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STAKEHOLDER SUGGESTIONS

- CONSUMER POLICY -

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It is provided by the secretariat to the REFIT Platform members to support their deliberations on the relevant submissions by stakeholders and Member States authorities.

The Commission services have complemented relevant quotes from each suggestion with a short factual explanation of the state of play of any recent, relevant ongoing or planned work by the EU institutions.

The document does not contain any official positions of the European Commission unless expressly cited.

Table of Contents

1. SUMMARY

This briefing includes seven suggestions in three different areas:

Consumer Rights:

- The Austrian Federal Economic Chamber (WKÖ) argues that the implementation of the Consumer Rights Directive led to legal uncertainty, enormous bureaucracy and unnecessary and excessive regulatory burdens for affected companies.

- The Danish Business Forum (DBF) suggests that businesses should be allowed to focus on informing consumers about conditions that go beyond what is required by the law instead of being individually required to inform every consumer about the law or statutory rights.

- The Danish Business Forum (DBF) suggests that the planned evaluation of the Consumer Rights Directive should look into issues such as the requirements to provide a standardised withdrawal form and the right to return used goods etc. in order to ensure that the Directive does not impose unnecessary or disproportionate burdens on businesses.

- The Board of Swedish Industry and Commerce (NNR) suggests reducing information duties for businesses. The burden of information regarding dispute resolution should be laid on the dispute resolution body instead of the seller.

An overall evaluation of the Directive is foreseen alongside with the Fitness Check on the key EU Consumer and Marketing Law Directives planned for completion in the first half of 2017.

Consumer Protection:

- The Danish Business Forum (DBF) suggests better harmonisation of how 'sweeps' are being done, as they are now carried out by national consumer authorities using different methods. The Commission is currently carrying out a review of the CPC Regulation which may result in a legislative proposal in 2016, as indicated in the Commission work programme for 2016.

Consumer Product Safety:

- The German Chambers of Industry and Commerce (DIHK) argue that the existing regulations for better traceability in the Product Safety Directive are sufficient and that the proposed new regulation imposes burden on business.

- The Finnish Survey for better regulation voices concern that the required marking of origin will lead to substantial additional costs or other burdens while at the same time not contributing much to product safety.

The General Product Safety Directive is currently being negotiated in the Council and European Parliament.

2. CONSUMER RIGHTS DIRECTIVE

2.1. Submission by the Austrian Federal Economic Chamber (WKÖ)

Directive 2011/83/EU on consumer rights had to be implemented into national law by the Member States until 13.12.2013. However, the provisions are applied in practice **consistently throughout the European Union since 13.06.2014** to contracts between businesses and consumers.

The directive establishes **new provisions for distance contracts** (e.g. mail order companies, webshops, hotel bookings), but **especially also for contracts negotiated away from business premises** (in Austria called "Außergeschäftsraumverträge"– AGV).

Unfortunately, the directive is a **particularly negative example** that REFIT´s **aspiration, to establish a simple, clear and predictable legal framework, is not met.** Instead, it created **massive legal uncertainty, enormous bureaucracy and unnecessary and excessive regulatory burden for the affected companies** in many areas. Thus, there is urgent **need to evaluate and amend** the directive.

As an example, some especially problematic aspects are highlighted.

1. Contracts negotiated away from business premises:

The provisions on contracts negotiated away from business premises do **not only apply if,** e.g. **a business is collecting unrequested orders by doorstep selling**, **but also if**, e.g. **a craftsman is called into a customer´s flat because of an order** (e.g. paintwork, electrical installations, manufacturing of a cupboard, hairdressing in a flat, etc.), and if the contract is concluded there.

