



Commission Proposals on the Marketing of Products: COM (2007) 37 and COM (2007) 53.

PP 07-01

Fair play for all economic operators

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Introduction

The Commission “Marketing of Products Package” consist of three legislative proposals. This paper relates to two of these, the proposed Regulation on accreditation and market surveillance relating to the marketing of products [COM(2007) 37] and the proposed Decision on a common framework for the marketing of products [COM(2007) 53].

These two proposals will set the legal framework for the revision of existing legislation as well as for the drafting of future legislation in the field of the marketing of products. It is essential that the new legal architecture fosters the efficiency of the market surveillance system with clear and enforceable obligations for all stakeholders concerned. The existing and future Community laws which will have to be aligned with this new framework for the marketing of products are fundamental for our industry, as they define product requirements in the field of safety or environmentally-conscious design.

CECED¹ sees the package as a good step in the right direction. However, it contains a major loophole that will lead to unfair competition between manufacturers of branded products and trading companies placing similar products on the market because it sets different obligations for the economic operators placing a product on the market².

We highlight four vital elements that should be addressed in the Commission’s Package. Failure to address these issues effectively will hamper fair competition and foster the importation of low quality, not fully compliant consumer products. This will undermine the overall quality of the market and sometimes even compromise consumer health and safety and/or the environment.

As a background it is essential to distinguish clearly between obligation and responsibility. The “Marketing of Products Package” lays down the obligations that must be met by those wishing to market products in the EU. Those obligations, of course, carry responsibility with them (notably remedies and penalties for those who fail to meet the obligations required). To be certain that everyone will have the same responsibility under the law, it is essential that everyone be subject to equal obligations for equivalent roles. The Commission proposal does not ensure that economic operators placing a product on the market face the same

¹ CECED represents the household appliance industry in Europe. Its member companies employ over 200,000 people, are mainly based in Europe, and have a turnover of about €40 billion. If upstream and downstream business is taken together, the sector employs over 500,000 people. Direct Members are Arçelik, BSH Bosch und Siemens Hausgeräte, Candy Group, De’Longhi, Electrolux Holdings, Fagor, Gorenje, Liebherr, Indesit Company, Miele, MTS, Philips, Saeco, SEB and Whirlpool Europe. CECED’s member associations cover the following countries: Austria, Belgium, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

² “Placing on the market” means the first making available of a product on the Community market (cf. the proposed Decision, article 6.2).

responsibility before national authorities. As a result it does not guarantee fair play for all economic operators. It is essential that this shortcoming be corrected.

1. Obligations for placing products on the EU market

All operators that place products on the European market must “ensure that these products comply with the applicable Community requirements” (the Decision, “whereas” 15), regardless of whether they are manufacturers, authorised representatives or importers³. Only this will give authorities the possibility of fully enforcing legislation.

The text proposed by the European Commission still contains an area for major improvement: equal obligations and thus equal treatment of economic operators. Today the obligations are not equal, and the proposal does not adequately address this problem.

There are two concerns:

- First, if legal obligations are not set equally for equivalent roles in the supply chain, there is a clear competitive advantage for free-riders;
 - i. because of the costs of ensuring compliance which they may avoid;
 - ii. because it will result in unequal legal responsibility and unequal remedies and/or penalties.
- Second, failure to achieve equal application of the rules to all products can lead to health and safety risks for consumers from non-compliant goods, or damage to the environment. Both are unacceptable outcomes.

Importers of “no-name” products from third countries are not negligible actors on the market for consumer goods. They must be under the clear obligation that a product they place on the market complies with the essential requirements of Community legislation and that the product is safe for use by the European citizen and respects the environment, among others.

CECED is highly critical of the statement that importers' “obligations in relation to the conformity of the product should be limited to certain control measures...” (the Decision, “whereas” 17) and urges the EU institutions to ensure that there is a clear obligation for all economic operators placing products on the EU market to introduce compliant products. This is the only way to maintain the most open market in global trade and to preserve the “European approach” to product standards and specifications, while coping with globalization of the economy.

Major recent pieces of Community legislation have addressed this issue squarely, getting the equation right for a sustainable and balanced global business system; that is to say, the Framework Directive for Eco-design of Energy-using Products (EuP), the Directive on the Restriction of Hazardous Substances in electrical and electronic equipment (RoHS) and the General Product Safety Directive (GPSD).

2. Traceability of products within the EU

The proposed Decision shows a commendable endeavour to ensure traceability upstream towards the product manufacturer, whether the product is sourced from within the Union or from an extra-EU

³ The legal texts use specific definitions that somehow diverge from common practice. For instance if the European branch office or subsidiary of a Japanese company imports its products from Asia, according to the legal text, they are importing, but as authorised representatives which implies that they are subject to the same obligations as manufacturers. As well importers are manufacturers when they place goods on the market under their own name even if the products were manufactured outside the EU (cf. article 6.3). Importers are those who have no relation with products they sell (cf. article 11).

location. Nevertheless, there is a “gap in obligations” along the global supply chain because EU jurisdiction is limited to its own territory. However effective the traceability system may be in identifying those who infringe the rules, there will be occasions when the guilty party is beyond **the reach of European jurisdiction**. As already mentioned, **it is crucial that enforcement authorities can easily identify the economic operator that places the product on the EU market so that the law may be enforced effectively**.

Extending traceability beyond this point is misleading and gives the impression that the ultimate responsibility for the compliance of products placed on the market by an importer lies with the original manufacturer. The responsibility must lie with the importer.

3. Consumer goods should be fully covered by the Regulation [COM(2007) 37]

Currently, the speed of the market and the volume of trade in consumer goods are higher than that of industrial goods. As a consequence, consumer goods are much more exposed to unfair competition from non-compliant products imported from non-EU countries than is the case for industrial goods. In fact, the trading of consumer goods does not require a level of know-how and expertise as high as for industrial equipment. Therefore, the possibility and probability that consumer goods may be traded without complying with the rules is much higher than for industrial goods.

The Proposal envisages the exclusion of consumer goods from the market surveillance system set up by the Proposal. Consumer goods would be brought under the umbrella of the General Product Safety Directive as far as health and safety of consumers are concerned. In our view, there is no rationale for such a provision. On the contrary, **consistency of market surveillance for consumer goods should be reinforced and this provision (proposed Regulation, Article 13§2) should be deleted to bring consumer goods fully under the scope of the Regulation**. Furthermore, it is illogical to exclude the health and safety provisions for consumer goods from this Regulation, whereas other provisions (such as electro-magnetic compatibility and environmental protection) are covered.

4. Involvement of stakeholders

The level of involvement of stakeholders in the market surveillance process should be increased. The Proposal should be amended in order to introduce the requirement for **Member States to consult stakeholders with a view to simplifying administrative procedures**.

Stakeholders should be involved in the process of control that follows the decision by market surveillance authorities to take restrictive measures against a product.

Stakeholders should also be involved in the supervision of the system of peer evaluation set up by national accreditation bodies so as to make this exercise as open as possible.