ongoing concentration process also at this level, agricultural production remains characterized by a large number of relatively small operators. In 2005 (the latest year for which figures are available; EUROSTAT 2008), a total of 7.8 million holdings of at least 1 European Size Unit (ESU)¹² existed in the EU-27.

In general terms, food supply chains are characterised by dispersed primary production and much higher levels of concentration at the retail end of the chain. "One business study of the European food market found that in Europe (then 15 member states), there were 3.2 million farmers, around 240,000 processors, 600 retailer chains, but just 110 combined 'buying desks' (consortia of retailers' contracts and specification officers) that interface with 250 million consumers through 170,000 shop outlets (Lang, 2005). This study concluded that the role of retailers and their buying desks was the new power in the consumer-producer interface." (Gabriel and Lang, 2006, p. 29)

This significant divergence in industry structure at the production and retail level has direct implications for the ability of actors to exercise market power¹³. While farmers and producers can improve their bargaining situation by creating associations, they still need to comply with retailer-imposed standards in order to sell their products. Furthermore, certification is normally done at the level of the individual farm, with each farmer having to bear the costs individually.

Reflections on the competitiveness of the European agro-food industry are currently ongoing in the context of the High Level Group on the Competitiveness of the Agro-Food Industry (see box 5), which will deliver its report in March 2009.

Box 5: High-level group on the competitiveness of the agro-food industry

¹² For each activity (“enterprise”) on a holding, or farm, (e.g. wheat, dairy cow or vineyard), a standard gross margin (SGM) is estimated, based on the area (or the number of heads) and a regional coefficient. The sum of all margins, for all activities of a given farm, is referred to as the economic size of that farm. The economic size is expressed in European Size Units (ESU), 1 ESU being equal to 1200 Euro of SGM (EUROSTAT 2008).

¹³ DG MARKT is currently undertaking a monitoring exercise of retail services in the context of the Single Market review, which looks at retail service provision in the Member States in order to identify possible market malfunctioning affecting any part of the retail value-added chain.

In recognition of the fact that the competitiveness of the European agro-food industry is today a matter of great concern a **High Level Group (HLG) on the Competitiveness of the Agro-Food Industry** has been set up by the Commission Decision of 28 April 2008 (2008/359/EC) and launched officially on the 12th of June 2008 by Vice-President Verheugen together with his fellow Commissioners: Mrs. Fischer Boel, Mrs. Kuneva and Mrs. Vassiliou.

The formal objective of the exercise was to **identify** the factors, future challenges and trends that can influence the competitive position of the European Agro-Food Industry as well as to **formulate recommendations for actions over the short to medium term in public policy and the regulatory framework which would enhance the sustainable development and competitive position of the sector**. In this respect, the following areas of interest were tackled during the HLG discussions, and consequently in the High Level Group Report scheduled to be adopted after March 2009¹⁴:

- **Agricultural and Environmental Policy**
- **Internal Market for Food**
- **The Operation of the Food Chain**
- **Research and Innovation**
- **Trade and Exports**

The HLG Members sought to establish an **integrated approach** to their task that would encompass all relevant existing policy areas having an impact on either the supply or demand side of the industry (from farm to fork and vice versa), taking into account the vision of the respective HLG members for the future of the sector. In the course of their work, the Group has examined ways to reduce costs, where possible, and enhance the growth and efficiency of the whole food supply chain, from the primary sector to the retail sector, whilst securing sustainable, safe and diversified products at affordable prices for the consumer.

The HLG is addressing the issue of private labels and encourages the European Commission to study their effects on the competitiveness of the Agro-Food SMEs and examine ways to reduce where appropriate the imbalances of power in the food supply chain should they be found to exist.

http://ec.europa.eu/enterprise/food/high_level_group_2008/hlg_introl1.htm

The certification and control requirements applying to private schemes have to be added to the official control requirements. The degree of overlap between some schemes (mainly those certifying good agricultural practices) and official requirements, for example in the area of cross-compliance, can be substantial, even if a study on synergies between cross compliance and certification schemes conducted in the context of an EU research project (Farmer et al., 2007) concludes that “Among the countries examined, there appear to be very few, if any, schemes that incorporate all of the cross compliance standards that apply in the Member State concerned”. However, it goes on to say that “...it may be the case that farmers who are certified for meeting specific standards are less likely not to meet cross compliance standards. Membership of certain certification schemes could be a factor in the risk sample that member states use to target farms for cross compliance inspections. Such an approach would require some confidence that certification schemes rigorously enforce standards that closely match those set for cross compliance”.

¹⁴ These are also the main chapters of the Report.

This has been recognised in a 2007 amendment of the cross-compliance regulation¹⁵ which now states that

The risk analysis may take into account one or both of following:

(a) a farmer's participation in the farm advisory system provided for in Articles 13 and 14 of Regulation (EC) No 1782/2003;

(b) a farmer's participation in a certification system if the scheme in question is relevant for the requirements and standards concerned.

However, it is not known to what extent this provision has already been used in the different member states.

In summary, farmers and producers would benefit from

- ⇒ Greater harmonisation and mutual recognition among liability and assurance schemes covering largely the same elements
- ⇒ Greater participation and influence in scheme development
- ⇒ Greater recognition of certification to (relevant) private schemes for the purposes of official controls

(c) Developing countries

The impact of private standards on **farmers and producers in developing countries** has been discussed in a number of publications and international fora. Two perspectives are described in the 2005 Worldbank report on Food Safety and Agricultural Health Standards: Challenges and Opportunities for Developing Country Exports (Worldbank, 2005), identifying standards as "catalysts" or "barriers":

The "**standards as catalysts**" perspective emphasizes the *opportunities* provided by the emerging standards and the possibility that certain developing countries could use those opportunities to their competitive advantage. From this viewpoint, many of the emerging public and private standards represent a potential bridge between increasingly demanding consumer requirements and the participation of distant suppliers. Many of these standards provide a common language within the supply chain and raise the confidence of consumers in food product safety. Without that confidence, the market for certain products cannot be maintained, let alone increased, in turn jeopardizing international trade.

From this perspective, the challenge inherent in compliance with standards may provide a powerful incentive for the modernization of developing countries' export supply chains and give greater clarity to the SPS management functions of government. For example, increased attention to the adoption of 'good practices' in agriculture and food manufacture may induce changes in domestic food safety and agricultural health

¹⁵ Commission Regulation (EC) No 1550/2007 of 20 December 2007 amending Regulation (EC) No 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers.

controls. Such changes could also benefit the domestic population, producers, and the environment.

Rather than eroding the comparative advantage of developing countries, the enhancement of capacity to meet stricter standards could create new forms of competitive advantage and generate new employment. Hence, the process of standards compliance could conceivably provide the basis for more sustainable and profitable trade over the long-term—albeit with some highly visible winners and losers.

Asfaw et al. (2008) provide an empirical analysis of EU private food-safety standards impact on pesticide use and farm-level productivity among smallholder export vegetable producers in Kenya. Their estimation results show that export producers complying with private standards significantly use less toxic pesticides; however there is no significant difference on the total quantity of pesticides used. Model results also demonstrate a positive and significant impact of standards adoption on revenue of vegetable production. They conclude that while food safety and quality standards can be a barrier for resource poor smallholders to maintain their position in the lucrative export markets, they can also induce positive changes in production systems of small-scale farmers who adopt it. Their findings partly support the notion that adoption of emerging food-safety standards can serve as a catalyst in transforming the production systems of developing countries towards safer and more sustainable production

A more pessimistic “**standards as barriers**” perspective highlights concerns that the growing stringency of food safety and agricultural health standards could undermine progress made by developing countries in increasing their exports of high-value agricultural products, while posing insurmountable barriers to new market entrants within the developing world. The conventional wisdom, reflected in most analytical literature and public pronouncements, holds that the emerging product and process standards amount to a barrier to the trade of developing countries and, in particular, to small producers and agro-enterprises. Echoing criticism of the wider trade regime for agricultural products, many analysts, commentators, and developing country policymakers view food safety and agricultural health measures as disguised protectionist tools. Scientific justification is now used to prohibit or restrict imports. Discrimination occurs when higher standards or more rigorous enforcement applies to imports than to domestic supplies. Even if standards are not used intentionally to discriminate against imports, there is concern that their growing complexity and the lack of harmonization among countries will impede the agri-food trade expansion efforts of developing countries.

There is also concern that many developing countries lack the administrative, technical, and scientific capacities to comply with emerging requirements, presenting potentially insurmountable barriers in the short and medium term. A related concern is that the initial investment and recurrent costs required to comply with emerging standards weakens the competitive position of developing countries or compresses the profitability of their export-oriented activities. It is argued that the combined effects of institutional weaknesses and rising compliance costs will contribute to the further marginalization of weaker economic players, including small and poor countries, small and medium-sized businesses, and smallholder farmers.

http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_challenges_synthesisreport.pdf

The issue of private standards has been raised in the SPS Committee of the WTO; Annex 7 provides a discussion on whether and how private standards fit in the framework of the SPS Committee. The issue of private standards and developing country exports of fresh fruit and vegetables was raised in the SPS Committee in 2007 (WTO G/SPS/GEN/761, 26.02.2007).

Concerning animal welfare, the OIE expressed concern for assurance schemes demanding high compliance levels and said they must be based on sound science. (WTO G/SPS/GEN/822, 25.02.2008)

A number of measures have been proposed to facilitate use of private standards by producers in developing countries:

- ⇒ First, relevant stakeholders face a major challenge in simply being aware of the rules and requirements pertinent to particular markets and understanding how the game is actually played. This learning curve gives incumbent countries and suppliers a large advantage over new entrants.
- ⇒ Second, it is more urgent than ever before that developing country stakeholders participate in standard-setting processes, whether through international organizations, bilateral discussions, or membership in private bodies.
- ⇒ Third, there is an acute need for a strategic approach to capacity-building related to standards. That approach would gauge the direction of future standards, act in a pre-emptive fashion to address emerging risks, and, where possible, get ahead of the curve by asserting competitive advantage through effective application of standards.
- ⇒ Fourth, although the diversity of existing standards may sometimes increase transaction costs, it also may enable developing country suppliers to choose among markets for whose standards they can most readily meet. Given the diversity of standards applied within and between countries, there is scope for different speeds on the highway of standards compliance. This is certainly the case when one considers the emerging opportunities for South-South trade in high-value food products

http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_challenges_synthesisreport.pdf

see also conclusions to SPS Committee of the WTO (G/SPS/GEN/761, 26.02.2007)

In summary, farmers and producers in developing countries would benefit from

- ⇒ Greater harmonisation and mutual recognition among liability and assurance schemes covering largely the same elements
- ⇒ Greater participation and influence in scheme development
- ⇒ Capacity building for exporters to meet scheme requirements
- ⇒ Assuring policy coherence on assurance scheme development

(d) **Other actors in the food supply chain (processors, traders, retailers)** are affected to the extent that their operations need to be certified as well. Quite often, certification schemes cover the whole food supply chain and thereby have an impact on all actors in the food supply chain. However, the extent to which this represents a burden depends amongst others on the degree of concentration at the particular chain level (see point b

above; highly concentrated operations will find it less difficult to comply with certification scheme requirements; they may even be in a position to set their own requirements).

2.3. How would the problem evolve without a change in policy?

Without a change in policy, it can be expected that the currently observable trends in the development of certification schemes would continue. This means:

In the area of **differentiation schemes**, performance in the market will continue to be the main determinant of success or failure. Schemes will come and go according to how well retailers see they meet consumer demands, how much more consumers are willing to pay for certified goods and how expensive scheme participation is for farmers and producers (i.e., whether they can derive economic benefit from scheme participation). Whether the overall number of differentiation schemes is likely to rise is difficult to predict. However, without a change in policy, there won't be any significant changes in the way these schemes operate and hence no change in the risks to competition problems. Greater transparency and clarity of the claims made may or may not be in the interest of scheme owners, but the growing debate around these schemes and the greater attention given to these issues in the media may have a positive influence.

It should be noted that the potential threat to the internal market from schemes indicating the name of a Member State, place or region can at least partly be addressed through existing legislation (see Annex 3: *Case-law prevents certification schemes that conceal barriers to the Internal Market*). There remains a grey area for schemes bearing the name of a place or region which in theory are open to all producers complying with the scheme specification. Consumers are likely to expect that certified products come from the name-giving place or region, and actual practice shows that this is indeed the case (e.g., Verbraucherzentrale 2005). Ongoing revisions of labelling rules at European level may be able to provide greater clarity here, for example by addressing country of origin labelling.

The issue of consumer confusion arising from different schemes covering similar objectives is being taken up by initiatives such as the ISEAL Code of Good Practice (see annex 8), which claims to be the international reference for setting credible voluntary social and environmental standards.

Currently, such initiatives are only known for standards and schemes operating at the international level (e.g., the Marine Stewardship Council; rainforest Alliance; IFOAM; Fairtrade Labelling Organisations; Forest Stewardship Council).

In the area of **food assurance schemes**, the proponents of currently existing schemes claim to have already embarked on a significant degree of harmonisation. GLOBALGAP's predecessor EurepGAP replaced a range of different retailer standards for good agricultural practices. The UK Assured Food Standards and the Red Tractor mark were set up in 2000 to help harmonise the approach to standard setting and inspection throughout the supply chain at a time when the public was faced by a plethora of food standards and labels¹⁶. The Red Tractor mark has unified different UK company and sector standards under a single assured food standards umbrella (which may in fact serve to consolidate the single-Member State nature of this scheme). The German QS

¹⁶ <http://www.redtractor.org.uk/site/REDT/Templates/GeneralWho.aspx?pageid=21>

scheme owners have, however, entered into harmonisation agreements with several other schemes in other Member States – in Belgium, The Netherlands, Denmark and Austria. It can be expected that the success of the strongest schemes in this group will lead to further consolidation or mutual recognition in the future. In this light the risk of competition problems emerging (in terms of foreclosing competitors) could rise.

While overlap among schemes seems to be a diminishing issue in this group, overlap between schemes and official controls is also pertinent. Policy has already started to take this issue into account (see 2.4 b) above). To what extent this possibility will be used by the Member States and thereby lead to a reduction of the audit and control burden on farmers, remains to be seen. In the UK, progress seems to be made in this area (see box 6):

Box 6: Reducing duplicate audits by taking participation in certification schemes into account for official control purposes

“January 2007 saw a big step forward in co-operation with a government agency to reduce the burden of inspection on assured farmers. Food businesses along the supply chain have had to comply with General Food Hygiene Regulations for more than a century, but until now the regulations have never applied to food production before the farm gate. EU regulation 852/2004 has changed all that, and farmers and growers also fall within the regulations that require producers to take all reasonable steps to keep food free from contamination that could pose a threat to the health of anyone that eats it.

“A new regulation means a new enforcement regime and the Food Standards Agency (FSA) has appointed local authorities to do this work in mainland UK, and DARD in Northern Ireland. But the FSA has recognised that the industry’s farm assurance schemes were already covering food safety. And in keeping with the much discussed principles of ‘Better Regulation’ the FSA has introduced a system for planning of inspection programmes that avoids unnecessary duplication. Red Tractor assurance schemes have demonstrated to the FSA that we cover the legal requirements point by point. And they have satisfied themselves that there is a robust inspection process.

“The risk based system for inspection priorities includes a very heavy weighting for assured farmers and growers. The FSA recommends as a default that 25% of farmers and growers should be inspected every year. But for assured producers this is reduced to just 2% per year. This is a significant benefit for assured farmers and allows regulatory authorities to use public resources more effectively.”

<http://www.redtractor.org.uk/site/REDT/Templates/GeneralNews.aspx?pageid=96>

To what extent consumers will receive better information on the claims made by these schemes remains unclear. The UK House of Commons in its seventh report on the Environment, Food and Rural Affairs (House of Commons, 2005) concludes that

"It is not at all clear that food assurance schemes are currently providing useful and meaningful information to consumers, and the proliferation of such schemes adds to the confusion. Few consumers are in a position to inquire into the veracity or reliability of the schemes' claims. Furthermore, even where scheme are sound, they may certify nothing more than that required minimum standards have been met – something consumers should be able to take for granted without the need for assurance by an external, private body. We believe that most consumers are likely to assume that the fact that a food carries an

assurance scheme mark means that it has exceeded legal requirements in some respect".

It is likely that this situation will continue unchanged until further measures are taken.

In the area of **food safety and liability** (post-farm gate), scheme owners have also started to harmonise their specifications. While mutual recognition at the international level may still be blocked by different legal requirements, some progress has already been made at the national level. For example, the BRC Global Standard for food processing companies has harmonised many differing retailer control schemes designed to meet the legal obligation of "due diligence".

The main problem for this group of schemes is the unequal distribution of power along the food supply chain, which enables actors down the chain to impose requirements on other actors further up the chain. This situation is not likely to change in the near future, even though concentration processes are also ongoing at the level of primary production. However, the conference "Changing Dimensions of the Food Economy; Exploring the Policy Issues" organised in 2003 by the OECD, in collaboration with the Dutch Ministry for Agriculture, Nature Management and Food Quality, concluded that existing competition policy is sufficient to address market power issues:

"Governments may address possible market power through competition policy and possibly dependency laws. The presenters concluded that present competition law suffices to address possible market power issues, but that enforcement may be an issue. There is little action against food retailers, among other things because suppliers do not complain. In some European countries, dependency laws are introduced as an additional protection for suppliers. Their effects are limited so far, again because suppliers typically do not complain."¹⁷

However, if consolidation continues, the threat of competition problems rises.