Businesses – an overwhelming majority of them are SMEs or even single-person companies – are in such cases affected by **enormous information obligations** (see also distance contracts below), whereas the information must be given to the customer beforehand principally on paper. If there is no exception from the right of withdrawal (e.g. in the case of urgent repair and maintenance works; however, the consumer must be precontractually informed about the non-existence of the right of withdrawal by writing), the consumer has a **period of 14 days to withdraw from an off-premises contract**. If the **consumer wants a service to be provided during the withdrawal period, he must explicitly request that (principally on paper).** Because the **burden of proof that the information has been provided is always on the business**, it has no other option than **have the consumer sign enormous contract forms in duplicate**. Given the case that, for example, a hairdresser is called into a flat or a care home for an aged client´s more extensive hairdressing, it can be estimated that the 50 Euro limit will be exceeded regularly. The example shows, how **bureaucratic and exaggerated the new standards are**. But also **regarding all other crafts** (e.g. electrical installation, sanitation and heating, paintwork), first experiences show that the new provisions are an **entire overextension and an unacceptable bureaucratic burden**. Notably, first reports from our members show, that also consumers are overcharged with the new provisions and react wary of getting forms filling pages that they have, for example, to sign before the work begins during the withdrawal period.

Besides the enormous bureaucratic effort, **mistakes concerning the information about the right of withdrawal are sanctioned with liberation of the consumer´s duty of payment** if he withdraws from the contract. So, he would get the service for free.

A **model withdrawal form** which businesses can use is contained in the directive´s annex, however, with many design tips, even for jurists it is challenging. Among other things, a

craftsman without legal education must decide, whether it is a service contract or a sales contract, so that he can give the right information about the right of withdrawal. In the case of a service contract, the withdrawal period starts with conclusion of the contract, while in the case of a sales contract it starts with receipt of the goods. Therefore, he must give divergent information depending on the kind of the contract. If the craftsman assesses the contract wrongly, also the information on the right of withdrawal will be wrong. Thus, the withdrawal period is extended by 12 months. In case of a withdrawal, the consumer can call his money back or does not need to pay. This sanction is also critical with regard to the Fundamental Rights Charter.

Assessing whether it is a sales contract or a service contract is not easy. This is especially shown in the craftsman's trades, where many contracts are so called **mixed purpose contracts**, which contain both goods and services. This also shows in the guidance document published by the DG Justice on 13 June 2014 (see page 6f with numerous example cases), which, unfortunately, has been published quite late and was firstly only available in English. According to this document, the purchase of specific construction elements, such as windows, including their installation in the consumer's house would be a sales contract. The period of withdrawal would begin after receiving the last window (it must be mentioned that this is factually and economically inappropriate). However, must there be an explicit claim from the consumer before the installation of the windows? What about the construction of a partition to divide a room, where also a door is installed? Here, both the goods (bricks, doorframe and door) and services are part of the contract. There are good reasons that this is a service contract. Otherwise, the withdrawal period would begin with the delivery of the last construction material. However, would the assessment even be different if it would not be a brick wall but a standard drywall?

These questions only illustrate some examples of **legal issues**, which SMEs from the crafts sector have to cope with since 13 June 2014 in addition to the **enormous battle with red tape,** in order to act in conformity with the law and especially to keep the claim for remuneration.

During the negotiations, AFCO has opposed the, especially for SMEs, excessive and bureaucratic provisions and has called for an exception for contracts, where the consumer himself has requested the business' visit. This exception was also supported in the Council by Austria; however, to our knowledge there was no support from other Member States (except for Germany).

An improvement of the companies´ situation on national level is not possible, because the Austrian legislation is largely oriented on the directive. The scopes provided in the directive (e.g. the exception for contracts negotiated away from business premises up to 50 Euro), have been implemented by the national lawmaker. Therefore, **an amendment of the directive is necessary**. In all cases where the consumer has requested the entrepreneur´s visit, no use shall be made of the complicated information and guidance system. In these cases, the initiative came from the consumer; therefore nobody is taken in surprise as in a doorstep selling situation.

2. Distance contracts and pre-contractual information requirements

However, also the new provisions on distance contracts have brought severe burden to the affected companies. Here, the **excessive extension of pre-contractual information requirements** must be mentioned. EU legislation is following a questionable strategy of extending information requirements, without the existence of a scientific study on the effectivity of this model. Especially with the new Directive on consumer rights, this **is getting more and more absurd**. Information requirements, which moreover also exist in parallel in

various directives, are regularly extended, as in the case of the Directive on consumer rights.

