

Position Paper

Commission Working Document The 'Blue Guide' on the implementation of EU product rules Draft – Version 30 September 2013

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About BITKOM

BITKOM is the voice of the information technology, telecommunications and new media industry in Germany. BITKOM represents more than 2,000 companies, of which 1,200 are direct members. They include nearly all global players as well as more than 800 powerful small and medium-sized enterprises and a lot of founder-managed creative companies. BITKOM's members generate an annual turnover of 140 billion Euros in total, exporting high-tech goods and services worth 50 billion Euros per year.

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The European Commission has kindly invited interested stakeholders, Member State representatives and Commission experts to a meeting on October 25, 2013, dedicated to the revision of the Blue Guide on the implementation of EU product rules. The purpose of the meeting will be to discuss the new draft of the Guide. BITKOM would like to take the opportunity to provide comments on the current draft. The order of comments follows the numbering of the chapters in the draft Blue Guide.

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Offering a product in a catalog

2.2 *Making available*

2.3 *Placing on the market*

Chapters 2.2 and 2.3 state that a supply of a product "... includes any offer for distribution, consumption or use in the Union market which could result in an actual supply ...")

And

"A product offered in a catalogue or by means of electronic commerce is deemed to have been placed on the Union market when the catalogue or website directs its offer to the Union market"

"Any offer" (possibly even oral) is very different from the actual supply of a product. Especially for products that are not yet fully developed and have not undergone the conformity assessment procedures yet, it would be an unnecessary disadvantage if marketing (including offers in catalogs) could not start already in this early phase. Usually, the marketing begins before the completion of development, e.g. to determine the envisaged quantities for the production start.

President

Prof. Dieter Kempf

Management

Dr. Bernhard Rohleder

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We propose for the Blue Guide to treat “offering a product” the same way as “displaying a product”, e.g. at trade fairs. There is already a number of harmonized regulations in several NLF directives concerning the “displaying of a product”. The Blue Guide should align to these existing regulations. As an example, the EMC directive states the following:

“Directive 2004/108/EC, Art. 4,3. “Member States shall not create any obstacles to the display and/or demonstration at trade fairs, exhibitions or similar events of equipment which does not comply with this Directive, provided that a visible sign clearly indicates that such equipment may not be placed on the market and/or put into service until it has been brought into conformity with this Directive.”

Translations for professional products

3.1 *Obligations for the Manufacturer*

The draft guide requires the manufacturer to “provide the product with the accompanying information ... in a language easily understood by consumers and other end-users, as determined by the Member State concerned”.

“Other end-users” could be professional business partners. Therefore, the Guide would be applicable also to professional B2B products. However, servicing instructions are normally made available only to service persons and are generally acceptable in English language. This may be even covered by a contractual agreement among the B2B partners.

The guide should clarify that in case the intended end-user is a professional business partner, it is generally acceptable to provide instructions in English language or in a language agreed by means of a contract between the B2B parties.

One set of instructions for bundled identical products

3.1 *Obligations for the Manufacturer*

It is unclear whether in case of bundling many identical products in one package (e.g. installation equipment), each single product needs an instruction or whether it is sufficient to provide one instruction per packaging.

In case several identical products are bundled in a packaging for use in one application (e.g. installation equipment), only one set of instructions per shipping unit are sufficient in practice. Additional sets of instructions are even useless, thrown away unused and cause unnecessary costs and environmental burden.

Importers do not need to “destroy” packaging

3.3 *Importer*

The chapter on the obligations of the importer asks the importer to “Indicate his name and address on the product or where not possible because of the size or physical characteristics of the product or because the packaging would need to be destroyed, on the packaging or/and on the accompanying documentation”.

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In order for an importer to indicate his name and address on the product, the importer would typically have to open the packaging. It is not necessary to destroy the packaging. The importer would then have to seal the packaging again for further distribution of the product.

The opening and re-sealing of the packaging of every single product handled by an importer is not possible in practice. Also the NLF refers in this context to “opening” of the packaging. Therefore, one of the criteria for allowing the indication of name and address on the packaging or/and on the accompanying documentation should be that the importer has to open (not necessarily destroy) the packaging.

Translations induced by Distributor

3.4 Distributor

In practice, there are cases where the manufacturer foresees the distribution only in a limited number of member states and provides the required documents and safety information only in a language required for these member states. If a distributor decides to sell the product also in other member states, the manufacturer usually has no knowledge about this activity and cannot be held responsible for not providing the required documents and safety information also for those member states for which the manufacturer did not foresee distribution. In those cases, it is rather the distributor who needs to accept the responsibility to produce and provide the documents and safety information in the language(s) required by these member states.

This should be reflected in the text of chapter 3.4. The current text can be read as if the distributor may ask the manufacturer to provide the translations for distribution in member states not foreseen by the manufacturer.

Written Approval of Format of Address Information

4.2.2.2. *The requirement to indicate name and address for importers*

In our view, it is not necessary for the Blue Guide to explain how an address looks like. The draft Blue Guide describes it as follows: “*Normally an address consists of a street and number or post-box and number and the postal code and town. Some countries may deviate from this principle (for example no street and number, but just a postal code), but a written approval of this address from the national authority must be kept available by this importer for other Member States authorities.*”

If one of the official address formats in a member country is different from the examples given in the Guide, then an importer should be allowed to use this format. The importer should not be required to obtain an additional written approval of the address format from the national authorities. This would create an unnecessary bureaucratic burden for the importers and, presumably, for the national authority as well. Assuming that a large number of importers in a member state would make use of a specific national address format, the national authori-

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ty responsible to approve the use of the format would become a bottleneck. It may be much more practical for all member states to exchange the valid address formats for each respective member state among each other as this would be a one-time effort.

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