2.4. Does the EU have the right to act?

The issues which may give rise to action touch on various policy areas of Community competence. These include trade policy; consumer policy; environmental policy; development policy; competition policy; internal market policy; food and feed safety policy (including labelling and animal welfare policy). First and foremost, however, agricultural policy is concerned. EU farming requirements and rules for the placing of agricultural products and foodstuffs on the internal market and ensuring the integrity of the internal market are matters of Community competence (Titles I and II of Part Three – Community Policies – of the Treaty establishing the European Community, and in particular Article 37 thereof).

No option described in this Impact Assessment conflicts with the EU Charter of Fundamental Rights.

The area of food quality certification is not entirely new for the EU. The existing schemes for Organic farming, Protected Designations of Origin (PDO) and Protected

¹⁷ <http://www.foodeconomy2007.org/UK/History+2003+Conference/>

Geographical Indications (PGI) as well as the scheme for Traditional Specialities Guaranteed (TSG) are examples where the EU has taken on the legislation of certification schemes, thereby replacing the various schemes that existed at the level of the Member States. The justifications for action in these areas include the need to ensure farmers get a fair return for agricultural product having certain characteristics, to protect consumers, and to support rural development objectives.

Whether or not specific action is justified to restrict or regulate certification activities by private actors, will depend on the circumstances and the extent to which the problems identified cannot be resolved by Member State or private sector action. Since food markets are frequently national in scope, national competition authorities are also well placed to address competition-related concerns raised at local level.

For any intervention at EU level, subsidiarity is a guiding principle. The following key questions must be answered in analysing whether Community action, legislative or non-legislative, is justified:

- Why can the objectives of the proposed action not be achieved sufficiently by Member States (Necessity Test)?
- As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

In the area of certification schemes for agricultural products and foodstuffs, the many different approaches in Member States and private sector initiatives are at the heart of the problem. While several ongoing attempts are aiming at harmonising the existing approaches (see section 2.5), the development of an agricultural quality policy which would include a policy line on certification schemes for agricultural products and foodstuffs is within the remit of the Community. As will be detailed and analysed in the following sections, this policy line can take a variety of forms, from no intervention to various types of action.

D.3. OBJECTIVES

3.1. General objective

Depending on the type of certification scheme at hand (see above), certification of agricultural products and foodstuffs aims to:

- reduce transaction costs and increase efficiency in vertically integrated supply chains;
- reduce risk and thus protect the reputation of food business operators, notably retailers, and serve as a legal defence in liability disputes;
- ensure compliance of production processes with legal requirements and expectations of consumers and citizens;
- highlight certain product or process characteristics corresponding to consumer demands in order to differentiate the product in the market and obtain a premium price;
- maintain the diversity of products and production methods in Europe and thereby contribute to rural development objectives.

3.2. Specific objectives

Existing arrangements for certification of agricultural products and foodstuffs should be reviewed in order to

- ensure that certification schemes do not undermine the proper functioning of the internal market;
- increase the transparency of certification schemes and avoid consumer confusion due to the high number of schemes and unclear or potentially misleading claims;
- reduce duplication and overlap of requirements among schemes, or between schemes and official requirements and the resulting costs for participants;
- avoid adverse effects on suppliers from developing countries.

3.3. Operational objective

Not needed.

D.4. POLICY OPTIONS

The preceding sections have outlined the main problems in the area of certification schemes for agricultural products and foodstuffs according to the type of scheme and the way in which these affect the different actors in the food supply chain, all of which is summarised in Table 4 (* *possible problematic areas indicated in italic*):

Table 4: Overview of certification schemes for agricultural products and foodstuffs, suspected problems and affected parties

	Safety and liability schemes (post-farm gate)	Pre-farm gate assurance schemes	Differentiation schemes
Scheme owners (who is making the rules?)	Retailers	Mostly independent organisations set up specifically to manage the schemes; boards can include retailers, producer associations, certifiers and others	Farmers/producers; public authorities; NGOs/interest groups
Position in the food supply chain (who has to follow the rules?)	Post-farm gate (processing, manufacturing)	Farmers, primary producers, sometimes covering the whole chain	Mostly farmers and primary producers
Use of logo	No	Some yes, some no	Yes
Main (overt) drivers	Legal requirements; protect reputation (following food scares)	protect reputation (following food scares); legal requirements	Societal/consumer demands
Main objectives of the schemes	In-chain quality and safety management	Guarantee compliance with legal requirements, including duty of care	Product differentiation
Main benefits	<ul style="list-style-type: none"> ▪ protection of liability and reputation of retailers ▪ potentially increase efficiency and reduced transaction costs 	<ul style="list-style-type: none"> ▪ protection of liability and reputation of retailers ▪ market access for certified producers ▪ increased consumer confidence in food safety and compliance with legal requirements 	<ul style="list-style-type: none"> ▪ increased consumer choice ▪ higher prices for producers
Main potential problems	<ul style="list-style-type: none"> ▪ Overlap between schemes and with official controls; ▪ unequal power between scheme owners and scheme takers (dominant position of retailers) 	<ul style="list-style-type: none"> ▪ Overlap with official controls; ▪ unequal power between scheme owners and scheme takers; ▪ potential deception of consumers by schemes certifying and advertising compliance with legal requirements ▪ potential threat to internal market 	<ul style="list-style-type: none"> ▪ Consumer confusion (number of schemes; unclear claims; lack of transparency) ▪ Potential threat to the internal market by schemes bearing regional names
<p><i>* No official requirements for accreditation and control</i></p> <p><i>* No official requirements for independence, inclusiveness and transparency</i></p>			

Table 4 ctd.

	Safety and liability schemes (post-farm gate)	Pre-farm gate assurance schemes	Differentiation schemes
Effects on farmers and producers	Hardly any (the schemes apply to processing and manufacturing, post-farm gate)	<i>* Significant burden and potential advantage; may lack involvement in scheme development; de-facto condition for market access</i>	Voluntary initiatives; opportunity rather than burden; for voluntary participants, additional costs and risk that decertification could negate advantages
Effects on (export) producers in developing countries	Hardly any (<i>*only at the stages of packaging and processing</i>)	<i>* Significant burden and potential advantage; de-facto condition for market access; lack of involvement in scheme development; lack of capacities to comply with scheme requirements; potential opportunity for modernisation and increased efficiency</i>	Voluntary initiatives; opportunity rather than burden
Effects on intermediate chain actors	<i>* Significant burden for food manufacturing and processing enterprises; de-facto condition for market access</i>	<i>* Can be significant where the scheme includes the whole supply chain</i>	Hardly any
Effects on retailers	Positive; protection of liability and reputation; schemes owned and imposed by retailers (or by groups with strong retailer involvement)	Positive; protection of liability and reputation; strong retailer involvement in scheme development	Hardly any; retailers can stock labelled products and thereby increase consumer choice; normal commercial risks
Effects on consumers	<i>* Possibly through price effects or through reduced choice of products; otherwise none</i>	Increased confidence in food safety and compliance with legal requirement; <i>* potential confusion if scheme message is not clear</i>	Increased choice, but also <i>* confusion through number of schemes and unclear claims</i>

** Possible problematic areas*

While a number of problems highlighted in the analysis of certification schemes presented above can at least partly be addressed by making better use of existing legal instruments (see 4.1 below) or by building on ongoing initiatives in the private sector, two broad clusters of issues can be identified where further action may be required, namely:

- (a) Issues related to **the way in which certification schemes operate (process)**, including
- independence of certification and control; accreditation;
 - stakeholder participation in scheme development (also from developing countries),
 - awareness-raising and capacity building for small-scale operators (also in developing countries)
 - transparency of standard setting processes and scheme requirements

- the need for clarity of the relation between scheme requirements and legal minimum requirements
- (b) Issues related to **the content covered by certification schemes**, including
 - reduction in the number of schemes with similar requirements operating in the same market; improved mutual recognition among similar schemes
 - overlap of private certification schemes with official requirements, e.g. in the context of cross-compliance
 - communication of scheme requirements and claims, including a clear indication of whether and how a scheme goes beyond minimum legal requirements
 - definition of terms and/or standards for specific policy areas (environment; animal welfare; ethical considerations; etc.);
 - clarification of the status of schemes indicating regional or place names.

The two areas are not mutually exclusive but can be addressed simultaneously. For each area, two general options exist: **voluntary guidelines or standards** on the one hand, and **regulation or mandatory standards** on the other. Naturally, the status quo presents a valid option, even more so since a number of information gaps remain. Therefore, the status quo described below includes activities which aim to increase our knowledge of certification schemes, their functioning in the market and their effect on the various actors in the food supply chain.

4.1. Option 1: no new EU action = status quo (plus further research)

This option is a continuation of the present situation in which the EU is not directly involved in the operation of private and national/regional certification schemes¹⁸. The EU provides a general policy framework on issues of relevance to certification schemes (internal market rules; competition rules; consumer information and labelling requirements) but no specific rules or legislation for the operation of certification schemes.

In fact, a number of problems highlighted above can be addressed through existing legislation:

Misleading claims made by certification schemes

Article 2 of Directive 2000/13/EC states that

"The labelling and methods used must not:

- (a) be such as could mislead the purchaser to a material degree, particularly:

¹⁸ The EU oversees certification schemes itself. These are the schemes for (a) protected designations of origin and protected geographical indications, (b) organic farming and (c) traditional specialities guaranteed. They are treated in parts II and III of this impact assessment, and further schemes are under consideration (Ecolabel for processed food and Animal Welfare).

- (i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production;
- (ii) by attributing to the foodstuff effects or properties which it does not possess;
- (iii) by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics; [...]

In addition, Directive 2005/29/EC on Unfair Commercial Practices fills the possible gaps by specifically prohibiting in all circumstances the following practices:

"Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation" (annex I, point 3) ;

"Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation" (annex I, point 4).

The Unfair Commercial Practices Directive also prohibits misleading practices which may affect the purchase decision of consumers, such as false or deceiving information on the main characteristics of a product, its method of manufacture, its specification or geographical or commercial origin.

- (a) National rules on accreditation, certification schemes or the provision of certification services hindering the free movement of goods and services and the freedom of establishment

The free movement of goods is enshrined in Articles 28-30 of the EC Treaty.

Accreditation services have recently and for the first time been harmonised and laid down at EU level in Regulation (EC) No 765/2008. This will guarantee the provision of accredited certification services throughout the single market and ensure the operational standards and supervision of each national accreditation authority.

Articles 43 and 49 of the EC Treaty and Directive 2006/123/EC on services in the internal market (the "Services Directive") apply to the establishment of certification service providers (so called Conformity Assessment Bodies, "CABs") and to the cross-border provision of certification services. As regards the freedom of establishment of CABs, the Services Directive in its Art. 10(3) sets out in substance the principle of non-duplication, which can also be inferred from the case-law on Article 43 EC.

Article 10(3) Services Directive reads as follows: "The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State."

In this context, paragraph 4 of Article 10 of the Services Directive is also worth mentioning: "The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest."

As regards the freedom to provide services, pursuant to Regulation (EC) No 765/2008 and the Services Directive, CABs accredited in a Member State have the right to provide their services cross-border in other Member States on the basis of the accreditation they received in their home Member States.

- (b) Certification schemes being imposed on producers by powerful actors in the food supply chain

Competition authorities may intervene if certification schemes are used as a tool for abusing market power (e.g. buying power) or when they lead to reduction of consumer welfare by for example foreclosing other competitors¹⁹. Competition authorities may also intervene in case of cartel-like behaviour (horizontal coordination) on the part of the producers or the buyers:

- Agreement among competitors
- Restrict entry
- Decrease output

For cartels, establishment of market power is not necessary

If seller/buyer has market power (e.g., monopsony/oligopsony) and certification schemes are contributing to the abuse of such market power or otherwise foreclose other competitors, at the detriment of consumers, i.e.:

- negative effects on total input/output and
- subsequent impact on consumer prices/choices or quality
- there may be a violation of competition rules.

In a speech given to the Konrad-Adenauer Stiftung in January 2009, Commissioner Fischer Boel stated that

"... national and European competition authorities need to keep an eye on the consolidation which is taking place in the retail and food-processing sectors – to make sure that this consolidation does not tilt the playing field too far in one direction. As we know, in some Member States the retail sector has the strength of a giant."²⁰

¹⁹ Based on a presentation given by Paul Csiszar (Director, Directorate E – Industry, Consumer Goods and Manufacturing, DG Competition) during the conference on "Food Quality Certification – adding value to farm produce", Brussels, 5-6 February 2007 (http://ec.europa.eu/agriculture/events/qualityconference/csiszar_en.pdf)

²⁰ <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/25&format=HTML&aged=0&language=EN&guiLanguage=en>

(c) Certification schemes presenting barriers to international trade

Both the TBT and the SPS Agreement of the WTO make statements of relevance to certification schemes, where mandatory certification is required and the latter is carried out either by governmental or non-governmental bodies. The general underlying principle is that they should not be more trade-restrictive than absolutely necessary and that imported products should have access to certification procedures in no less favourable terms than those accorded to domestic products. The provisions of the TBT agreement would therefore only operate where a positive assurance of conformity with a technical regulation or standard is required, and this certification scheme is operated by a governmental body or delegated to a non-governmental body. Under the SPS-Agreement, scientific evidence for the necessity of a measure is required.

Choosing this option would include **further research** in the area of certification schemes in order to gain a better understanding of the nature and extent of the problem. Such research could, in particular, establish the number or percentage of farmers who are participating in more than one certification scheme and the magnitude of the associated cost and burden, figures which are currently lacking. An updated **inventory** and classification of certification schemes operating in the EU market is an indispensable tool for such research²¹. The inventory would classify schemes according to their objectives, targets, scope etc. and would thereby allow operators in the food supply chain to compare their schemes with others. Ultimately, the inventory could lead to the identification of best practices for different types of certification schemes.

A variation of this option is the establishment and publication of a register of certification schemes operating in the EU market, for the sake of transparency and information. Since this implies a certain degree of scrutiny of the schemes to be published, this option will be addressed below.

Stakeholders say:

- No intervention at EU level is not an option (CEJA, Stakeholder Hearing, 2006)
- + Market forces already act to eradicate problems such as duplication and overlap between schemes. Competition law and market legislation are available to deal with schemes which act anti-competitively or as barriers to trade (COPA/COGECA, Stakeholder Hearing, 2006)
- + Food processors do not consider involvement of public authorities in quality issues to be beneficial (Food processors panel, Stakeholder Hearing, 2006)
- + Retailers believe that further harmonisation and convergence will take place without intervention. This process has already started, as it is a commercial imperative. Business-to-consumer schemes will succeed where they meet consumer requirements (Retailer panel, Stakeholder Hearing, 2006).
- + Retailers state that research has not yet identified the best practice amongst certification schemes, but they have been judged on how they use differentiated quality criteria.

²¹ The establishment of such an inventory has been requested as an external study for 2009/2010.

Stakeholders may wish to consider what voluntary action they could take together to facilitate dissemination of best practice amongst certification schemes (Retailer panel, Stakeholder Hearing, 2006).

Option 1 will be retained as the reference point for all other options to be analysed.

4.2. Option 2 (focus on process): Oversight of the way in which private and national certification schemes operate – a meta-standard for certification schemes

4.2.1. Basic approaches

In order to address cross-cutting problems of independence, inclusiveness, transparency, accreditation and control which are inherent in the way that certification schemes operate and which affect all types of schemes to a certain extent, criteria could be established which form the minimum requirements for all certification schemes. This would be equivalent to a **meta-standard**, a certification of certification schemes.

Possible criteria for inclusion in such a meta-standard are²²:

- Where appropriate, standards of certification schemes should be built on scientific evidence and on existing international standards.
- Scheme standards (or scheme specifications) should be set by independent committees where there is a consensus from all relevant food chain stakeholders. Experts who are relevant to the scope, objective and technical specification of the standard must also participate in the independent committee.
- Standards to be applied to imports from developing countries should ensure the participation of developing country stakeholders in the setting of the standard.
- The technical scope and objective should be clearly identified and specifications should be relevant, clear and practically applicable. "One issue-labels" bear the risk of trade-offs (e.g. carbon labelling: environmental vs. development objectives). Therefore, schemes covering agricultural production should take an integrated approach and single-issue labels take account of such trade-offs.
- The specifications in the standards should balance benefits and costs having regard for market requirements.
- The specifications in the standard must comply with all regulations relevant to the scope, but it must also include further requirements above legislation. Alternatively, there should be clear indication whether and to what extent scheme requirements go beyond existing regulations.
- Opportunities for mutual recognition with other schemes should be explicitly set out in the specifications, together with conditions for accepting other certificates as equivalent

²² This is based to a large extent on the submission of COPA-COGECA to the Green Paper consultation.

- The standards must be transparent to all stakeholders in the food chain including consumers, regularly reviewed and preferably available on the Internet.
- Standards should avoid using names or images that would suggest a certain origin of certified products while in fact they are/should be open to all operators who are complying with the scheme specifications
- An assessment must be done by a third party certification body and the certification body should be different to the standard setting body.
- The certification body must be accredited in accordance with ISO 17021 for management standard or EN 45 011 for GAP or product certification standards. The accreditation of the certification body must be done by a body which is a member of the EA (European co-operation for Accreditation)
- Assessments of the standards must be done regularly in a way to ensure conformity. These guidelines do not specify an inspection interval since existing credible quality assurance systems all use different assessment systems, but it is important that if standards are to get mutual recognition or be used as a tool for official controls, the inspection frequency must be agreed and accepted by the different parties.
- There must be a requirement of internal audits in the standard. Internal audits are audits carried out by the individual farmer/business or group of farmers/businesses that are certified to the standard.
- When group certification is used, inspections carried out on individual farms/businesses by the 2nd party audit (internal audit) must follow the same procedures and specifications as those for individual third party inspections in order to be credible. The third party auditing body must also take a big enough inspection sample of the group in order to approve the group certification. The group must have a management system to carry out inspections on all the members of the group.