Every new information requirement means burden and legal uncertainty for the affected companies. Just as an example, the **pre-contractual information requirements on warranties** are pointed out. The obligation of traders, of providing pre-contractual information about the conditions of the manufacturer´s warranty means an **enormous effort** for traders with a wide range of products. It has also not been considered that the information requirements are also in effect for the traditional mail order business. Here, it makes no economic sense to print the complete warranty conditions. Maybe, the clause of Article 8(4) can be used; however, there is no legal certainty for the affected companies.

Particularly, it cannot be the task of the companies, to i**nform consumers increasingly extensive about the legal situation**. In the directive, the **information obligations on the right of withdrawal have been expanded substantially**. Moreover, an information obligation on the **legal guarantee has been introduced,** which causes confusion. Whereas the directive requests "a reminder of the existence of a legal guarantee of conformity for goods" (Article 6(4)(l)), the guidelines of the commission state that "the seller should specify that, under EU law, he is liable for any lack of conformity that becomes apparent within a minimum of two years from delivery of the goods and that national laws may give the consumer additional rights" (p. 27).

Moreover, there is a **massive legal uncertainty** how the pre-contractual information requirements can be **accomplished correctly,** especially because the directive differentiates the run of the withdrawal periods. If goods are, for example, ordered in one order but are delivered separately, the period for all goods begins with receipt of the last good. However, if a separate delivery will happen, is not known to the entrepreneur in advance. Therefore, **generally, the model instructions on withdrawal cannot be used**. To cover all possibilities, various model instructions on withdrawal must be provided on the website. This seems bureaucratic.

Also the obligation that the **"trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order" of the main characteristics of a good or a service, is a regulatory overreach**. However, the directive regulates also the labelling of the button for the order of clothes or the booking of a hotel and the trader shall ensure, that the consumer "explicitly acknowledges that the order implies an obligation to pay". Therefore, all over Europe, millions of enterprises are forced to give their websites a new layout – without any Impact Assessment. This is another example how **easily new administrative burdens for companies are created** just because it is not possible to come to grips with rip-offs on the internet (supposed free offers of horoscopes, prognosis of lifespan or recipes) by effective enforcement of existing legislation in some Member States.

There is massive legal uncertainty regarding the **extent, to which the main characteristics of a good or a service must be outlined before placing the order**. The guideline in article 8(2) is quite vague and is causing problems with the interpretation. However, every entrepreneur will have an interest to present and describe his products in a way that the consumer can get an idea of it. If, according to article 8(2), the information must be provided in the same way as in article 6(1)(a), this "overview" would lead to an entire confusion, especially if several goods are ordered.

The provisions on the design of distance **contracts on digital content** are **completely confused, wrongheaded and bureaucratic**. Apparently, they have been attached to the directive at the last minute, thus without any profound discussion and coherent coordination. To go into detail would take us too far afield. However, it must be mentioned that the content of Article 16(m), about the loss of the right of withdrawal, combined with all the other

provisions (information on the right of withdrawal, information on the content) **bears a high legal uncertainty and makes downloads bureaucratic**.

Obviously, the Commission is aware of the problem and tries to clarify some aspects in the guidelines (p. 64ff). However, it is questionable, whether the well-intentioned remark that the use of the example consent and acknowledgement statement (p. 66) would also contain the information on the right of withdrawal and is in accordance with the directive.

The **legal uncertainty concerning contracts on digital content is problematic**, and questionable with regard to the Fundamental Rights Charter, because **infringements are sanctioned similar to those by contracts negotiated away from business premises**. Article 14(4)(b) entitles the consumer either not to pay for the content received or be reimbursed for the amounts paid.

Another example for a professional group especially affected by the directive are real estate agents. These are affected by both the provisions for distance contracts and for contracts negotiated away from business premises. If the real estate agent wants to protect his brokerage, he must overwhelm the consumer with enormous information materials before beginning his service. The consumer is facing a raft of information and must confirm the receipt before getting information on the realty.

The new provisions lead to a situation where either the whole procedure is clearly slowed down (awaiting the 14-days withdrawal period) or the consumer loses his right of withdrawal if he wants services and information immediately (in the case of complete fulfilment of the contract within the withdrawal period). The intention of the directive, consumer protection, is completely lost. Often, consumers are angry about the new provisions and refuse any further contact with the real estate agent. The companies report up to 50% less requests from prospects and many severances after the initial contact.

