



IMPROVING THE EU ECOLABEL – DISCUSSION PAPER FOR THE BELGIAN PRESIDENCY MEETING 2010

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1. Introduction

Investigations by the NGO FERN on a controversial Indonesian paper producer with an EU Ecolabel license, referred to as the *Pindo Deli case*, led to widespread negative publicity against the EU Ecolabel. Some of the problems highlighted in the FERN reports were caused by weak criteria on sustainable forest management but others concerned more general aspects of the EU Ecolabel scheme. The report and its findings triggered a discussion within the NGO and consumer organisation community. We identified some general challenges in the implementation of the EU Ecolabel in relation to transparency and its overall credibility.

Therefore, we would like to take the Belgian Presidency Meeting 2010 as an opportunity to discuss how the credibility and transparency of the Ecolabel scheme could be improved.

In particular, we identified the following problems:

- It seems that there is no common understanding on how much information a Competent Body is allowed to or should disclose upon request of consumers or citizens organizations;
- There is no formal complaint procedure in place;
- It is not possible to identify on what basis the Ecolabel license has been awarded to the product and how the on-going compliance is checked by the Competent Body;
- There is no control system in place to ensure harmonized and correct implementation of the Ecolabel in all EU Member States.

2. Increasing transparency of the EU Ecolabel scheme

What kind of information is a CB allowed to disclose upon requests from consumers or citizens organizations? Article 10.6 of the Ecolabel Regulation rules the following:

The competent body which has awarded the EU Ecolabel to the product shall not disclose, or use for any purpose unconnected with the award for use of the EU Ecolabel, information to which it has gained access in the course of assessing the compliance by a user of the EU Ecolabel with the rules on use of the EU Ecolabel set out in Article 9.

It shall take all reasonable steps to secure the protection of the documents provided to it against falsification and misappropriation.

According to Karl Falkenberg¹ "*this requirement guarantees protection of applicant's commercial data*". It seems that CBs have been interpreting this article in a way that it is not allowed to disclose ANY information other than that the applicant has or has not fulfilled the Ecolabel criteria.

While we agree that it is necessary to protect the applicant's commercial data, we would like to raise the following concerns:

- a) Article 10.6 is formulated in a restrictive way and we think that it should be reformulated in the next revision of the EU Ecolabel Regulation.

¹ Director General of DG Environment, in a letter to FERN on 21 May 2010.

- b) The purpose of this Article is to protect commercial data of applicants against falsification and misappropriation. We fully agree that important and confidential commercial data has to be protected from misuse. However, we should differentiate between commercial data (e.g. the exact formulation of a product that could be copied by competitors) and information concerning the award of the Ecolabel.
- c) Like in the Pindo Deli case, consumers or NGOs will request basic information from Competent Bodies (for example on the types of proof that was provided by the applicant). If the CBs cannot disclose any information at all, it is very likely that all requests for information will end up in complaint procedures.
- d) We therefore think that a narrow interpretation of Article 10.6 not only inhibits a transparent implementation of the EU Ecolabel but also leads to burdensome situations for CB's and the Commission in cases of formal complaints that could have been easily avoided.
- e) Furthermore, we believe that Ecolabel license holders would support and benefit from increased transparency in the EU Ecolabel scheme. First they will be able to check on which basis the Ecolabel license was issued for their competitors and second because and increased transparency and credibility of the Ecolabel is beneficial for all license holders that use the Ecolabel as a marketing tool.
- f) We would like to stress that existing forest certification schemes publish summary reports of the operations they have certified while protecting strictly commercial data.

Summary of applications

Therefore, as a minimum it should be possible to provide the following information:

- Types of proof that has been provided for each criterion;
- If certificates have been provided as a proof, at least the name of the certification scheme should be indicated;
- On-site checks that have been undertaken according to Article 9.6. to verify the application;
- If a point system is integrated in the criteria, information on the amount and the breakdown of points that the applicant has achieved.

Ideally, this information could be publicly available (online) in a summary of a successful application. This would also support Article 4.2 of the Ecolabel Regulation which states that the rules of procedure of CBs *"shall be as such as to ensure transparency in the conduct of their activities as well as the involvement of all interested parties"*.

Annual reports

In addition, competent bodies could also publish annual reports that – inter alia – contain the following information

- Information about the current license holders (amount of licenses, name, product group, etc.);
- Activities undertaken to verify and monitor the ongoing compliance of license holders with the product group criteria (Article 10.2 and 10.3.);
- Documentation of all requests and complaints about licensed product;
- Documentation of withdrawn licenses and any breaches of license holders against Ecolabel criteria.

In this way, CBs can communicate on the EU Ecolabel and on their activities to the public. This would further increase transparency of the Ecolabel scheme and underline the benefits of a third party verified Ecolabel.

3. Formal Complaint Procedure

The investigations of the NGO FERN on the Indonesian paper producer Pindo Deli proved that there was no formal complaint procedure in place. We think that it is crucial to discuss how such a complaint procedure could be developed and how it could be communicated to consumers. As a first step, it will probably be useful to differentiate between requests (e.g. for information if the Ecolabel license of the company is valid) and a proper complaint (e.g. if a consumer thinks that the product should not have been awarded with the Ecolabel or does not comply with the criteria). It should be avoided that all requests are dealt as complaints. This would on the one hand be very burdensome and on the other hand not in the interest of a consumer or organization that only requests some basic information.

4. Ensuring correct and harmonized implementation

Currently, consumers and stakeholders have to trust CBs that the Ecolabel scheme is implemented in the same and strict way in all countries. However, there is no control system in place to guarantee this. One of the major benefits of the EU Ecolabel in contrast to other environmental labels is the fact that the criteria are verified by independent third parties – the Competent Bodies. For the credibility of the EU Ecolabel scheme it would be very important that all CBs are accredited and that their work is monitored and controlled. This could function through a top down approach, where a central accreditation body monitors the work of all CBs to ensure a harmonized and correct implementation of the Ecolabel Regulation and its product specific criteria. Alternatively, a system of peer reviews between CBs could be established. In this case a national CB would monitor the work of another CB. The current system only establishes (in Article 13) a working group of competent bodies to exchange information and experiences. However, this does not replace a peer review system as its sole purpose is the exchange of information.

It is important to mention that we do not have any serious indication to believe that some CBs are not implementing the Ecolabel scheme correctly or that Ecolabel licenses have been awarded in cases where they should not have been awarded. However, at the same time it is currently very difficult for NGOs and consumer organizations to evaluate how CBs are implementing the Ecolabel scheme. We believe that the strength of the Ecolabel originates in the third party verification done by CBs. For us it is critical that this element of third party checks also applies to CBs.

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