This list is not exhaustive and serves as a basis for discussion and further development.

This option can be implemented in two ways: either through **regulation** (equivalent to a mandatory standard) or through **guidelines** and possibly a voluntary standard. Both of these sub-options could be combined with a (mandatory or voluntary) register for certification schemes.

4.2.2. Option 2.a: Development of specific legislation for the operation of certification schemes for agricultural products and foodstuffs (mandatory standard)

Under this option, the EU would adopt legislation laying down rules for the operation of certification schemes for agricultural products and foodstuffs in the EU market along the lines of the criteria listed above. All schemes operating in the EU market would have to comply with these rules. Non-compliant schemes would face sanctions or would be prohibited.

4.2.2.1. Screening for technical and other constraints

Significant resistance of many stakeholders to this option presents a clear constraint. This resistance has been voiced for example during the 2007 Food Quality Certification conference (e.g., report of Workshop 2), and is based on the perception that certification schemes, inasmuch as they are private or Member State initiatives, should be left to the private sector or the administration in the Member States as much as possible.

Stakeholders in various consultations (e.g., Stakeholder Hearing 2006; consultative group; Council working group; 2007 conference) have expressed great hesitation at the idea that the EU could regulate the functioning of predominantly private certification schemes (see below).

In the consultation on the Green Paper on Agricultural Product Quality, stakeholders were asked whether EU guidelines would be sufficient and what criteria such guidelines could contain (question 16). Annex 10 summarizes the responses received to this question. The majority of stakeholders are of the opinion that no additional regulation is needed in this area and that guidelines are indeed sufficient.

However, there are also proponents of the regulatory approach. For example, the UK House of Commons in its seventh report on the Environment, Food and Rural Affairs (House of Commons, 2005) concludes that

"we recommend that the [UK] Government should ensure the central registration of food assurance schemes. All schemes should have to be registered and approved by an identified body. The FSA [Food Standards Agency] would be an obvious candidate for the task. The purpose of such schemes should be to certify that the product carrying the mark has either been:

- produced or manufactured in a way which exceeds minimum legal standards – for example, in respect of the environment or animal welfare – or
- has a "special characteristic", such as meeting organic or vegan/vegetarian production requirements."

4.2.2.2. Assessment of effectiveness, efficiency and consistency

Effectiveness: Regulation coupled with a control mechanism is the most legally secure method of ensuring that only schemes complying with defined criteria operate in the EU market. However, depending on the consequences of breaches of the law, legal regulation will necessitate high burden of proof and identification of legal and illegal behaviour. Advisory provisions would be difficult to incorporate. It is quite likely in developing such regulatory requirements that many issues essential for the coherent development of schemes cannot be described as legal obligations or can only be described in a blunt way. The omission of important elements or their superficial treatment, coupled with the higher burden of proof and time needed for enforcement, would reduce and possibly negate the legal security provided by regulation. Thus the effectiveness of regulation for such an issue could be low.

Efficiency: Regulating criteria for certification schemes for agricultural products and foodstuffs means that they will have to be controlled. Regulation could require a register or at least a means to identify schemes, either at EU or at Member State level²³, and designated control bodies for carrying out the inspections. All of this comes at a significant cost, for national administrations as well as for the stakeholders in the food supply chain. For farmers, even though they are not likely to be controlled themselves, the (sometimes already high) costs of certification are likely to rise.

Therefore, efficiency of this measure seems to be low.

Stakeholder say:

- No need for an EU regulatory framework for quality assurance schemes. The diversity of existing schemes shows that requirements can vary across regions, a dynamic that would be lost by regulatory intervention (CEJA; COPA/COGECA, Stakeholder Hearing, 2006)
- Legal requirements (notably food safety) are already regulated. Consequently there is no need for additional legislation laying down requirements (Food processors panel, Stakeholder Hearing, 2006)
- Certification bodies believe that the EU should work only as a facilitator of rationalisation of certification schemes in the form of reducing the number of schemes in each segment of the food chain and improving mutual recognition and benchmarking (Certification bodies panel, Stakeholder Hearing, 2006)
- Retailers question how official intervention to standardise existing certification schemes will differ from the requirements in international norms on accreditation and certification. They fear a loss of diversity at the business-to-consumer level. Will legal liability be transferred from operators to regulators? (Retailer panel, Stakeholder Hearing, 2006)
- Retailers think that mutual recognition is a minefield and that regulation will not improve it. Moreover, certification schemes have to build confidence in their systems and are accountable directly to their stakeholders, so they must be free to set their own reasonable criteria (Retailer panel, Stakeholder Hearing, 2006)

Consistency: This option is unnecessarily heavy in terms of public intervention and administrative burden and is therefore in contradiction with the Commission's "better regulation" policy, its simplification programme and its action programme to reduce administrative burden. While self- and co-regulation mechanisms could be considered in order to reduce the administrative burden on the Commission, they would still constitute a significant intervention in the economic activities of actors in the food supply chain.

Conclusion: Option 2.a will not be retained for further analysis.

²³ The case of certification schemes operating in more than one Member State needs to be born in mind.

4.2.3. *Option 2.b: Develop guidelines for the operation of certification schemes for agricultural products and foodstuffs (equivalent to a voluntary standard)*

Instead of regulating the operation of certification schemes for agricultural products and foodstuffs, this option foresees the development of guidelines or best-practice approaches along the lines of the criteria listed above. Schemes not in conformity with the guidelines (but in line with all other legislation) would not be prevented from operating in the EU market. Conformity with the guidelines could be highlighted by scheme owners vis-à-vis consumers or other actors in the food supply chain. The guidelines could thus serve as a benchmark²⁴ for certification schemes for agricultural products and foodstuffs.

In order to provide an incentive for scheme owners to comply with the guidelines, various supporting measures can be envisaged:

a) Eligibility for EU (and/or other public) support: Already, EU rural development funds are available for farmers who participate in food quality schemes fulfilling certain requirements²⁵. It would not be difficult to replace these requirements with the full guidelines, once they have been developed. However, schemes would have to be independently assessed against the guidelines in order for participants to become eligible for funding.

b) A logo indicating compliance with the guidelines. The development of a logo signalling compliance with the guidelines to the consumer deserves special attention. The core problem in the area of certification schemes has been identified as being the proliferation of logos without clear rules. While clear rules would be established through the guidelines, the addition of yet another logo (which would not even concern the product but only the scheme under which it is certified) needs to be very carefully considered. Furthermore, such a measure would require significant efforts by Commission (and/or other public) services in developing the logo and overseeing its use.

c) Publication of compliant/non-compliant schemes: a list of schemes complying with the guidelines could be made public on the Internet. Alternatively, a list of non-compliant schemes could be published ("name and shame- approach"). Both approaches would require an independent assessment of compliance and a register of schemes (see 4.2.4. below).

4.2.3.1. Screening for technical and other constraints

Establishing the guidelines themselves should not encounter any significant constraints other than the potentially different opinions of stakeholders in the food supply chain. There are ongoing initiatives in this area, for example by COPA-COGECA, and in the context of a

²⁴ Benchmarking is the process of comparing the cost, time or quality of what one organization does against what another organization does. The result is often a business case for making changes in order to make improvements. Also referred to as "best practice benchmarking" or "process benchmarking", it is a process used in management and particularly strategic management, in which organizations evaluate various aspects of their processes in relation to best practice, usually within their own sector. This then allows organizations to develop plans on how to make improvements or adopt best practice, usually with the aim of increasing some aspect of performance.

²⁵ (Council Regulation No. 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), Article 20(c)). Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) specifies a range of criteria that food quality schemes have to comply with in order to be eligible for support.

CEN workshop No. 40 on "Quality and Environment in agricultural activities." Existing standards or guidelines for certification schemes for agricultural products and foodstuffs can be found in the French standard NF V 01-007 (quality and environmental management systems for agricultural activities), or the ISEAL Code of Good Practice (see annex 8). Furthermore, EU standard EN 45011 (based on ISO Guide 65) and other international standards exist, which specify general requirements that a third-party operating a product (including processes and services) certification system shall meet if it is to be recognised as competent and reliable.

It is worth noting that the final report of CEN Working Group 177 in October 2007 concluded (recommendation 2):

"Since there was no consensus to reach an European management system standard on quality and environment in agricultural activities, CEN BT WG 177 concludes that there is no need for a specific quality and environmental management system standard for agricultural activities at European level."

Designing an incentive mechanism for schemes to comply with the voluntary guidelines will be more difficult and potentially much more costly, with implications for effectiveness and efficiency (see below).

4.2.3.2. Assessment of effectiveness, efficiency and consistency

Effectiveness: Voluntary guidelines are probably less legally effective than regulation in ensuring that only schemes complying with the defined criteria operate in the EU market. However, compared to the baseline scenario (status quo), a positive result is likely to be achieved. This is the option which is preferred by a broad group of stakeholders, as expressed for example during the conference "Food Quality Certification – adding value to farm produce" held in Brussels on 5-6 February 2007²⁶. Other supporters of this idea can be found in the UK (e.g., http://www.foodaware.org.uk/red_tractor.htm) and among respondents to the consultation of the Green Paper on agricultural product quality²⁷.

If guidelines provide a value-added for scheme owners and stakeholders, and if combined with the right incentive mechanism, effectiveness can be high.

Efficiency: Voluntary guidelines without a register and control mechanism are less costly than a mandatory standard (i.e. regulation). If they are combined with an incentive mechanism (which adds to the cost) or use a "name and shame" approach to highlight non-compliant schemes, they should be able to achieve a positive outcome. Thus, efficiency should be higher than for regulation.

Consistency: The development of voluntary guidelines is consistent with the Commission's objectives for better regulation, simplification and reduced administrative burdens.

²⁶ In her concluding remarks of that conference, Commissioner Fischer Boel expressed her intention to develop a clear, concise guide setting out what makes a good food certification scheme, including issues related to competition, internal market rules and labelling (see http://ec.europa.eu/agriculture/events/qualityconference/fischer_boel_cr_en.pdf). The report of Workshop 2 also recommends the establishment of EU guidelines for certification schemes (see http://ec.europa.eu/agriculture/events/qualityconference/ws2_rep_en.pdf).

²⁷ COM(2008) 641 final

Stakeholders say:

- + The solution might be to develop, with industry, an EU-wide framework providing non-mandatory guidelines on organisation of reputable certification schemes. This might cover requirements on organisational structure; independent operation; equal and effective participation by all stakeholders, irrespective of their location; transparency, clearly defined technical scope of the scheme; and technical competence. Another key benefit of such a framework might be to facilitate mutual recognition between schemes operating in the market place (COPA/COGECA, Stakeholder Hearing, 2006)
- + Traders believe that an EU-wide framework could help to solve the issues and challenges of certification schemes (Trader panel, Stakeholder Hearing, 2006)
- + The EU could provide financial assistance for development of systems to improve the integrity of certification schemes (Trader panel, Stakeholder Hearing, 2006)
- + Traders are in favour of EU intervention along the lines described above and, in particular, of standardisation of existing certification schemes and of general implementing rules. Not only should minimum requirements be established but also some types of requirements should be forbidden ((Trader panel, Stakeholder Hearing, 2006)
- + Certification schemes are numerous and there is scope for industry driven harmonisation of the process related to certification schemes. The procedure should be harmonised as follows and more widely used in the EU: the normative document should be made available to the public, in order to ensure clarity about what “quality” is being assured. This normative document remains the responsibility of the industry. Guidance on certification of implementation of the normative document. Stakeholders should agree on the certification scheme, based on a certification standard. Certification should be undertaken by an accredited body (Food processors panel, Stakeholder Hearing, 2006).
- + Across all categories, the majority of respondents to the consultation of the Green Paper on agricultural product quality²⁸ is of the view that EU guidelines would be sufficient to contribute to a more coherent development of certification schemes. This opinion is most pronounced among national authorities; regional and local authorities; the farming community; processing organisations; consumers and general public (even though a sizeable number here thinks that guidelines are not sufficient); and academic organisations. Somewhat more undecided are trade organisations and NGOs, but overall numbers of respondents in these categories are small.

Option 2.b will be retained for further analysis.

4.2.4. *Potential additional measure: register and publicise schemes that meet the standard*

While for sub-option 2.a the establishment of a register of schemes is a de-facto requirement (to enable controls), sub-option 2.b does not necessarily require such a register. However, a register of schemes complying with the guidelines would be needed for the various incentive measures (e.g. publication of compliant or non-compliant schemes). It would also

²⁸ COM(2008) 641 final

increase transparency of scheme requirements to consumers and other actors in the food supply chain.

Management of such a register could be done in various ways – through self-registration of scheme owners, at the level of the Member States or at Community level. It has to be noted, however, that a certain degree of scrutiny (repeated at certain intervals) would be needed in order to justify the inclusion of a scheme in the register. Thus, establishing a register requires a considerable administrative effort.

Stakeholders say:

- + No objection to developing a European registry of quality assurance logos which could provide an overview to all interested parties if published on the Internet (CEJA, Stakeholder Hearing, 2006)
- + Development of an EU database covering the existing certification schemes, which would include details on their criteria and certification, could promote transparency vis-à-vis consumers and other stakeholders in the supply chain (Food processors panel, Stakeholder Hearing, 2006)
- Farmers’ representatives think that this would be very difficult to manage and question what purpose this might serve (COPA/COGECA, Stakeholder Hearing, 2006)

The potential additional measure of establishing a register will be retained as an add-on to Option 2.b

4.3. Option 3 (focus on content): Addressing the policy areas covered by private and national certification (differentiation) schemes for agricultural products and foodstuffs

Neither liability nor assurance schemes are considered to be candidates for EU schemes, and these type of schemes are not considered.

4.3.1. Basic approaches

In order to reduce the overall number of certification schemes, to harmonise different concepts and definitions in the Member States and the private sector, and to establish common criteria at EU level for some of the policy areas covered by certification schemes for agricultural products and foodstuffs, the Community can directly intervene in the content or policy area covered by the schemes.

Two broad approaches can be distinguished: Voluntary labelling (e.g. through the development of new EU schemes) or the establishment of mandatory standards. The choice between the two will depend on a number of considerations, as outlined in box 7 below.

Box 7: Mandatory standards or voluntary labelling?

Typically, certification schemes address product and process attributes that cannot be observed by the consumer, neither before nor after the purchase and consumption of the product, not even through repeated purchases. Examples of these so-called "credence attributes" are the safety of the food; the way in which animals are kept for meat products; or the agricultural practices used in growing crops. There is thus an information asymmetry between producers and consumers with regard to these attributes, which certification schemes and the corresponding labels are trying to address.

The question of whether mandatory standards or voluntary labels are better suited to correct this market failure depends on the extent to which consumers are only concerned about their own consumption²⁹. If some consumers wish that their own consumption satisfies the standard and are willing to pay (some of) the cost of its doing so, voluntary labelling is the obvious solution since it enables producers to demonstrate to consumers that they have met the standard and claim a premium price for doing so.

As soon as one person's choice creates spill-over effects for other persons, and especially when these are negative and costly externalities for the persons affected, labelling would not be sufficient anymore to ensure that all individuals make consumer choices that have no externalities on others. Mandatory regulation may be required, but that raises the ethical issue of imposing preferences on others. If preferences are truly collective and all consumers share them, there would be no need for mandatory regulation since all consumers prefer and would buy the labelled goods that correspond to their preferences. Only if consumers experience tangible negative effects from others' consumption of non-compliant foods would there be a case of mandatory regulation. For instance, a ban has been called for against Canadian seal fur where EU consumers experience strong 'psychic' negative externalities. The extent, to which the 'disutility' from safety risks can be equated with the 'psychic disutility' from consumer aversion for particular production methods, even if only consumed by others, is more a matter for ethic than for economic debate. Since standards of morality and ethics differ across the globe, there is no consensus on this.

Furthermore, mandatory standards need to be screened for consistency with WTO rules so as not to be perceived as trade barriers under the guise of "credence attributes."

In the following, and based on the discussion provided in box 7, only voluntary EU labelling initiatives will be explored. It is assumed that the policy areas currently addressed by certification schemes do not present the negative and costly externalities of consumption mentioned above.

Voluntary labelling can again be done in two ways: through the development of new EU schemes, or by defining protected reserved terms. The main difference between these two options is that the former requires a certification mechanism while the latter doesn't. Both will be discussed below.

²⁹ This section is based on a study on qualified market access commissioned by DG TRADE (Holmes et al., 2008)

4.3.2. *Option 3.a: Developing new stand-alone EU schemes for specific policy areas.*

The Commission has already developed certification schemes (or is preparing to develop them) in several policy areas (see box 8), under three different models.

Box 8: EU-managed voluntary certification schemes for agricultural products and foodstuffs

(1) "exclusive scheme" model: The EU scheme replaces all existing private and national schemes in the particular policy area, e.g.

- Geographical indications (PDO/PGI) for agricultural products and foodstuffs (Regulation (EC) No 510/2006)
- Traditional Specialities Guaranteed (TSG) (Regulation (EC) No 509/2006)

(2) "reference standard" model³⁰: the EU scheme forms the baseline on which private and national operators can be certified or build their own schemes, e.g.

- Organic farming (Regulation (EC) No 834/2007)

(3) "Primus inter pares" model: The EU scheme stands as one among other private and/or national schemes in the same policy area, e.g.

- Traditional Specialities Guaranteed (TSG) (Regulation (EC) No 509/2006)

Two potential new EU schemes are currently under discussion: DG SANCO is exploring the feasibility of different options for indicating animal welfare related information on products of animal origin and is in this context looking at the possibility of developing an animal welfare label, and the Commission has proposed to extend the coverage of the EU *Ecolabel* to cover processed food.