As part of the urgently needed amendment of the Directive on consumer rights, we ask for an exception for the professional group of real estate agents. Not only contracts on real estates should be excluded, but also contracts on services by real estate agents.

2.2. Policy Context

The Directive on Consumer Rights (2011/83/EC) replaces, as of 13 June 2014, Directive 97/7/EC on the protection of consumers in respect of distance contracts and Directive 85/577/EEC to protect consumer in respect of contracts negotiated away from business premises.

The purpose of the directive is to achieve a high level of consumer protection across the EU and to contribute to the proper functioning of the internal market by approximating certain aspects of Member State laws, regulations and administrative provisions concerning contracts concluded between consumers and traders.

The directive regulates certain aspects of contracts between a trader and a consumer. Its structure is based on a division of contracts into:

(1) contracts concluded outside the trader's business premises (off-premises contracts);

(2) contracts concluded using distance communication (internet, telephone etc.) (distance

contracts); and

(3) contracts other than distance or off-premises contracts (hereinafter referred to as 'on-premises' contracts).

The Directive thus lays down, among others, an obligation for a trader to provide a set of pre-contractual information regarding contracts concluded at distance (e.g. on the internet or by phone) or outside trader's business premises (e.g. during a home visit by the trader regardless whether such visit has been ordered by the consumer).

Current state of play

An overall evaluation of the Directive is foreseen alongside with the Fitness Check on the key EU Consumer and Marketing Law Directives planned for completion in the first half of 2017. One of the elements of these exercises will be to look at the overall effectiveness of existing information requirements laid down by the Directive on Consumer Rights and other horizontal pieces of EU law. The issues raised in the request of the WKÖ will thus be part of that evaluation. The data gathered in the assessment of the Directive will show whether there are any practical problems in its application and their possible scale.

A public consultation will take place between February and May 2016 (12 weeks) to support the evaluation of the CRD. All stakeholders are invited to submit their opinion as well as any supporting evidence such as quantification of their costs linked to the implementation of the CRD.

2.3. Submission by the Danish Business Forum (DBF)

Consumer contracts are generally very complex because of demands in legislation (for instance following the directive on consumer rights). Today, e-retailers must comply with about 100 information obligations. This is overly burdensome and makes it more difficult to start a business without professional help or specialist legal advice. In contrast, most agree that general "terms and conditions" should be easily understood and that consumers should be able to - in principle - accept them unread.

Suggestion

Businesses should not be individually required to inform every consumer about the law or general statutory rights. Businesses should instead be allowed to focus on informing consumers about conditions that go beyond what is required by the law. A task force with participation of relevant stakeholders could look into how this would work in practice.

2.4. Policy Context

The Consumer Rights Directive 2011/83/EU sets out the information requirements for distance sales (such as eCommerce) in Article 6(1), which consist of a limited number of information requirements going up to a maximum of 20. The advantage of the Directive, compared to the previous EU consumer law, is that this list is uniform across the EU and, in principle, exhaustive, thus doing away with different national requirements that previously fragmented the internal market. Traders trading across national frontiers should benefit from

this uniformity of regulation, as it should reduce compliance costs for cross-border sales.

The consumer information requirements under the Directive are complemented by sector-specific EU law requirements, for example, in the area of telecommunications, gas and electricity. Further general consumer information requirements stem from the eCommerce Directive and the Services Directive. The Consumer Rights Directive does not apply in certain sectors, such as financial services and insurance, for which there is specific EU regulation. Last but not least, there are specific EU labelling requirements for certain products.

Nothing in the Directive prevents traders from informing consumers about contractual conditions that go beyond what is legally required, such as longer right of withdrawal periods or sellers' voluntary commitment to cover the cost of returning the goods to the trader in case of withdrawal.

Current State of play

See section 2.2

2.5. Submission by the Danish Business Forum (DBF)

The directive on consumer rights requires that, in cases of "at distance" or "off-premises" contracts (primarily online business), the trader must provide the consumer with a withdrawal form set out in Annex I (B). Given that it is optional for the consumer – but mandatory for the trader - to use the form it is perceived by traders as unnecessarily bureaucratic.