Furthermore, the Commission is addressing the issue of Fair Trade in a Communication that fulfils a commitment made to the European Parliament in 2006 to continue to reflect on the issues which had been raised in the European Parliament report on Fair Trade and Development³¹ (see also Box 2 above).

Several other candidates for new schemes have been proposed by stakeholders, namely in the area of products from high-nature-value farming (see Box 9, below); climate change; integrated farming; mountain products; and water labelling (see Annex 9). In its Council Conclusions of 4.12.2008 concerning "*Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan*", Council invited the Commission:

"to study the introduction of the carbon footprint of products in the existing EU environmental labelling instruments such as the Eco-label and energy labelling; also

³⁰ "Reference standard" here refers to the criteria of a voluntary labelling scheme, which can be used by other schemes for further development. This is different from the basic legal requirements that all farmers have to follow, whether they participate in a scheme or not.

³¹ European Parliament Report on Fair Trade and Development 2005/2245(INI).

INVITES the Commission, taking into account Member States' experience, to start working as soon as possible on common voluntary methodologies facilitating the future establishment of carbon audits for organisations and the calculation of the carbon footprint of products."

Box 9: Highlighting products from high-nature value (HNV) farming – a case for a potential new EU scheme

Certain farming practices and methods are inextricably linked to environmental value, such that if the farming were to cease or change, the environmental value could suffer. This is particularly the case for 'high nature value farming' which is defined with reference both to the environmental value of a specific area and to the farming on which that value depends. Many of these areas are mountainous or semi-natural grasslands where farming activity is marginal and economically not remunerative. In many areas of Europe, semi-natural land cover or features survive only as smaller patches in a more intensively farmed landscape, but can still be of sufficient local value for biodiversity conservation to be considered as HNV farmland. Considerable financial efforts are put into preserving the farming activities in these areas, under CAP rural development programmes and under environmental programmes such as LIFE. A systematic product policy that could assist farmers to get a return from the market for their provision of environmental value in terms of biodiversity and habitats protection linked to the way they farm, does not exist.

The arguments advanced for considering a scheme for products of high nature value farming activities can be summarised as follows³²:

- these farmers provide a substantial environmental service because of the way they farm, on which rare and increasingly threatened biodiversity depends.
- despite CAP support, many farms are not viable and as a result, many of these extensive farming systems are under threat.
- a segment of consumers could be willing to pay for products having the attribute of being produced in these areas. However, they can be misled if product is not made in line with the particular farming techniques on which the environmental value depends. (e.g. product claiming the 'mountain' image when it has not been produced in a mountain zone).
- a new quality label for high nature value farming systems would open up marketing opportunities and so provide a market instrument to broaden the economic sustainability of producers in these areas.

Some of the issues that need to be addressed before considering a scheme linked to environmental value of the farming activity are:

- a sufficiently robust identification of farming techniques and areas having the specific characteristics which create in combination high nature value farmland, so that the scheme could be adequately controlled;
- degree of subsidiarity, i.e. the extent to which the task should fall to Member States and regions, and the justification for action at EU level: why can the problem not be addressed by private and/or national or regional initiatives?
- coherence with existing policies and in particular rural development policy and environmental policy;

³² For more detail, see <http://www.efnecp.org/download/EFNCP-HNV-farming-concept.pdf> 'HNV Indicators for Evaluation', Final report for DG Agriculture. Contract notice 2006-G4-04.

- adequacy of control mechanisms and weight of administrative burdens, both on public authorities and on farmers.

Stakeholders say:

Contribution by the European Forum on Nature Conservation and Pastoralism (EFNCP) to the Green Paper on agricultural product quality:

- + Existing schemes and arrangements are inadequate from the point of view of products from High Nature Value (HNV) farming. Under the current system, products of HNV farming cannot be differentiated from other products.
- + Maintaining HNV farming is an explicit policy aim of the EU, enshrined in the EU Biodiversity Strategy and as one of three environmental priorities for Pillar 2 of the CAP.
- + HNV farming needs to find alternative ways to increase the economic return on its activity, as intensification is either not possible due to the natural limitations of the location, or would degrade the nature value of the existing farming system.
- + Market demand for products from farming systems that conserve nature may represent an important economic opportunity for HNV farming. Although this opportunity can be pursued in local and national markets without an EU labelling scheme, it seems appropriate that the existing EU scheme should take account of new policy priorities such as HNV farming, and be adapted to their needs. In this way, opportunities may be opened up for differentiating HNV farming products on the wider EU market.

Contribution by Natural England to the Green Paper on agricultural product quality:

- An EU-wide scheme for products from "high nature value areas" would be too complex and costly to administer, with limited consumer interest in an EU-wide label for such products. It would also risk duplicating national and other EU schemes

Each new scheme will have to be assessed on its own merit. It is beyond the scope of this impact assessment to analyse possible policy options for new schemes at this stage. This section will therefore focus on a general discussion of the criteria to be applied in the decision on whether or not to establish a new EU scheme, as well as look at the pros and cons of such an option in the context of the problems and objectives identified earlier.

4.3.2.1. Screening for technical and other constraints

Naturally, only schemes with similar policy objectives could be harmonised under one EU scheme. Given that the objective of many scheme owners is to differentiate their products from other competing products, it seems somewhat counter-productive to take away the differentiating element. The biggest asset of existing schemes is the degree of consumer recognition of their own logo. There is likely to be fierce resistance by scheme owners to the idea of merging existing schemes under a European umbrella if this would mean that existing schemes and logos may no longer be used (the "exclusive" model, see box 8 above).

Any new EU scheme would have to be managed in a way that complies with WTO rules.

It is assumed that any new stand-alone EU scheme, whether it follows the "exclusive" or "reference standard" model outlined above, is implemented by way of a regulation or directive. As such, it would include definitions of terms which would then become binding for use in all Member States. For instance, an EU scheme for mountain products could define the term "mountain". A side effect of such a scheme could therefore be the limitation of the term "mountain" in line with the definition given in the regulation setting up the EU scheme. This may be desired, but it may also generate conflicts with other current users of the term. Alternatively, the new EU scheme could therefore simply define the use of a logo (possibly with an accompanying phrase such as "product of mountain farming") without reserving any particular terms (the option of using protected reserved terms is addressed in detail in annex A.II).

4.3.2.2. Assessment of effectiveness, efficiency and consistency

Effectiveness: Establishing an EU scheme in an area where private and national schemes already exist would be effective if it had an influence on the main identified objectives (improved functioning of the internal market; less confusion of consumers; reduced burden on farmers, including those from developing countries).

A new EU scheme would be effective in reducing the confusion of consumers if it defined terms and concepts in a way that would be binding for all other users of these terms, and if it would successfully communicate this fact and the corresponding definitions to the consumers. Compared to the status quo in many policy areas (different schemes with no harmonised definition of terms and concepts), it can be assumed that an EU scheme under the "exclusive model" would have a positive impact, since it would replace all national, regional and private schemes. An EU scheme that would allow other schemes to continue ("reference standard" model) would have to address the potential consumer confusion that could be caused by the creation of an additional logo that consumers would have to understand and distinguish from existing private logos in the same policy area.

In terms of burden on farmers and producers, it should be noted that the policy areas proposed for new EU schemes are clearly aimed at product differentiation. As mentioned earlier, there is not much overlap in the group of differentiation schemes – if farmers/producers belong to one of them, they very rarely choose to adhere to a second one in the same policy area (e.g., a Bioland farmer very rarely if ever is also certified according to Demeter standards). Thus, introducing a new EU scheme in the policy areas proposed it not likely to be effective in reducing the burden on farmers and producers.

Concerning the functioning of the internal market, harmonisation of terms and concepts is certainly likely to have a positive impact. Furthermore, an EU scheme would by definition be available for all producers in all EU Member States, under the same certification requirements. It is therefore likely to improve the free flow of goods and services in the internal market (even though there still seems to be a certain fragmentation in the market for organic products, despite the fact that a "reference standard" EU scheme exists).

Efficiency: Establishing a new EU scheme could be a costly undertaking. It may be possible to limit the costs by choosing a "reference standard" model where existing private schemes could apply for certification based on harmonised criteria. If the certification scheme is voluntary and rely on private certification bodies, which are paid by the firms certified, the extra costs for the public authorities could be negligible.

Consistency: Every new EU scheme would have to be assessed in the context of existing EU schemes and overall policy principles. Currently, no policy line exists that would frame the development of new EU schemes. Development of new EU schemes will become consistent if common criteria for their development are established. This is discussed under option 3.b below.

Stakeholders say:

- Retailers feel that the further development of EU schemes should be in response to specific consumer demand rather than to meet different policy objectives (Retailer panel, Stakeholder Hearing, 2006)

In the context of the consultation of the **Green Paper** on agricultural product quality³³, stakeholders were asked whether there any pressing issues for which existing schemes and arrangements are inadequate and for which there is a strong case for an EU level scheme (see Annex 10, question 14):

- The majority of respondents are against introducing new EU schemes (although some make specific reference to mandatory schemes and don't express their views of voluntary schemes). Some see possibilities for new schemes if certain conditions are fulfilled, and 24% of all respondents (= 50 replies) are of the opinion that new schemes are needed in certain policy areas

Arguments against new schemes include:

- Additional new schemes would confuse consumers;
- Quality issues should primarily be in the hands of private operators; schemes will develop as private initiatives, no Commission involvement is necessary. The market is more flexible and responsive to develop products according to consumer demands, without excessive bureaucracy;
- New schemes are not compatible with "better regulation" principles;
- (proliferation of) certification schemes are (is) costly for small-scale operators; scheme participants have no advantage in the market
- current schemes are already above international market standards
- legal minimum standards must apply to all products and should not be covered by a scheme; mandatory issues to be addressed through legislation and not through a scheme
- there is no scientific basis for any new scheme
- there is a danger that schemes and labels are seen as a way to raise production standards
- Against an EU-wide scheme for products from "high nature value areas" which would be too complex and costly to administer, with limited consumer interest in an EU-wide label for such products

However, some respondents also made suggestions of issues that should either be addressed in the context of a **new EU scheme** or for which **common definitions at EU level** (not necessarily through a new scheme) would be needed. These include:

- Integrated farming/integrated production
- Environmentally friendly products / use of pesticides; biodiversity; water preservation
- Products making full use of local sustainable resources (water, feed, etc.)
- EU sustainable agriculture label
- Products from high nature value farmland
- Common definitions for the terms "mountain", "island" and "alp"
- Animal welfare
- Climate change / low carbon emissions / energy use of production and transport

³³ COM(2008) 641 final

- Superior product quality (similar to Label Rouge)
- GMO-free food / GMO- free feed
- Products from national and/or regional parks
- Local traditional products / typical products from a specific region
- Compliance with EU farming requirements
- ethical and socially responsible criteria especially for small-scale producers
- worker welfare scheme /social criteria of production
- stricter organic livestock regulation
- a scheme for products from local breeds / protection of local breeds / products from animal breeds in danger of extinction
- a scheme for sparsely populated regions with a low economic activity and unfavourable agroclimatic conditions
- bio-dynamic farming
- EU basic, EU extra and EU superior quality
- a framework communicating quality parameters from feed to food
- harmonisation of requirements for temperature of storage and transport of foodstuffs
- health
- (country of) origin; EU origin
- mandatory labelling of farming methods for meat and dairy products

Conclusion: Option 3.a will be retained for further analysis.

4.3.3. *Option 3.b: Establishing common criteria for the development of new EU schemes*

As mentioned above, there is a need to introduce common criteria to assess new EU certification schemes for agricultural products and foodstuffs. Criteria would have to be developed in consultation with stakeholders, but based on material examined in the course of this assessment and stakeholder views, such criteria could consist of asking the following kind of questions:

- Is the scheme addressing an identified priority area for EU agriculture policy?
- Is there a problem in the specific policy area that cannot be addressed (or that is caused) by private and/or national or regional initiatives?
- Would the establishment of an EU scheme in the particular policy area solve the identified problem(s)?
- Is the scheme fully in line with principles of sustainability? Does it take an integrated approach to farming requirements or otherwise address the problem of trade-offs?
- Would the administrative costs and burden of an EU scheme be compensated by improvements in other areas (e.g. functioning of the internal market; burden on farmers/producers; consumer interests)?

- Is the proposed new EU scheme coherent and compatible with other EU initiatives in the same policy area?³⁴ Could the problem be better addressed by adjusting another EU initiative rather than creating a new one?
- Is the proposed new EU scheme in line with the Community's international obligations (e.g. WTO laws) towards third country trading partners?³⁵

4.3.3.1. Screening for technical and other constraints

4.3.3.2. Assessment of effectiveness, efficiency and consistency

Conclusion: Option 3.b will be retained for further analysis.

4.3.4. *Option 3.c Development of protected reserved terms corresponding to specifications*

Instead of developing EU schemes for individual policy areas, this option concerns the laying down (by the legislator) of clear, unambiguous definitions, identities, standards and classes, which have to be respected if used at the stage of placing on the market. It is explained in more detail in section 4.5 of annex A.II to the Impact Assessment Report.

Defining reserved terms in the policy areas covered by private and national/regional certification schemes would address the problem of consumer confusion by unclear use of terms and claims made in certification schemes. For example, if the term "mountain" would be defined according to some specification, its (entirely voluntary) use would only be allowed when the specification has been followed.

The main difference between new EU schemes and definitions of reserved terms lies in the fact that the former requires a certification mechanism while the latter doesn't and are enforced as part of general food law, labelling provisions or the instrument under which they were enacted.

Reserved terms are suitable for simple single-issue claims (e.g. "farmhouse", "free range") which can be easily and unambiguously expressed in a few indents in a regulation. More complex farming requirement claims could need a lengthy and detailed specification and would probably require a more elaborate mechanism for application and control, such as certification.

Reserved terms can be implemented through self-declaration by users, combined with a relatively light control mechanism (see under "efficiency" below).

³⁴ For example, the proposed expansion of the EU Ecolabel to processed food has raised concerns about the potential confusion of consumers with the EU organic farming scheme, under which the term "eco" has until now been exclusively reserved throughout the EU for food product of organic farming.

³⁵ The WTO Panel report in the matter of *EC – trademarks and geographical indications* (DS174, 290) addressed the question of access to an EU scheme for producers in other members of WTO.

4.3.4.1. Screening for technical and other constraints

No constraints can be identified for the definition of reserved terms. However, terms that can be defined in scientific or clear language would be best suited. There are likely to be difficulties in defining terms of art and particularly terms having different cultural resonance across the EU.

4.3.4.2. Assessment of effectiveness, efficiency and consistency

Effectiveness: Defining reserved terms will address the problems of consumer confusion and internal market. It does not address the problem of burden on farmers and producers (neither in a positive nor in a negative way).

As regards consumer confusion, defining reserved terms has the potential to lead to greater clarity and consistency in the use of terms on product labels and in certification schemes.

In relation to the smooth functioning of the internal market, it is also assumed that a binding definition of certain terms will improve the free movement of goods in the internal market.

Efficiency: as pointed out above, this option does not require a certification mechanism. Misuse of terms would have to be controlled, but this is the same case as for general labelling requirements and could therefore be combined with official controls Member States apply under Regulation (EC) No 882/2004. Efficiency of this option is certainly greater than the establishment of new EU schemes for single-issue terms.

Consistency: This option is in line with Commission objectives for simplification and reduced administrative burden

Conclusion: Option 3.c will be retained for further analysis.

4.4. Fine-tuned shortlist for further analysis

Following the screening for technical and other constraints as well as the assessment of effectiveness, efficiency and consistency, option 2.a is considered to be too heavy in terms of administrative burden and inconsistent with the Commission's objectives for better regulation, simplification and reduced administrative burdens. It will therefore not be analysed in detail.

The options retained for further analysis are:

- **Option 1: no EU action = status quo (plus further research)**
- **Option 2.b: Develop guidelines for the operation of certification schemes (equivalent to a voluntary standard)**
- **Option 3.a: Development of new (voluntary) stand-alone EU schemes or standards for specific policy areas.**

- **Option 3.b: Establishing common criteria for the development of new EU schemes**
- **Option 3.c: Defining reserved terms corresponding to specifications (see section 4.5 in annex A.II to the Impact Assessment Report)**

It should be noted that Option 2.b (with or without a register) can (but doesn't have to) be combined with either Option 3.a, Option 3.b or Option 3.c. Furthermore, Options 3.a, 3.b and 3.c can be implemented simultaneously.

Option 2.b Guidelines				
Option 3.a new EU schemes		✓		
Option 3.b Criteria for new EU schemes		✓	✓	
Option 3.c Reserved terms		✓	✓	✓
<i>if this option is chosen... ...this option can also be chosen</i>	Option 1 status quo	Option 2.b guidelines	Option 3.a new EU schemes	Option 3.b Criteria for new EU schemes

✓ = combinable

D.5. IMPACT OF OPTIONS

All options retained for further analysis concern voluntary measures. Bearing this in mind, and taking into account the need for proportionality in assessing the impacts of voluntary instruments in an area where currently no direct EU interventions exist, this impact assessment will look mainly at the impacts of options on the identified problem areas and on different stakeholder groups, rather than try to estimate certain effects.

5.1. Option 1: Status quo

5.1.1. Identification of impacts

Economic impacts

Negative economic impacts are expected on the functioning of the internal market and competition, on the operating costs and administrative burden of small and medium enterprises (farms), on consumers' choice and confidence, and on producers in third countries.

Social impacts

Social impacts will be negative as regards governance, participation and good administration.

Environmental impacts

Environmental impacts will be negative to the extent that schemes make misleading claims on environmental attributes and thereby hinder real environmental benefits.

5.2. Option 2.b: Voluntary guidelines for certification schemes

5.2.1. Identification of impacts

Since this option consists of the development of entirely voluntary guidelines, impacts will depend on the extent of uptake of the guidelines by scheme operators and on the extent to which compliance with the guidelines becomes a marketing instrument (i.e., the extent to which this is communicated to and appreciated by consumers). Since uptake is likely to increase over time, impacts (especially negative impacts on participants of non-complying schemes) are likely to increase as well.

Furthermore, impacts will vary depending on whether an incentive mechanism is used to stimulate compliance with the guidelines, and on the nature of such an incentive mechanism.

Economic impacts:

a. Functioning of the internal market and competition:

- Positive impact on the free movement of goods and services by defining common criteria for the operation of certification schemes.
- Positive impact on farmers and producers through the provision of a benchmark for certification schemes which facilitates harmonisation and mutual recognition of schemes, thereby reducing the burden caused by duplication of certification and controls.
- Positive impact on consumers through the expected reduction in the number of non-compliant schemes in the EU. Consumers will be able to trust the claims made by schemes complying with the guidelines to the extent that they (a) are aware of the existence and content of such guidelines, and (b) know whether a particular scheme complies with the guidelines.
- Unclear impact on owners of and participants in existing schemes, who may have to revise their current practices if they want to comply with the criteria put forward in the guidelines. This can lead to adjustment costs both for scheme owners and participants. However, compliance with the guidelines can also lead to greater consumer trust in the scheme (if compliance is communicated to and understood by consumers) and therefore to increased sales and revenues. No direct impact on owners and participants in schemes already compliant with the guidelines, but indirect positive impact in discouraging non-compliant schemes operating in the same field.
- Positive impact on competition if the guidelines lead to greater transparency and efficient functioning of the schemes (e.g. in terms of independent certification). These effects would apply in particular to the differentiation schemes which are most in the public arena. These benefits should also affect post-farm gate assurance and pre-farm gate liability schemes, but to a lesser extent.
- Positive impact on farmers if the guidelines lead to a better balance of power in the food supply chain through greater involvement of stakeholders in the development of schemes.

b. Competitiveness, trade and investment flows:

- Positive impact on producers in developing countries if (a) the guidelines incorporate their concerns and lead to their involvement in scheme development (where appropriate), and (b) the guidelines are being observed by the schemes of greatest relevance to developing country producers.
- Positive impact on international trade to the extent to which the guidelines are seen to be reducing the trade-restricting effect of private standards.

c. Impact on Small and Medium Enterprises:

- Positive impact to the extent that the guidelines help in re-balancing the power between the production end (characterised by a large number of small and medium enterprises) and the retail end of the food supply chain.

d. Operating costs and conduct of business:

- Additional adjustment costs: possible, but likely to be compensated by higher sales and revenues³⁶
- Additional compliance costs: possible, but likely to be compensated by higher sales and revenues
- Additional transaction costs: not likely, rather the contrary (reduced transaction costs due to agreement on common criteria for certification schemes, thereby facilitating mutual recognition and benchmarking of schemes having adopted the guidelines)
- Stricter regulation of the conduct of a particular business: not regulation, but guidance on the conduct of certification schemes for agricultural products and foodstuffs
- Administrative burdens on businesses: The aim of the guidelines is to reduce the administrative burden on businesses by facilitating mutual recognition and benchmarking of schemes, thereby reducing the need for duplication of certification and controls.
- Consumers and households: By establishing EU-wide guidelines for certification schemes, consumers' ability to benefit from the internal market should be enhanced because schemes complying with the guidelines shall enjoy greater acceptance and recognition throughout the EU.
- Third countries and international relations: By developing guidelines for certification schemes which incorporate provisions for the participation of developing country

³⁶ Voluntary participation in certification schemes for agricultural products and foodstuffs is a decision that operators make based on the expected net benefit of this participation. If it turns out that additional adjustment and compliance costs are not compensated by additional sales and revenues, operators will not participate in such schemes, which will then disappear from the market. If compliance with the guidelines turns out to be too costly, schemes will not adopt them.

stakeholders, the EU will take a step towards facilitating third country producer participation.

- Public authorities: The development of guidelines itself has a very limited impact on public authorities. This changes when the additional measure of a register or the different incentive mechanisms are considered which have been outlined above. As soon as the compliance of a scheme with the guidelines has to be assessed (in order to determine whether the scheme would be eligible for public support, or whether it may use the logo, or whether it should be included in the list of compliant or non-compliant schemes), the administrative burden for public authorities increases significantly.

Social impacts:

a. Governance, participation, good administration, access to justice, media and ethics

- Transparency: the guidelines will include criteria which will improve the transparency of certification schemes. They will therefore contribute to the better information of the public about the claims made by certification schemes.
- Participation of stakeholders in scheme development and implementation: the guidelines will include criteria which will ensure the participation of stakeholders (including stakeholders from developing countries, if appropriate) in the development and implementation of certification schemes.

b. Social impacts in third countries

- Contribution to EU development policy: by including provisions on the involvement of stakeholders in developing countries, the guidelines will contribute to the potential of certification schemes to act as "catalysts" for development.

Environmental impacts:

The development of voluntary guidelines for certification schemes does not have any direct environmental impacts. However, by addressing if the issue of trade-offs and potentially misleading claims in environmental areas (e.g. food miles –v– carbon footprint), inadvertent negative impacts on the environment should be diminished.

5.2.2. *Qualitative assessment of impacts that are most significant*

Impacts considered to be most significant are:

- The potential positive impact on farmers and producers (including those from developing countries) through improved benchmarking and mutual recognition of schemes (thereby reducing the need for multiple certification and control).
- The potential positive impact on farmers and producers (including those from developing countries) through greater participation in scheme development and oversight.
- The potential positive impact on the functioning of the internal market.

- The potential positive impact on consumers through greater transparency of claims made by certification schemes.

The potential negative impact (cost) on public authorities through the establishment of a register argues against inclusion of such an option.

Whether or not these impacts will occur depends to a significant degree on the uptake of the guidelines by scheme owners. This, in turn, will depend on the extent to which scheme owners either (a) perceive the guidelines to be beneficial for their schemes (i.e. derive benefit on scheme operations through applying the guidelines), (b) value the indirect benefits provided through an incentive mechanism, or (c) believe that non-compliance with the guidelines will be detrimental for their schemes (i.e., opportunity costs such as loss of market share from not applying the guidelines).

5.3. Option 3.a: Development of new stand-alone EU schemes

5.3.1. Identification of impacts

This section examines the direct costs and benefits of new EU schemes only. It does not look at indirect effects, which would require general equilibrium modelling. It does not examine long-run strategic considerations. It does not attempt to analyse the impacts of any particular new EU scheme, which should benefit from a separate impact assessment on a case-by-case basis.

It is assumed that only differentiation schemes would be considered to be stand-alone EU schemes and neither assurance nor liability schemes are considered.

Economic impacts:

- a. Functioning of the internal market and competition:
 - Positive effect on the free flow of goods and services in the internal market through the harmonisation of terms and concepts.
 - Unclear impact on consumer choice – could be positive through better information on certified products, could be negative if previously certified products disappear.
 - If the scheme follows the "exclusive" model (see box 8), competition issues between schemes in the same policy area will disappear; the scheme will create a monopoly for certification (but not for products, since there will still be many producers). If prices rise, this will be due to greater demand rather than less competition. In this case, the benefits to suppliers of a robustly competitive environment will decline but not disappear.
 - If the 'reference standard model' is followed, certifiers will continue to operate to implement the standard laid down in the EU scheme and provide certification services to suppliers. The competition risks will continue to apply and may even increase given the pan-EU nature of the EU standard, which could increase the tendency of stronger players to foreclose weaker.
 - Positive impact on (the reduction of) market segmentation. An EU-wide scheme will by definition cover the whole of the internal market.

b. Competitiveness and trade:

- By setting a common framework for trade in product having the value added characteristic or attribute, intra Community trade should be facilitated. A scheme that reserved a particular value-adding term to participants in the scheme should diminish the problem of free-riders.
- Compliance with WTO rules would need to be ensured and third country suppliers would derive similar benefits as EU producers from any improvements to the functioning of the single market.

c. Operating costs and conduct of business:

- Any EU scheme will detail requirements that scheme participants will have to follow in order to be allowed to carry the logo. Thus, in the majority of cases, there will be adjustment and compliance costs for scheme participants. However, since participation in the scheme is voluntary, participants will expect a net benefit from certification. If adjustment and compliance costs turn out to be greater than the additional revenue, participants are free to drop out of the scheme, although there may be fixed costs of joining and then further costs of readjusting to production outside the scheme.
- Whether or not a new EU scheme will increase administrative complexity depends on the details of scheme implementation. Based on experience with the PDO/PGI scheme, EU schemes following the "exclusive" model are likely to add to administrative complexity at EU level, while "reference" schemes entail higher administrative burdens at the point the daughter schemes are developed and implemented (whether national or private). In addition the administrative burden of developing and maintaining the reference standard is significant.

d. Innovation and research:

- New EU schemes covering certain aspects of agricultural production methods will define the eligible production methods in a specification. Depending on whether these production methods are new and innovative or traditional, the scheme will either stimulate or hinder the introduction and dissemination of new production methods. Once specified, the defined production methods may be slow to change. Therefore, in the long run, new EU schemes are not likely to lead to innovation in production methods.

e. Consumers and households:

- Unclear impact on prices – certified products will probably be more expensive than non-certified ones, but not necessarily more expensive than other certified products.
- Positive impact on consumers to benefit from the internal market (see under a. above)
- Consumers would be confronted with yet another logo. Unclear impact on consumer confusion if "reference standard" model is chosen, since effect on the number of existing schemes is not clear (if the reference standard is set higher than the standards of most existing schemes, many of them are likely to disappear. If the reference standard is low, most existing schemes are likely to continue).
- Positive impact on consumer information through the harmonisation of terms and concepts.

f. Specific sectors:

- Depending on the policy area covered by the new EU scheme, which will in any case concern the production of agricultural products and foodstuffs, specific regions and sectors will be affected more than others. For instance, an animal welfare scheme will only concern animal husbandry. The effect on farmers and producers within these sectors complying with the scheme requirements is expected to be positive, this presumably being one of the objectives of the scheme in the first place. However, farmers not complying with the scheme requirements may suffer if as a consequence their products lose market share or yield lower prices.

g. Third countries and international relations:

- Any new EU scheme would have to be managed in a way compatible with WTO rules. The United States' contribution to the Green Paper consultation states that

"As the European Commission (EC) considers the creation of quality standards for European Union (EU) Member States, the United States encourages the EC to carefully ensure that the standards and regulations created do not contradict the EC's World Trade Organisation (WTO) Commitments under the Technical Barriers to Trade (TBT) committee [...]"

Similar concerns are raised in the contribution of the Secretariat for Agriculture, Livestock, Fisheries and Food of Argentina.

h. Public authorities:

- The development of a new EU scheme could cause administrative burden both at the level of the Member States (or at regional level within Member States) and at the level of the EU. Based on experience made with the existing EU schemes for PDO/PGI, TSG and organic farming, certification and control functions would have to be allocated and assured. Scheme and logo development would require involvement of stakeholders.

- Enforcement in the marketplace and supervision of the certification-accreditation system

Social impacts:

a. Governance, participation, good administration, access to justice, media and ethics

- Better information of the public: The development of a new EU scheme is likely to draw the public's attention to the particular issue covered by the scheme. It can be assumed that the EU will only take action in a priority policy area that it considers to be of high importance. Consequently, any new EU scheme could be accompanied by an information campaign, a website, press releases etc. which would all contribute to making the public better informed about the issue. Furthermore, EU promotion and/or rural development funds will become available to promote products certified under the scheme. A new EU scheme would thus send a strong signal to the public on the political importance the Commission attaches to the issue at hand.
- Greater involvement of stakeholders: It can be assumed that all Commission standards on the involvement of stakeholders and civil society representatives will be observed in the development of the new EU scheme. Given that the existing schemes are mostly in the hands of private operators, stakeholder involvement will certainly improve.

Environmental impacts:

Environmental impacts will only arise if the policy area covered by the new EU scheme is linked to the environment. The exact impacts will depend on the inclusion of environmental criteria in the specification of the scheme.

5.3.2. *Qualitative assessment of impacts that are most significant*

The following impacts are deemed to be most significant:

- The positive impact on consumer awareness and information through EU action in the chosen policy area, coupled with an information campaign and possibly other support measures.
- The particular positive effects of the scheme in the chosen policy area through compliance of a sufficiently large number of farmers with the scheme specifications.
- The possible negative impact on public authorities caused by the administrative burden that any new EU scheme may bring.

Concerning competition risks highlighted above, the EU standard could include specific provisions for Member States to be attentive to the risks.

This analysis is not going into the details of any particular new EU scheme. For schemes under development or at the discussion stage, such impact assessment is in train or has already been done (e.g. DG SANCO is developing an impact assessment on an animal welfare labelling scheme; DG ENV conducted an impact assessment on a revised

Community ecolabel scheme). For other schemes proposed by various stakeholders, it is too early and beyond the scope of this impact assessment to go into detailed options.

Instead, general impacts of developing new EU schemes have been listed above. These are necessarily vague and will not be sufficient to take decisions in concrete cases. They can, however, serve as a guide when it comes to the question whether an EU scheme is preferable to one or more private schemes in the policy area at hand, or whether the following option (definition of reserved terms) is preferable.

5.4. Option 3.b: Develop common criteria for new EU schemes

5.4.1. Identification of impacts

In the light of the existing EU agricultural product quality schemes, the two in development and pressure to consider further schemes, and the complexity of issues raised as highlighted here, it is necessary to consolidate criteria to be used in consideration of EU schemes. This would ensure coherence both with agricultural policy priorities and coherence with existing schemes. See also section 4.3.3 above for a preliminary list of policy criteria to be applied for new agricultural product quality policy schemes.

Economic impacts:

- Functioning of the internal market and competition: common criteria for the development of new EU schemes is expected to result in greater coherence of EU schemes, thereby overcoming the problem of information asymmetry between farmers/producers and buyers, leading to greater clarity for consumers, and improving the functioning of the internal market.
- Third countries and international relations: The common criteria for new EU schemes will include an explicit check for compatibility of the proposed scheme with WTO rules and other international obligations. The expected impact of these criteria on third countries and international relations is expected to be positive.

Social impacts:

- Governance, participation, good administration: Common criteria for new EU schemes will address issues relating to the need for EU action based on the principle of subsidiarity, proportionality and reduction of administrative burden. They will therefore contribute to the goals of good administration.

Environmental impacts:

- Sustainability is a principle which will be addressed explicitly by the common criteria for new EU schemes. Environmental impacts are therefore expected to be positive.

5.5. Option 3.c: Protection of reserved terms

- see paper A.II -

D.6. COMPARING THE OPTIONS

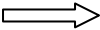
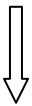
	Advantages	Drawbacks
Option 1: Status Quo	<ul style="list-style-type: none"> + Allows further research to fill information and data gaps before further action is taken + Preferred by a many stakeholders + Relies on ongoing initiatives in the private sector to develop in a positive way 	<ul style="list-style-type: none"> – Not all problems are likely to be addressed by private sector initiatives (transparency, clarity of claims...) – Lack of coherent policy – fails to address issues of threats to single market, anti-competitive situations, and consumer confusion
Focus on process		
Option 2b): Voluntary guidelines for certification schemes (private, national, EU)	<ul style="list-style-type: none"> + option preferred by many stakeholders + may achieve an outcome if combined with incentives for adoption, such as linkage under rural development quality measures and promotion funding; + will enable "best practice" schemes to be identified. + EU shows it is engaged in key issue affecting farmers. + in line with Commission objectives for better regulation, simplification and reduced administrative burdens 	<ul style="list-style-type: none"> – less legally binding than regulation; – guidelines perceived as 'weak' response, compared with regulation; – scheme owners may resent / suspect EU involvement
Option 2b)+: register of schemes	<ul style="list-style-type: none"> + transparency of schemes in conformity with guidelines and those not 	<ul style="list-style-type: none"> – heavy administrative burden for EC; – administrative burden for scheme owners; – undermines voluntary nature of guidelines; – increased risk of legal disputes.
Focus on content		
Option 3a): New stand-alone EU schemes	<ul style="list-style-type: none"> + harmonised concepts and terms in the policy area covered by the new scheme (prevent incoherent developments) + current reality: new schemes requested by various interest groups; 2 new EU schemes in process of creation. 	<ul style="list-style-type: none"> – high administrative burden at EU level; compatibility with WTO rules needs to be assured; – uncertain results; – unclear impact on existing schemes; – risk of policy incoherence.