Additionally, the wording used in the withdrawal form can be confusing to consumers because it concerns both services and goods causing consumers to doubt whether the withdrawal form is relevant to them.

Also, the directive on consumer rights gives consumers the right to return goods after having used them. In these cases the consumer is liable for any diminished value of the goods resulting from handling the good. The consumer has the right to object to the trader's determination of the value of the goods. However, there is no time limit on how long the consumer can claim the right to object (presumably up to 3 years) which may impose costs on businesses (e.g. for storage of returned goods).

The directive on consumer rights was recently adopted and implemented nationally. The directive states that the European Commission must conduct an evaluation of the directive by December 2016.

Suggestion

The evaluation should look into the issues described above in order to make sure that the directive - and especially the requirement to provide a standardised withdrawal form and the right to return used goods etc. - does not impose unnecessary or disproportionate burdens on businesses.

2.6. Policy Context

The Consumer Rights Directive 2011/83/EU provides, as one fundamental consumer right, the right to withdraw from a contract concluded at distance (e.g. on the Internet or on the phone) or outside trader's business premises (e.g. during a home visit by the trader). However, the withdrawal right was already provided in the previous 1985 directive on doorstep selling and the 1997 directive on distance selling, which were replaced by the directive when it entered into application in June 2014. In contrast to the previous – minimum harmonisation – directives, the directive provides for fully harmonised rules across the EU, with some exceptions, thus doing away with the previous national differences as regards, e.g. withdrawal periods that fragmented the market earlier on.

Current state of play

See section 2.2.

2.7. Submission by the Board of Swedish Industry and Commerce (NNR)

Legislation

Consumer Rights Directive; 2011/83/EU, Directive 1999/44/EC, Directive 2013/11/EU amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Burden on business

The various consumer Directives set forth a number of information duties on products that can become disinformation if the consumers fails to consider all the given information. According to the Directive, a seller has the duty to inform the consumer prior to concluding a contract on how a dispute can be resolved outside of court. This information is redundant since it is not prerequisite to conclude a contract or not. The information could instead confuse a consumer and distract him or her from other necessary information. The burden of the informational duty is heavy, since the type of information that shall be given differs from country to country and needs to be extensive to be understood.

Simplification proposal

Minimized or reduced information duties would make it simpler for the businesses. A study on a European level on the effects of and consumers understanding and use of existing information should be carried out. The burden of information regarding dispute resolution should be laid on the dispute resolution body instead of the seller.

Effects of the simplification proposal

Time-saving, reduced costs, increased investments

2.8. Policy Context

The EU Consumer Rights Directive 2011/83/EU – which applies in all Member States since 13 June 2014 – aims to strengthen consumer rights by giving consumers the same rights across the EU, while striking a balance between consumer protection and safeguard of business competitiveness. An evaluation of the CRD directive is foreseen in accordance with

its Article 30 and will be carried out in 2016.

The CRD lays down fully harmonised pre-contractual information requirements that the trader has to provide to the consumer in order to ensure that the consumer is fully informed before making a purchase. Among others, the trader has to inform the consumer – where applicable - in accordance with Article 6(1)(t) about the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods for having access to it.

Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees harmonises the minimum level of consumer rights in case of defective products, be it through legal guarantees (warranties) and, to a lesser extent, commercial guarantees.

EU countries can introduce more favourable rules for consumers. A commercial guarantee must be clearly drafted and indicate what rights it gives on top of consumers' legal guarantees.

Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) - offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders. This Directive establishes a minimum level of harmonised quality requirements for ADR entities and ADR procedures in order to ensure that, after its implementation, consumers have access to high-quality, transparent, effective and fair out-of-court redress mechanisms no matter where they reside in the Union. Traders must inform consumers about the ADR entity or ADR entities by which those traders are covered, when those traders commit to or are obliged to use those entities to resolve disputes with consumers. That information shall include the website address of the relevant ADR entity or ADR entities. Furthermore, traders are obliged to inform consumers about the ADR entity or ADR entities by which they are covered (and whether they will make use of the relevant ADR entities to settle the dispute) when the consumer has submitted a complaint directly to the trader and the dispute could not be settled bilaterally.