Option 3b): Develop policy criteria for new EU schemes	<ul style="list-style-type: none"> + consolidate coherent approach and avoid ad-hoc development of inconsistent schemes; + diminish risk of developing confusing schemes in marketplace. 	– reduce flexibility and opportunity for ad-hoc scheme development
Option 3c): Develop regulation of reserved terms	See paper A.II	See paper A.II

Table 5: Comparison of retained options by specific objectives

Main objectives →	Reduce consumer confusion		Reduce burden on farmers/producers (incl. from developing countries)		Improve functioning of the internal market	
Options ↓						
1. a) Status quo = no EU action	Baseline		Baseline		Baseline	
Focus on process						
2.b) Voluntary guidelines for certification schemes	Situation improved	+	Situation improved	+	Situation improved	+
2.b)+ Register of schemes	Situation unchanged	+/-	Situation unchanged	+/-	Situation unchanged	+/-
Focus on content						
3.a) New EU schemes "exclusive" model	Situation improved	+	Situation unchanged	+/-	Situation improved	+
"reference standard" model	Situation improved	+	Situation unclear	+/-	Situation unclear	+/-
3.b) Policy criteria for new EU schemes	Situation improved	+	Situation unchanged	+/-	Situation improved	+
3.c) Protected reserved terms	Situation improved	+	Situation unchanged	+/-	Situation improved	+

Table 6: Comparison of retained options by effectiveness, efficiency and consistency

Evaluation criteria 	Effectiveness (how well will it solve the problem?)		Efficiency (is this the most we can get for the money?)		Consistency (is it in line with other Commission objectives and strategies?)	
Options 						
1. Status quo = no EU action	Baseline		Baseline		Baseline	
Focus on process (main problems addressed: burden on farmers; internal market)						
2.b) Guidelines	Medium	+/-	High	+	High	+
2.b)+ Register of schemes	Low	—	Low	—	Low	—
3.a)+ Policy criteria for new EU schemes	Medium	+/-	High	+	High	+
Focus on content (main problems addressed: consumer confusion; internal market)						
<i>In the absence of specific proposals and analysis, the impacts of a new EU scheme cannot be assessed</i>						
3.a) New EU schemes "exclusive" model	Possibly High	+	Possibly Medium	+/-	Possibly Medium	+/-
"reference standard" model	Possibly Medium	+/-	Possibly High	+/-	Possibly Medium	+/-
3.b) Protected reserved terms	High	+	High	+	High	+

Conclusion:

- Following the above analysis, the most promising options for addressing the way in which certification schemes work (**process**) are the development of voluntary guidelines for private and national schemes. Based on the assessment the register of schemes looks challenging and the issues of manageability of the register would have to be overcome and the option reassessed before proceeding.
- As regards the **content** covered by certification schemes, the option of developing a new EU scheme needs to be put into a framework of political priorities, needs and subsidiarity

considerations. Each new scheme proposal will have to be evaluated on a case-by-case basis. However, a policy framework for new EU schemes affecting farmers could be usefully elaborated, thus ensuring that schemes are compatible with existing policy (e.g. existing schemes, single market, etc.), properly reflect policy needs and challenges facing the agriculture sector, and can be best achieved only through EU-level action. Given the current enthusiasm for new EU level schemes in the field of agricultural product quality policy, such criteria should be brought forward in the short term.

- On the option of protected reserved terms, see Annex A.II to this Impact Assessment.

D.7. MONITORING AND EVALUATION

7.1. Option 2.b: voluntary guidelines for certification schemes

Core indicators of progress:

- a. existence of the guidelines (short-term, output indicator)
- b. uptake of the guidelines by scheme owners / number of schemes (or share of schemes) which operate according to the guidelines (medium- and long term, output indicator)
- c. improved benchmarking and mutual recognition of schemes: number of such agreements reached following publication of guidelines (medium- and long term, outcome indicator)
- d. improved functioning of the internal market: availability of certified products in countries other than the country of origin of the scheme (medium- and long term, outcome indicator)
- e. stakeholder involvement in scheme development: number/share of schemes having a fair representation of all stakeholders on their development and oversight committees (medium- and long term, outcome indicator)
- f. reduced burden on farmers and producers (including those from developing countries): could be linked to indicator c) above. Also: reduction in the number of farmers having to undergo more than one certification for the same objectives.

Monitoring and Evaluation arrangements:

Since adoption of the guidelines is a voluntary decision to be taken by the owners and managers of certification schemes, monitoring and evaluation would have to be done through specially commissioned studies, repeated at certain intervals.

If the guidelines are combined with a register of schemes, compliance with the guidelines would be checked at the time of entry in the register (in fact, establishing a register of schemes comes close to operating a certification scheme for certification schemes). Self-declaration by scheme owners can be envisaged but would have to be accompanied by independent controls of a certain sample of schemes at regular intervals (e.g., through accredited control bodies). Various options exist for allocating the cost of control (e.g., paid by the scheme operators; subsidised through public funds).

In order to evaluate the success of the guidelines, studies should be launched to assess:

- number or share of farmers who are undergoing certification to more than one standard in the same policy area (e.g., Good Agricultural Practices): before and (some time) after adoption of the guidelines
- costs of different certification schemes at the farm level and associated benefits
- overlap in the requirements of different schemes, and with official requirements (e.g. in the area of cross-compliance)

7.2. Option 3.b: develop criteria for new stand-alone EU schemes

Core indicators of progress:

- a. Existence of criteria (short term, output indicator)
- b. Application of criteria to newly proposed EU schemes (medium – long term, output indicator)
- c. Coherent development of EU schemes (medium- long term, outcome indicator)

Monitoring and Evaluation arrangements:

European Commission internal audit.

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See also OIE 2008, Implication of private standards in international trade of animals and animal products, Christiane Wolff and Michael Scannell, 76 SG/10, 25-30 May 2008

Annex 1: Main post-farm gate safety and liability schemes in Europe

The BRC Global Standards

In 1998 the British Retail Consortium (BRC), responding to industry needs, developed and introduced the BRC Food Technical Standard to be used to evaluate manufacturers of retailers own brand food products. It is designed to be used as a pillar to help retailers and brand owners with their 'due diligence' defence, should they be subject to a prosecution by the enforcement authorities. Under EU food Law, retailers and brand owners have a legal responsibility for their brands.

In a short space of time, this Standard became invaluable to other organisations across the sector. It was and still is regarded as the benchmark for best practice in the food industry. This and its use outside the UK has seen it evolve into a Global Standard used not just to assess retailer suppliers, but as a framework upon which many companies have based their supplier assessment programmes and manufacture of some branded products.

The majority of UK, and many European and Global retailers, and brand owners will only consider business with suppliers who have gained certification to the appropriate BRC Global Standard.

Source: <http://www.brc.org.uk/standards/default.asp>, accessed on 16.12.2008

The International Food Standard (IFS)

The development of the IFS is based on the ever-rising demands of consumers, the increasing liabilities of retailers and wholesalers, the increasing legal requirements and the globalisation of product supplies. All of these points made it essential to develop a uniform quality assurance and food safety standard.

The members of the German retail federation – Hauptverband des Deutschen Einzelhandels (HDE), – of its French counterpart – Fédération des entreprises du Commerce et de la Distribution (FCD) and of its Italian counterparts COOP, CONAD, Federdistribuzione – have drawn up a quality and food safety standard for retailer (and wholesaler) branded food products, which is intended to enable the assessment of suppliers' food safety and quality systems, in accordance with a uniform approach. This IFS Food applies to all the post-farm gate stages of food processing. Retailers from Austria, Poland, Spain and Switzerland also support IFS as their food safety standard.

Source: <http://www.food-care.info>, accessed 16.12.2008

Safe Quality Food (SQF) Program

SQF means Safe Quality Food. The SQF Program is a fully integrated food safety and quality management protocol designed specifically for the food sector. It has been the culmination of 10 years development and is designed specifically for the food industry with application at all links in the food supply chain.

SQF Certification provides an independent and external validation that a product, process or service complies with international, regulatory and other specified standard(s) and enables a food supplier to give assurances that food has been produced, prepared and handled according to the highest possible standards.

The SQF Codes, based on universally accepted CODEX Alimentarius HACCP Guidelines, offers the food sector a way to manage food safety and quality simultaneously.

The SQF program has been implemented by over 5000 companies operating in Asia-Pacific, the Middle East, United States, Europe and South America.

Source: http://www.sqfi.com/sqf_program.htm, accessed 16.12.2008

Dutch HACCP

In 1996 a group of Certification Bodies in the Netherlands developed a standard for food safety management, 'The Requirements for a HACCP based Food Safety System'.

The first version of this standard was published on 15 May 1996 by the National Board of Experts HACCP, a group of experts on Food Safety representing all parties in the (Dutch) food chain. Currently more than 1900 certificates are issued by the associated Certification Bodies.

Summarising the major strong aspects of 'The Requirements for a HACCP based Food Safety System':

- continuous participation of all parties concerned in food safety in the maintenance of the certification scheme, including governmental agencies responsible for food safety;
- pragmatic elaboration of the HACCP principles and steps stipulated in the Alinorm of the Codex Alimentarius in detailed requirements suitable to small as well as large sized food business organisations;
- mature and high levelled set of requirements of a certification scheme;
- practical experience with this system since 1996 and a vast number of certificates issued internationally;
- application of this scheme by a growing number of major, reputable and internationally oriented certification bodies, under the accreditation of a world wide recognised accreditation body (the Dutch Accreditation Council RvA).

Source:

http://www.foodsafetymanagement.info/net-book.php?op=cms&nnl=english&pageid=60&pageid_up=0

ISO 22000

ISO 22000:2005, Food safety management systems – Requirements for any organization in the food chain, provides a framework of internationally harmonized requirements for the global approach that is needed. The standard has been developed within ISO by experts from the food industry, along with representatives of specialized international organizations and in close cooperation with the Codex Alimentarius Commission, the body jointly established by the United Nations' Food and Agriculture Organization (FAO) and World Health Organization (WHO) to develop food standards.

A major resulting benefit is that ISO 22000 will make it easier for organizations worldwide to implement the Codex HACCP (Hazard Analysis and Critical Control Point) system for food hygiene in a harmonized way, which does not vary with the country or food product concerned.

[...]

ISO 22000 is therefore designed to allow all types of organization within the food chain to implement a food safety management system. These range from feed producers, primary producers, food manufacturers, transport and storage operators and subcontractors to retail and food service outlets – together with related organizations such as producers of equipment, packaging material, cleaning agents, additives and ingredients.

[...]

Developed with the participation of food sector experts, ISO 22000 incorporates the principles of HACCP, and covers the requirements of key standards developed by various global food retailer syndicates, in a single document.

Source: <http://www.iso.org/iso/pressrelease.htm?refid=Ref966>, accessed 16.12.2008

Annex 2: Main food assurance schemes in Europe

GLOBALGAP (formerly EurepGAP; see www.globalgap.org).

GLOBALGAP is a private sector body initially established by a group of European food retailers that sets voluntary standards for the certification of agricultural products around the globe. The aim is to establish ONE standard for Good Agricultural Practice (G.A.P.) with different product applications capable of fitting to the whole of global agriculture.

GLOBALGAP is a pre-farm-gate standard, which means that the certificate covers the process of the certified product from farm inputs like feed or seedlings and all the farming activities until the product leaves the farm. GLOBALGAP is a business-to-business label and is therefore not directly visible to consumers. Certification is carried out by more than 120 independent and accredited certification bodies in more than 85 countries. It is open to all producers worldwide. As of July 2008, around 92,000 producers worldwide have been certified to GlobalGAP standards or benchmarked schemes³⁷

http://www.globalgap.org/cms/upload/Resources/Presentations/Cologne/Moeller_Kristian.pdf

GLOBALGAP certificates are issued to individual farmers or farmer groups, with group certification currently accounting for around 70% of all certificates.

Assured Food Standards/Red Tractor Mark (UK; www.redtractor.org.uk)

Assured Food Standards (AFS) is an independent organisation established in the spring of 2000 to manage, develop and promote the Red Tractor Mark that was launched in the summer of the same year. The Red Tractor scheme covers chicken, pork, lamb, beef, turkey, fruit, vegetables, salad, flour and other cereal products, and dairy products. Red Tractor farmers are regularly assessed by independent inspectors to check that they meet exacting standards for food safety and hygiene, animal welfare and protecting the environment. AFS and the Red Tractor mark were set up to help harmonise the approach to standard setting and inspection throughout the supply chain in the UK. AFS is owned by all the links in the food supply chain, from farmers to retailers. AFS consists of 6 wholly-owned individual assurance schemes for combinable crops, produce, chicken, pig meat, milk, beef and lamb as well as a number of separate but equivalent schemes. The Union flag in the Red Tractor logo provides an independently verified consumer guarantee that the product comes from a UK farm.

There are more than 78,000 Red Tractor farmers in the UK, and most sell their produce to one or more of the 400 processors and packers licensed to use the Red Tractor on their packaging.

<http://www.redtractor.org.uk/site/REDT/Templates/GeneralWho.aspx?pageid=14>

Qualität und Sicherheit/QS (DE)

QS is a vertical quality assurance system covering the whole supply chain including input supply, production, processing, retail and marketing in the areas of meat (pork, beef, veal poultry), fruits and vegetables (incl. potatoes) and combinable crops. It was established in 2001 and has currently issued around 117 000 certificates. Its main goal is the assurance of food and feed safety according to legal requirements

³⁷ Owners of Good Agricultural Practice (G.A.P.) standards worldwide can seek to demonstrate equivalence with GLOBALGAP through an independent benchmarking process. Standards that have completed the entire benchmarking procedure, which is operated by accredited certification bodies (CBs) are fully recognised as GLOBALGAP equivalent. Currently, 13 standards are fully approved (mostly in the area of fruits & vegetables and flowers & ornamentals), 2 are provisionally approved (also for fruit & vegetables) and 8 are at the application stage (here also two for salmonides and some for meat) (see http://www.globalgap.org/cms/front_content.php?idcat=29).

(EU food law; hygiene regulations; etc.). At European level, agreements for mutual recognition have been reached with scheme owners in the Netherlands (GMP+, IKB, IKB 2004+), Belgium (GMP, Certus), Denmark (QSG) and Austria (Pastus+) in order to minimise duplication of audits and to facilitate trade in the internal market (see <http://www.q-s-info.de/>).

Annex 3: Internal market implications of certification schemes for agricultural products and foodstuffs³⁸ and corresponding case law

Certification schemes for agricultural products and foodstuffs may need to be assessed for Internal Market compatibility, even if there is no direct State involvement in the scheme. Cases include:

- if the scheme is linked to underlying safety or health legislation or builds upon it;
- if it organises market behaviour in a manner that is implicitly encouraged by the Member State e.g. rules imposed by sports federations.

Certification services are economic activities that fall within the remit of the EC Treaty. They should therefore benefit from the principle of free movement enshrined in Article 49 of the Treaty. ‘Legislative’ cross-border restrictions to their provision must therefore be justified by a general interest objective, be non-discriminatory and proportionate to that interest.

Services of retailers are also subject to Article 49 EC Treaty. They should therefore also benefit from the principle of free movement enshrined in Article 49 of the Treaty. Since Article 49 applies to both the export and the import of services a user (farmer) of such services can contest a restriction that dissuades him or her from having access to those services.

The Commission actively encourages Internal Market compatible certification schemes. For example, in the services sector, the recently adopted services directive encourages the establishment of such codes at European level. A similar provision is to be found in the e-commerce directive. The Commission also supports the functioning of schemes by contesting national restrictions to cross-border certification services³⁹. The aim is to ensure that certification costs remain or become affordable. Where national schemes with established brand recognition exist, in order to avoid any Internal Market compatibility problems the following conditions should be met:

- Non-domestic EU suppliers should be able to benefit from these schemes on the same conditions as national suppliers.
- Non-domestic EU suppliers that have been certified to the same objective quality levels in their home Member State should benefit from the principle of mutual recognition and not be subject to a second round of certification.
- Food products from one Member State and their ‘mark’ should not be restrained from entering another Member State to compete with the local mark.

³⁸ based on a presentation given by Jean Bergevin, DG MARKT, at the Food Quality Certification conference in February 2007, see http://ec.europa.eu/agriculture/events/qualityconference/bergevin_en.pdf

³⁹ European Commission Press release IP/09/187 of 29/01/2009: Following infringement proceedings against Germany, the Court of Justice on 29 November 2007 (Case C-404/05, Commission v Germany; also similar judgment in case C-393/05, Commission v Austria) declared that Germany was in breach of Article 49 of the EC Treaty concerning the free provision of services, by requiring private inspection bodies of organically-farmed products approved in another Member State to maintain an establishment in Germany in order to be able to provide inspection services there. Germany complied with the Judgment of the Court by recently amending its legislation so that private inspection bodies in the field of organic production of agricultural products registered in other Member States are no longer obliged to establish themselves in Germany in order to be able to provide inspection services there. This will allow for cross-border provision of such services.