Transposition deadline for this directive expired on 9 July 2015.

Current State of play

See section 2.2

3. CONSUMER PROTECTION COOPERATION

3.1. Submission by the Danish Business Forum (DBF)

The European Commission regularly organises so-called "sweeps" to check if businesses comply with the Consumer Acquis in their marketing. In practice, sweeps are carried out by national consumer authorities and the results are submitted to the European Commission. Unfortunately, the method used varies significantly between Member States, which undermines the validity of the study.

Suggestion

A set of common criteria for carrying out sweeps should be introduced so sweeps are done in a consistent way and are representative. National enforcement agencies and the European

Commission should refrain from publishing names of companies or refer to websites or other sources of information as long as sweeps are not carried out in the same way.

3.2. Policy Context

The CPC Regulation is in force since 2004. It lays down the general conditions and a framework for cooperation between national enforcement authorities and covers situations when the collective interests of consumers is at stake.

In particular, the CPC Regulation further allows authorities to stop breaches of consumer rules when the trader and the consumer are established in different countries and requires them to coordinate their market surveillance activities.

The regulation links national Competent Authorities from all countries in the European Economic Area to form a European enforcement network, the "CPC Network". Every year, the Network identifies common enforcement priorities and carries out concerted enforcement activities, including the so-called "sweeps" (screening of websites in selected sectors). Since 2007, the Commission coordinates "sweeps".

Sweeps are based on Article 9 of the CPC Regulation and are carried out by national authorities based on based on national procedural rules.

In a sweep, authorities simultaneously check, on the basis of a questionnaire, whether the traders in the chosen on-line sector comply with consumer rules and, where not, act upon breaches detected. The subject of the sweep is agreed upon among competent authorities of the Member States following their examination of priority on-line sectors where consumer problems have been detected. The sweep is carried out simultaneously, according to a precise and harmonised methodology and questionnaire, which is carefully prepared by DG JUST and checked with the participating authorities. To ensure comparability and sufficiently representative coverage, Member States are encouraged to sweep a minimum number of websites and to target the most important ones in terms of their market share. Member States may also include in the sweep smaller sites, for instance where the authority has previously received consumer complaints concerning such site.

Enforcement actions that follow the screening phase of the sweep ensure that the screened websites comply with consumer law, are conducted by each Member States according to its enforcement system, and national procedural rules. At this stage there may indeed be differences in terms of the scope and timelines of these enforcement actions. However, the sweep questionnaire contains agreed criteria, which would be valid and verifiable under each national law, enabling a common legal assessment of malpractices with key EU consumer rules.

Additional difference among national authorities' practices when conducting sweeps is the publication of the names of websites checked. The Commission only publishes aggregated results, without disclosing the names of the websites. The situation may differ however in the Member States, whilst in some Member States national law does not allow the publication of the names of the companies in this context, in others national authorities must be fully transparent about their actions and may thus publish the names of the companies concerned by their enforcement actions. This difference does not affect the methodology of the sweep,

nor the consistency and comparability of the sweep results.

Sweeps have been assessed as an effective EU-wide tool to detect and correct online malpractices affecting EU consumer rights. From 2007 to 2013, more than 3,000 websites were checked. As a result of these actions, the level of compliance with consumer legislation greatly improved, from 50-60% at the screening phase to more than 80% after a year of enforcement actions[1].

The Commission is currently working towards a review of the CPC regulation. The Commission is among others assessing the effectiveness and operational mechanisms of the Regulation. The review is based on an external evaluation (done in 2012) and an extended consultation of all relevant stakeholders (completed on 13.02.2014). The review of the CPC Regulation may result in a legislative proposal in 2016, as indicated in the Commission work programme for 2016.

4. CONSUMER PRODUCT SAFETY

4.1. Submission by the German Chambers of Industry and Commerce (DIHK)

The existing regulations for better traceability in the Product Safety Directive are sufficient. The manufacturers, importers and distributors already have to be indicated in the products (cf. Article 8). If this specific information is missing, the statement of the country of origin does not provide any further help.