Case-law prevents certification schemes that conceal barriers to the Internal Market

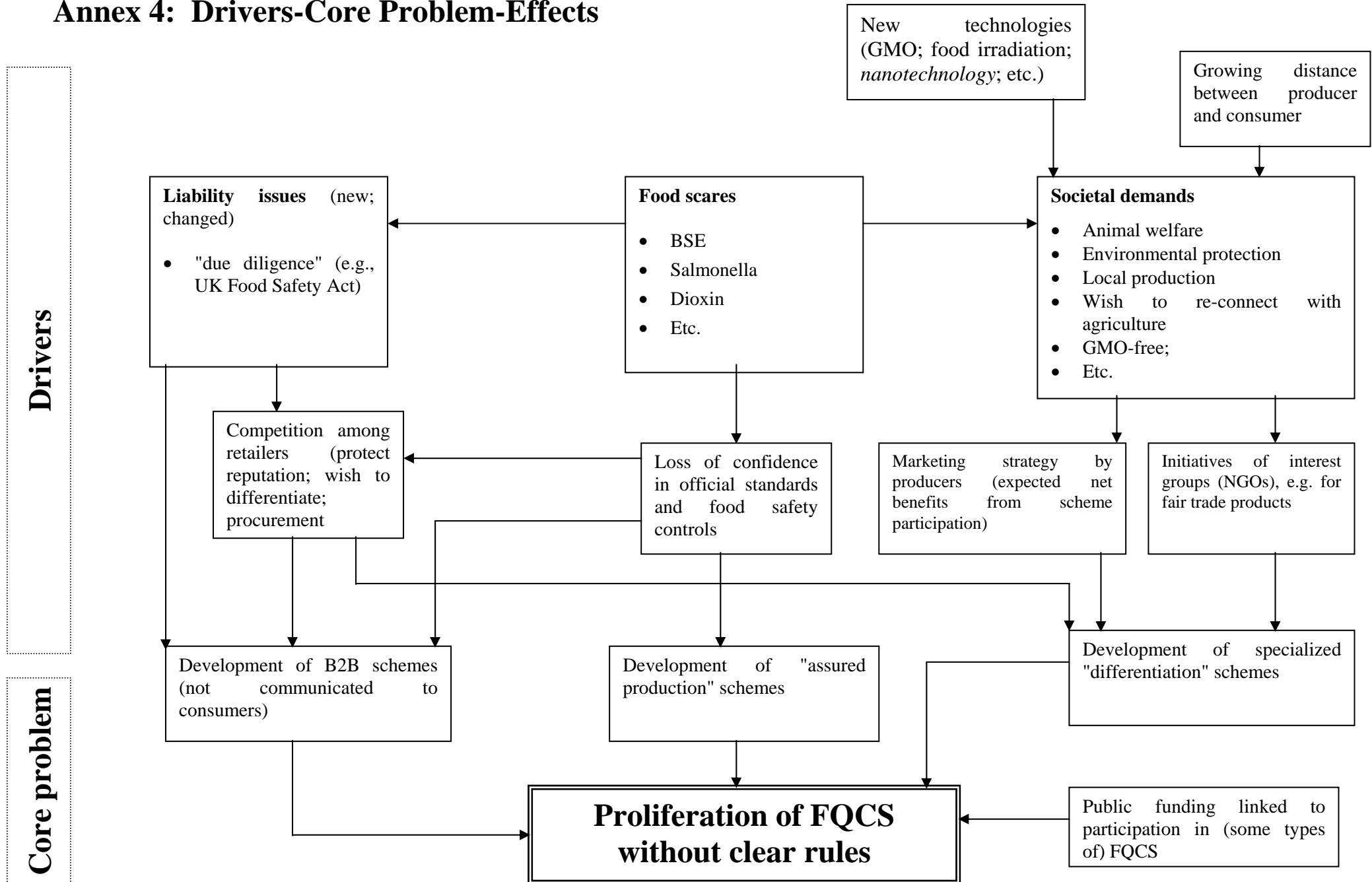
It should be stressed that in standing case law, the Court of Justice held that under Article 28 of the Treaty, all trading rules enacted by Member States which are capable of hindering, even indirectly or potentially, intra-Community trade, are prohibited. It considered in this context that a label laid down at national or regional level should be open to any product fulfilling specific objective criteria (e.g. animal welfare requirements, quality of raw materials used, chemical or microbiological properties etc...), irrespective of the concrete origin of such product. The Court accordingly dismissed a series of labels laid down by Member States that unduly contained such origin requirement, as being not consistent with the aforementioned article 28 of the Treaty (see e.g. the "CMA" judgement of 5.11.2002, case C-325/00, Commission v. Germany, as well as the "labels régionaux de qualité" judgement of 6.3.2003, case C-6/02, Commission v. France).

The Court of Justice indicated in this context that the fact that the use of a label is optional does not mean that it ceases to be an unjustified obstacle to trade, since such label would still unduly promote the marketing of national or regional products of a single Member State.

Although, admittedly, a label might be justified under Article 30 of the Treaty, as an exception to the single market, the Court made clear that a scheme encompassing all agricultural products or foodstuffs originating from a Member State would obviously not qualify as a geographical indication. It should also be noted in this context that the definition of PDOs and PGIs laid down in Article 2 of Regulation (EC) No 510/2006 (the PDO-PGI regulation), should be read on the same line. According to the standing position of the Commission, the PDO-PGI regulation is the exclusive legal instrument available for the protection of geographical indications falling under its scope.

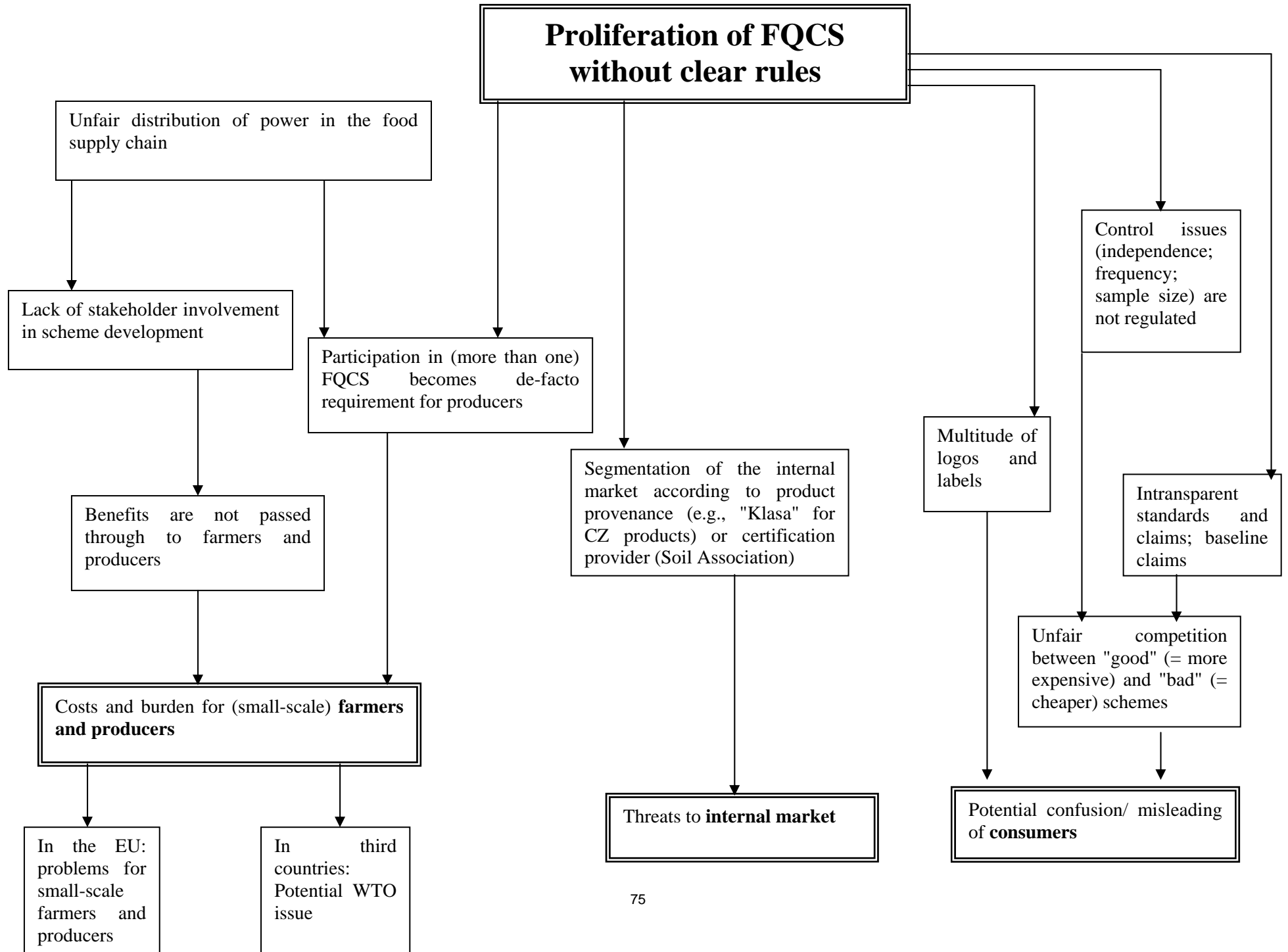
see http://ec.europa.eu/agriculture/quality/policy/workingdocs/fqcs_en.pdf, p. 7.

Annex 4: Drivers-Core Problem-Effects



Core Problem

Effects



Annex 5: Why are food safety and quality standards implemented?

A well-functioning market provides incentives for firms to supply products that embody the characteristics of safety and quality that consumers demand, both because firms derive greater profits from doing so and because their reputation is critical for repeat sales (Mitchell, 2003). Under certain conditions, however, markets may fail to provide the safety and quality that consumers demand or that is socially desirable.

For example, consumers may be unable to judge the safety or quality of a particular food product at the point of purchase or prior to consumption. Because greater safety and quality can increase costs for firms, this lack of information may reduce the firm's incentive to incur those costs. Firms that have a greater level of information about the safety or quality of the products they supply may be able to gain a strategic advantage over consumers or over their competitors, leading to inappropriate price signals or false product differentiation on the basis of safety or quality. This situation is compounded by the fact that the safety and quality characteristics associated with food are typically complex and significant costs can be imposed on consumers when searching for products that meet their own particular demands and assessing their actual characteristics. Such transaction costs can be an impediment to market development.

When consumers eat unsafe food they not only impose costs on themselves (i.e. loss of income for time spent away from work), but they also impose broader costs on society as a whole, through the health care system. Normally, consumers do not take such costs --what economists call 'externalities'-- into account when choosing the foods they buy and thus they tend to demand a lower level of food safety than society as a whole would prefer. Conversely, there can be positive externalities, benefits that accrue to other parts of society beyond the consumers themselves. One example is the protection of the environment when consumers buy 'environmentally friendly' products.

The government may implement food safety or quality standards in an attempt to address such market failures, as a means to achieve levels of safety or quality that are socially desirable and to reduce the associated costs. In extreme cases these may take the form of absolute bans on products. More generally, however, standards specify the ways in which food products are produced and/or their characteristics (for example ingredients, storage conditions etc.). In the latter case, governments may specify the safety and/or quality characteristics of the end product, but leave firms free to choose the most appropriate way in which to grow or manufacture such products. Further, in some cases they may also specify the information that must be disclosed to consumers and the format for this information.

This 'market failure' perspective presents public standards as instruments that correct inefficiencies in markets of food safety and quality. However, even a cursory observation of the prevailing standards environment provides illustrations where public standards have been implemented in the absence of any apparent 'market failure' or some other action may have been able to correct the failure at lower cost. The political economy perspective on standards acknowledges that public authorities are influenced by the interest groups their actions affect, whether private businesses, consumers or taxpayers, and that the standards they implement will reflect, at least in part, the power of these various actors. Thus, it is acknowledged that such private interests can 'capture' regulatory processes and steer them in directions that are to their economic advantage. In such cases, public standards can actually aggravate existing market failures and have considerable distributive impact.

Private standards are implemented by businesses and other entities, individually or collectively. Such standards evolve for very different reasons (see for example Henson and Caswell, 1999). Often they are devised to enhance economic efficiency, by facilitating communication between buyers and sellers or by ensuring the compatibility of product components or products that are consumed jointly. Or they can be the basis of the competitive strategies of firms -- a means to communicate with consumers and enhance reputation. Market signals are sufficient to induce the development of private standards. The role of the government is to ensure that such standards do not constitute or conceal anti-competitive practices.

Source:

http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_challenges_synthesisreport.pdf, p. 33

Annex 6: The evolving debate around climate change/carbon labels

Growing concerns about climate change have led to various attempts at calculating the 'carbon footprint' of a product and conveying this information by means of a label, with the aim to enable consumers to judge greenhouse gas emissions caused by the production and transport of the products they buy.

Some examples (see <http://www.climatechange.org/content.asp?ContentID=5828>):

UK: UK's Carbon Trust has calculated the product carbon footprint (PCF), of over 75 products since 2006 under its pilot Carbon Reduction Label scheme. The Carbon Reduction Label displays the product's carbon content and gives an average carbon content for the overall product group to provide context for comparison. Following the conclusion of the pilot scheme, six UK companies, including Innocent Drinks, Pepsico and UK supermarket chain Tesco, have officially signed up selected products to the UK Carbon Reduction Label.

France: The first French companies to introduce voluntary carbon labelling have been supermarket chains Casino and E. Leclerc. Casino adopted a Life Cycle Analysis (LCA) methodology in early 2006. The resulting 'l'Indice Carbone,' label, which displays the carbon content of individual products, can be found on 26 of its own brand products. The retailer aims to label some 3000 products in total. French retailer E. Leclerc's carbon labelling pilot scheme was launched in April this year in two stores in Northern France and included a total of 20,000 products.

Switzerland: Switzerland's top supermarket chain, Migros, embarked on a product carbon labelling programme in 2007. Consumers can now find seven Migros own-brand products carrying the Climatop carbon label. A further 10-12 are expected to carry the label in coming months. Rather than displaying product carbon content, the label provides confirmation that the product is 20% more carbon efficient than its counterparts within the same product category. MyClimate, the carbon offset company that carries out the carbon calculations on Migros' products, uses a hybrid "economic input-output life cycle analysis" (EIO-LCA) approach involving a detailed LCA on unique aspects of each product and EcoInvent, a global life cycle inventory (LCI) database for calculations on more generic aspects.

United States: In the US, the Washington-based Carbon Fund, an independent non-profit carbon offset provider, developed the 'Certified Carbon Free' label in collaboration with the Edinburgh Center for Carbon Management on the basis of ISO LCA standards, the GHG Protocol and the UK Carbon Trust's (2007) Carbon Footprint Measurement Methodology. Six products, including those of drinks manufacturer Monarch Beverages and organic sugar company Florida Chrystals carry the label with a further five products currently under-going the LCA process. Rather than displaying product carbon content, it indicates that the products' carbon footprint has been calculated, is continually monitored and reported and that the carbon is being offset.

Separately, the California-based Climate Conservancy, a spin-off from Stanford University, established the Climate Conscious label. Using LCA methodology, the label provides a rating (bronze, silver, gold) rather than displaying specific CO₂ content.

Canada: CarbonCounted, a Toronto-based non-profit organization, developed an online database web application, CarbonConnect, which allows companies to calculate PCFs according to existing standards. Once the carbon sources have been certified by CarbonCounted's certified auditors, the company can download the 'Carbon Counted' logo, which displays the product's combined CO₂ and CO₂ equivalent content. Currently, 40 companies, including Standard Chartered Bank and investment bank UBS carry the CarbonCounted label.

Various other projects are in the pipeline, amongst others in Japan, South Korea, Germany, Sweden, and China.

CO2 labelling of food: (How) can consumers consider climate impact in their food purchases? (DuVo study, 2008) http://www.duvo.nl/files/file/CO2_labelling_of_food4ec0b9.pdf

"[...] label initiatives have been launched in a number of north-west European countries with the aim of giving consumers insight into the energy consumption and/or climate burden related to food production. At the end of 2008, none of those initiatives had resulted in broad application. Labelling experiments are taking place in some segments; several sample products list CO2 emissions, while others specify whether or not a product was transported by air. [...]"

The form that the label initiatives take varies from number-based (how many grams of CO2) to symbols ('transported by plane') or logos. Relative scores are also used, analogous to the Energy Label for motor vehicles and appliances. The segment of the lifecycle that has been included in calculations by the various initiatives varies from packaging only to the entire lifecycle, including the disposal and waste phase. In general, labels are tested on simple (fresh) products. Almost no examples are available of composite products (like soup and packaged meals) that have been labelled.

Various methods can be used to calculate the environmental impact of food. The methods generally include some form of product lifecycle analysis. [...] It is often difficult to compare or compile the data because of the differences between datasets, particularly in the methodology and parameters used to express environmental impact. [...] In terms of the environmental burden of dairy farming, for example, agreements need to be reached to coordinate what percentage of the impact should be attributed to milk production, and what percentage should go to meat production.

A single standard method is required if the aim is to compare environmental burden values directly. CarbonTrust, DEFRA and BSI have taken the initiative to develop an international standard for the "Carbon Footprint" expressed in CO2 equivalents. [...]"

It is theoretically possible to calculate the environmental burden at the level of an individual product. Conducting such analyses and adapting them to the frequently changing production chain or product composition is often an expensive exercise [...] After all, the environmental burden caused by the selfsame product may vary widely: There are different varieties of a crop, which may be cultivated in different regions in the world with different production techniques. Furthermore production seasons may vary, the weather is variable as well as the mode of transport, the product composition, the storage mode, as well as the packaging.

These many variables, the absence of a uniform system and the lack of sufficient validated datasets currently make it practically impossible to collect reliable data. It can therefore be stated that it is not feasible at this time to determine the product-level environmental burden on any major scale, so it would not be useful to base consumer information on that principle. [...]"

In designing methods of communicating about energy consumption and greenhouse gas emissions in relation to food, it is important to ensure that the chosen method does not lead to negative consequences for other aspects related to the environment or sustainability, such as water consumption, land use; health, animal welfare or fair trade. Some choices may be diametrically opposed. For example, improving animal welfare could lead to increased energy consumption. The air-freighted label draws attention to the carbon consequences of air freight without placing that issue in the context of the alternatives and without conveying the development benefits for the producers – an issue which the consumer might have given weight to, had it been raised.

Annex 7: Private voluntary standards and the World Trade Organisation (WTO) Committee on Sanitary and Phytosanitary Measures

The Committee on Sanitary and Phytosanitary Measures (SPS Committee) deals with government regulations in the areas of food safety, animal and plant health. At these meetings, WTO member countries have the opportunity of raising specific trade concerns, e.g. if they believe that another country's sanitary and phytosanitary (SPS) measures are more trade-restrictive than necessary for health protection. In June 2005, St. Vincent and the Grenadines raised concerns about GLOBALGAP (formerly EurepGAP) pesticide requirements for banana importation, and the relationship between GLOBALGAP and official EU requirements. Other developing countries shared this concern, wondering what alternatives were available to affected developing countries. The EU's response was that GLOBALGAP standards were not official EU requirements and even if they went beyond official EU regulations, they were not in conflict with EU legislation. [...]