Especially for SMEs the burden that is obliged by this provision is not in favour to encourage business. Again and unfortunately the fact is ignored that for the reason of product safety there is no need for such a bureaucratic regulation.

We think also the Commission should give us examples where this proposed marketing would have led in the past to better results in product safety traceability issues.

4.2. Submission by the Finnish Survey for better regulation

Article 7 of the proposed regulation on product safety (2001/95/EC) would require that the manufacturers and importers of consumer goods ensure that the products carry a marking indicating the country of origin. In the proposal, this provision was mostly justified by reference to the traceability of the products even though the proposal also contained detailed and fairly comprehensive requirements regarding traceability. It is feared the market actors will incur substantial additional costs or other burdens as a result of the marking of origin while at the same time it would not contribute much to product safety.

[1] http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140701_commission_report_cpc_reg_en.pdf page 4

4.3. Policy Context

Product safety rules and the market surveillance that underpins them are the basis of the single market for goods.

Over two decades, EU legislation on general product safety (Directive 92/59/EEC and then Directive 2001/95/EC) has established a product safety and market surveillance framework that has contributed enormously to the safety of consumer products.

The General Product Safety Directive 2001/95/EC (GPSD) contains the core safety provisions that must be respected for many consumer products: it requires that consumer products be safe, provides for standard setting, imposes obligations on Member States and national market surveillance authorities and lays down procedures for the exchange of information and for rapid intervention in relation to unsafe products.

In response to calls from almost all groups of stakeholders and from the European Parliament to simplify Union rules, the directive is being revised to update its product safety rules and align them, as far as possible, with those in place for harmonised products.

For this purpose the Commission adopted, in February 2013, the "Product Safety and Market Surveillance package" which consists of a proposal for a Regulation on consumer product safety (COM(2013)78) and a proposal for a Regulation on market surveillance of products (COM(2013)75).

This package is important for streamlining and closing gaps in existing market surveillance, and enhancing consumer product safety. It aims at simplifying the current set of product safety and market surveillance rules and making enforcement more efficient. Whilst the requirement that consumer products made available in the EU must be safe also remains the key provision of the Commission proposal for a new consumer product safety regulation (COM(2013)78), its inter-action with sector-specific legislation applicable to consumer products, however, is clarified to avoid undue overlaps and increase legal certainty for economic operators.

Ensuring product identification and the traceability of products throughout the entire supply chain is an objective of the directive. In particular, it is thought that the indication of origin supplements the basic traceability requirements concerning the name and address of the manufacturer. The indication of the country of origin can facilitate the task of market surveillance authorities in tracing the product back to the actual place of manufacture and enable contacts with the authorities of the countries of origin in the framework of bilateral or multilateral cooperation on consumer product safety for appropriate follow up actions (Article 7).

This proposed requirement has caused a stalemate of the negotiations on the Product Safety and Market Surveillance package. The last time that the issue was discussed by the co-legislators was at the Competitiveness Council on 28 May 2015, but Member States could not agree on a compromise.

The Opinion of the European Parliament in First Reading in the legislative procedure in April 2014 proposed several amendments that would add obligations for economic operators (in addition to the currently applicable provisions of Decision 768/2008, e.g. procedural requirements for sample testing and drawing up of product model lists). These changes would

negatively impact on the objectives of simplification and administrative burden reduction.

A letter of 6 July 2015 entitled "Better Regulation – The CPSR proposal on a mandatory country of origin "Made in" labelling (Article 7)", co-signed by DIHK and three other German trading associations, has also been sent to First Vice-President Timmermans and Vice-President Katainen. A response was sent on 31.8.2015indicating that the European Commission is currently exploring different options to try to unblock the stalled negotiations on the legislative package.

At the Competitiveness Council on 28 May 2015, it was suggested that the scope of mandatory origin labelling could be limited to certain sectors - in particular those for which origin marking would deliver an overall net benefit.

Despite considerable efforts by the Latvian Presidency to find a solution based on this approach, Member States were unable to reach agreement in that meeting.