The private standard debate within the SPS Committee

Private standards have repeatedly been discussed in the SPS Committee. The discussions have focussed on three themes:

- **Market access:** Some say that standards set by the private sector can help suppliers improve the quality of their products and gain access to high-quality markets. Others argue that private standards can be more restrictive (e.g. requiring lower levels of pesticide residues) and more prescriptive (e.g., accepting only one way of achieving a desired food safety outcome) than official requirements, thus acting as additional barriers to market access.
- **Development:** The costs of complying with private standards, and the additional costs of certification, sometimes for multiple sets of standards for different buyers, can be a problem especially for small-scale producers in developing countries.
- **WTO law:** While some are of the view that setting standards for the products they purchase is a legitimate private sector activity and not a government one, others insist that the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) makes governments in importing countries responsible for the standards set by their private sectors. The latter are concerned that these standards do not meet WTO requirements such as transparency and scientific justification of food safety measures and are more trade-restrictive than necessary to protect health.

Health protection and requirements from the government

The concerns of governmental trade officials (particularly in developing countries) of the proliferation of private standards have to be seen in the context of the SPS Agreement [...]. The basic requirement under the SPS Agreement is that measures can be taken only if necessary for health protection, with scientific evidence required to demonstrate this "necessity" [...].

Under the SPS Agreement, the preferred way of meeting the justification requirement is through the use of internationally developed food safety, plant and animal health protection standards [...].

Alternatively, governments can justify national standards if they are based on an appropriate risk assessment, but the measure imposed must be no more trade restrictive than required to achieve the desired level of health protection. [...]

Importantly, the SPS Agreement contains a number of provisions to ensure the transparency of SPS requirements. Not only must governments give advance notice of their intention to modify SPS measures, but they must take into consideration any comments submitted by trading partners, provide associated documents upon request (including risk assessments and the evidence underpinning measures), and ensure that all measures are published promptly.

Food safety requirements are subjected to a different set of legal obligations than what is applied to quality and environmental measures or measures adopted to avoid the deception of consumers. This, in addition to the notification requirements, pushes governments to identify objectives and to clearly separate and distinguish between requirements imposed for health protection and those imposed for other purposes. [...]

Government SPS requirements versus private standards objectives

In contrast to these globally negotiated disciplines on governmental actions, private standards are seen by many developing countries as going in exactly the opposite direction. The private standards address a mix of SPS and other objectives – including social and environmental concerns that are not related to food safety or plant/animal health protection. These private requirements may have no scientific justification, but may address consumer perceptions of what is safe or unsafe, or may reflect production practices common in developed countries but unknown and perhaps unsuitable for developing country producers. [...]

Developing country concerns

[...] There are growing concerns in developing countries regarding the effects of these private standards and the degree of their trade restrictiveness. Suppliers who produce for the export market (toward industrialised countries) face difficulties in complying with private standards such as those required by global retailers and several cases show many have dropped out of the market.

Many developing countries find it difficult to produce goods that meet the internationally agreed food safety standards and when they do meet standards, this is often still insufficient to gain access to many markets, as the private standards set requirements well in excess of those of the Codex, IPPC or OIE.

Private retailers have often imposed and modified their requirements without any advance notice, and with no opportunity for producers in other countries to comment or complain. Recently, some efforts, including the smallholder taskforce at GlobalGAP, have begun to move in a different direction. However, compared to the disciplines that the SPS Agreement places on government regulations, there is little transparency in the development of private standards, and there is no forum for challenging private standards comparable to the SPS Committee or the dispute settlement mechanism of the WTO.

Stanton and Wolff, 2008. <http://www.agrifoodstandards.net/en/filemanager/active?fid=134>

Annex 8: The ISEAL Code of Good Practice

The ISEAL Alliance defines and codifies best practice, at the international level, for the design and implementation of social and environmental standards systems. ISEAL Alliance members are committed to meeting this best practice in order to ensure their systems are credible and accessible. The ISEAL Alliance provides a global framework for the social and environmental standards movement to coordinate, cooperate and build its capacity to deliver positive global impacts.

The vision of the ISEAL Alliance is to create a world where environmental sustainability and social justice are the normal conditions of business.

The mission of the ISEAL Alliance is to strengthen credible and accessible voluntary standards and to promote them as effective policy instruments and market mechanisms to bring about positive social and environmental change.

Credibility Tools

The rapidly growing number of voluntary standards and labels emerging into the marketplace makes it difficult to differentiate credible standards from other claims. The ISEAL Alliance aims to address this issue by creating the tools necessary to improve how voluntary standards are set and to evaluate the credibility of these initiatives.

One such Credibility Tool is the ISEAL Code of Good Practice for Setting Social and Environmental Standards. It is referenced by a range of governmental and inter-governmental guidelines as the measure of credibility for voluntary social and environmental standards. ISEAL Alliance members are prepared to make changes to their practices as a result of learning from each other and meeting the highest common denominator across the board in all aspects of the standard-setting and revision process. The Marine Stewardship Council has for example made changes to its stakeholder consultation process and the Rainforest Alliance has created new guidelines for developing local indicators that ensures its sustainable agriculture standards are accessible and locally relevant.

Compliance with the ISEAL Code of Good Practice ensures that organisations create:

- standards that are developed in transparent, multi-stakeholder processes,
- certification schemes that consumers can trust, and
- relevant, high level performance criteria that create genuine social and environmental change.

The normative documents from which this Code draws are ISO/IEC Guide 59 Code of good practice for standardisation, and the WTO Technical Barriers to Trade (TBT) Agreement Annex 3 Code of good practice for the preparation, adoption and application of standards.

<http://www.isealalliance.org>

Annex 9: Water labelling

Promoting sustainable water use through labelling

The problem

'When will the water run out?' "... the authors have estimated the water footprint of everyday food and drink, which encouragingly shows that one litre of beer consumes less water (300 litres) than one litre of orange juice (850 litres). One kilogram of coffee is reportedly more thirsty (21,000 litres of water) than one kilogram of hamburger (16,000 litres)."⁴⁰

Voluntary initiative:

March 23, 2008, PepsiCo Promotes 'Positive Water Balance' On Labels. PepsiCo India is changing all of the labels on Aquafina, its bottle water brand, to announce that by next year, PepsiCo India will be a positive water balance company. This is the first time PepsiCo has communicated a CSR initiative through its packaging, according to the Economic Times. The labels will urge consumers to partner with the company to "use water wisely so it could be enjoyed by future generations." PepsiCo says it has reduced water usage in its manufacturing plants by over 60 percent, and that it has saved 2 billion liters of water in the process, the article reports. PepsiCo may extend the messaging to other brands at a later stage.⁴¹

'Water footprint' (methodology for measuring)

By definition, the water footprint of a business is equal to the sum of the water footprints of the business output products. The supply-chain water footprint of a business is equal to the sum of the water footprints of the business input products.⁴²

Obligatory labelling:

Anders Berntell, head of the Stockholm International Water Institute (SIWI): "Some kind of labelling of food products when it comes to their water requirements could be a first step," he said. "Then people could see for themselves." Labels might, for instance, highlight water needed for irrigation beyond natural rainfall. ... Berntell said that he knew of no countries planning water labelling of foods.⁴³

⁴⁰ Climate change, increased industrial demand and wanton wastefulness: is 'peak water' upon us? 20.8.2008
<http://www.guardian.co.uk/environment/blog/2009/jan/22/water-climate-change>

⁴¹ <http://www.environmentalleader.com/2008/03/23/pepsico-promotes-positive-water-balance-on-labels>

⁴² Hoekstra, A.Y. (2008) The water footprint of food, In: Förare, J. (ed.) Water for food, The Swedish Research Council for Environment, Agricultural Sciences and Spatial Planning (Formas), Stockholm, Sweden, pp. 49-60.
<http://www.waterfootprint.org/?page=files/CorporateWaterFootprints>. See also: 'An improved water footprint methodology linking global consumption to local water resources: A case of Spanish tomatoes' A.K. Chapagain, S. Orr

⁴³ Interview - 'Water Labels' on Food Could Ease Shortages. 23.8.2006.
<http://www.planetark.org/dailynewsstory.cfm/newsid/37795/newsDate/23-Aug-2006/story.htm>

Annex 10: Stakeholder views expressed in the consultation of the Green Paper on agricultural product quality

Question 14: Are there any pressing issues for which existing schemes and arrangements are inadequate and for which there is a strong case for an EU level scheme? Should the Commission consider mandatory schemes in certain cases; for example, those with a complex legal and scientific background or those needed to secure high consumer participation? If so, how can the administrative burden on stakeholders and public authorities be kept as light as possible?⁴⁴

The majority of respondents are against introducing new EU schemes (although some make specific reference to mandatory schemes and don't express their views of voluntary schemes – see footnote). Some see possibilities for new schemes if certain conditions are fulfilled, and 24% of all respondents (= 50 replies) are of the opinion that new schemes are needed in certain policy areas.

The negative opinion is most pronounced among **national authorities, the farming community, trade and processing organisations**. Only among regional/local authorities, retail organisations, and environmental NGOs is there a majority view that new schemes would be useful (however, total number of answers in these categories are small). Consumers (incl. consumer organisations) are evenly split between proponents and opponents of new schemes, as are third countries. Among academic organisations and other respondents, a small majority can be found against new schemes.

Arguments against new schemes include:

- additional new schemes would confuse consumers;
- quality issues should primarily be in the hands of private operators; schemes will develop as private initiatives, no Commission involvement is necessary. The market is more flexible and responsive to develop products according to consumer demands, without excessive bureaucracy;
- new schemes are not compatible with "better regulation" principles;
- (proliferation of) certification schemes are (is) costly for small-scale operators; scheme participants have no advantage in the market;
- current schemes are already above international market standards;
- legal minimum standards must apply to all products and should not be covered by a scheme; mandatory issues to be addressed through legislation and not through a scheme;
- there is no scientific basis for any new scheme;
- there is a danger that schemes and labels are seen as a way to raise production standards;
- against an EU-wide scheme for products from "high nature value areas" which would be too complex and costly to administer, with limited consumer interest in an EU-wide label for such products

Some respondents proposed **criteria for deciding whether a new scheme would be needed or how it should operate:**

- only take action if the size of the problem justifies the additional administrative burden
- only take action if private initiatives threaten the functioning of the single market
- any new scheme should be science based
- new schemes should not hinder the functioning of the internal market

⁴⁴ Please note that the three sub-questions were in general perceived as one single question. Some respondents refer specifically to the need of a new mandatory scheme, while in the majority of cases it is unclear whether respondents mean voluntary or mandatory schemes.

- schemes with complex legal and scientific background should be governed by uniform regulations at EU level
- any new scheme must correspond to policy needs
- before developing any new scheme, first conduct an in-depth consumer study
- try to develop coherent, comprehensive schemes
- need simple and effective schemes with full transparency, assured through participation of farmers in the definition of rules
- new schemes should not lead to higher production costs, certification expenses must be shared by the entire sector; limit costs by facilitating grouping of producers; adapt scheme requirements to enterprise size
- don't include general management practices in certification schemes which makes them too complex
- preference should be given to labelling of single issues (animal welfare; mountains) rather than complex issues (organic)
- use "Système de Garantie Participatif"
- mandatory schemes should be reserved for food safety or health issues

Suggestions were also made on **what to do instead of developing new EU schemes:**

- simplify and/or harmonise existing schemes; increase scheme transparency; integrate new criteria into existing schemes
- introduce fewer but horizontal controls based on risk analysis
- better connect quality systems and official inspections as well as various types of inspections in the fruit & vegetables sector; take scheme participation into account for the allocation of subsidies;
- develop agreed guidance documents for important policy issues (e.g., health, environment, animal welfare, fair trade, traditions, regionality)
- give more visibility to sustainable and organic agriculture
- the EU should allow labelling schemes (e.g., conservation grazing) to be supported by the Member States and exempt from the requirement for State Aid notification where the protection of the environment is a primary aim
- focus more on co- or self regulation and consultation and avoid schemes which have no scientific basis and mislead the consumer
- use local administrations for recognising local products, free certifications by local authorities
- improve communication about existing quality measures and schemes before starting new schemes
- develop a global / comprehensive horizontal approach to quality products rather than multiplying schemes;
- start discussion on sustainable development at EU and global level; develop an integrated approach to sustainable production
- develop different national criteria and actions in order to promote the consumption of local and regional foodstuffs
- harmonise legislation in MS on integrated farming
- integrate and reduce certification burden for food producers
- develop guidelines for the auditing of certification schemes;
- establish a standard product nomenclature where a product name does not mislead the consumer through similarity with the national name of the translated version (e.g. “szalámi” (salami), “kolbász” (sausage), “párizsi” (Lyoner sausage), etc.
- animal welfare rules lead to competitive disadvantage for EU farmers and should be accompanied by a ban of non-complying imports
- begin by enforcing existing rules, e.g. on animal welfare

- harmonise labelling rules on non-GMO products
- integrate rules on environment, climate change and ethical issues in baseline requirements;
- establish observatory on evolution of agricultural practices
- minimum standards that are not met should be mentioned on the label;
- extend the scope of Regulations 509 and 510 to cover all products

However, some respondents also made suggestions of issues that should either be addressed in the context of a **new EU scheme** or for which **common definitions at EU level** (not necessarily through a new scheme) would be needed. These include:

- integrated farming/integrated production
- environmentally friendly products / use of pesticides; biodiversity; water preservation
- products making full use of local sustainable resources (water, feed, etc.)
- EU sustainable agriculture label
- products from high nature value farming (reserved for small-scale producers)
- common definitions for the terms "mountain", "island" and "alp"
- animal welfare
- climate change / low carbon emissions / energy use of production and transport
- superior product quality (similar to Label Rouge)
- GMO-free food / GMO- free feed
- products from national and/or regional parks
- local traditional products / typical products from a specific region
- compliance with EU farming requirements
- ethical and socially responsible criteria especially for small-scale producers
- worker welfare scheme /social criteria of production
- stricter organic livestock regulation
- a scheme for products from local breeds / protection of local breeds / products from animal breeds in danger of extinction
- a scheme for sparsely populated regions with a low economic activity and unfavourable agroclimatic conditions
- bio-dynamic farming
- EU basic, EU extra and EU superior quality
- a framework communicating quality parameters from feed to food
- harmonisation of requirements for temperature of storage and transport of foodstuffs
- health
- (country of) origin; EU origin
- mandatory labelling of farming methods for meat and dairy products

Question 16: Could EU guidelines be sufficient to contribute to a more coherent development of certification schemes?

Across all categories, the **majority of respondents is of the view that EU guidelines would be sufficient** to contribute to a more coherent development of certification schemes. This opinion is most pronounced among national authorities; regional and local authorities; the farming community; processing organisations; consumers and general public (even though a sizeable number here thinks that guidelines are not sufficient); and academic organisations. Somewhat more undecided are trade organisations and NGOs, but overall numbers of respondents in these categories are small.

Respondents who **disagreed with the idea of guidelines** either thought that stricter measures would be necessary (legislation) and that guidelines would not be sufficient to address the coherent development of certification schemes (an opinion most pronounced among the consumers and general public group); or they thought that not even guidelines would be needed since the market is capable of solving the problem without any sort of official intervention (most prominent among the farming community). The latter group points to ongoing harmonisation initiatives in the private sector or at the international level which make EU involvement unnecessary (some even say that EU guidelines will do more harm than good).

Criteria mentioned most frequently for inclusion in guidelines are:

- guidelines based on international standards (ISO 17000 Series and EN 45011);
- respect of international obligations (WTO);
- harmonisation of accreditation, certification and control procedures and requirements among Member States;
- independent certification by accredited bodies;
- internal audit of schemes;
- scheme specifications should be based on objective and scientifically sound criteria;
- scheme specification should be publicly available;
- involvement of stakeholders in scheme development;
- openness of scheme to all producers;
- make special arrangements for small-scale farmers and producers;
- scheme requirements should go beyond legal baseline.

Other comments made in this context refer to the need to spread cost of scheme participation between all actors in the food supply chain, and the need to consult widely and internationally for the development of guidelines.

Question 17: How can the administrative costs and burdens of belonging to one or more quality certification schemes be reduced?

The most frequently mentioned suggestions for reducing the administrative costs and burdens of belonging to one or more quality certification schemes can be grouped into

- (a) **ideas related to the further development of schemes:** encourage mutual recognition of similar schemes; develop one comprehensive scheme that makes all others redundant; involve farmers and producers in scheme development ;

- (b) **ideas related to the certification and control process:** use group certification for small-scale producers; combine audits for different schemes in a single combi-audit package; take scheme participation into account for the purposes of official controls (e.g., for cross-compliance); encourage competition in the certification market to drive prices down; use royalty system to shift costs from small to large producers;
- (c) **ideas related to financial support of scheme participants:** provide subsidies for small-scale producers participating in certification schemes (e.g., through Rural Development or promotion programmes); give tax returns (fiscal incentives) to producers participating in certification schemes; certification of small-scale producers to be done by public authorities (for free); waive certification fees for producers from third countries; make sure that the value added through scheme participation goes to the producers rather than to the certifying bodies;
- (d) **ideas related to information and communication:** inform consumers about scheme benefits so that they are willing to pay higher prices; develop common platform for background farm data to be used by all certification and control bodies; use better IT-programmes; establish online consultation with certification body

Some respondents stated that EU guidelines for certification schemes will facilitate harmonisation and mutual recognition of schemes and thereby reduce costs. However, other respondents felt that the EU has no business in interfering with the costs of these private certification schemes. Since schemes are private, participation is voluntary, and schemes will only survive if benefits are greater than costs. It was also mentioned that downward price pressure among certification schemes can lead to poor inspections and loss of consumer trust.

One respondent pointed out that it will be difficult to mutually recognise the individual quality characteristics of private certification schemes (which can be very different).