

Position Paper

# "Made in Germany"

Current Status and ZVEI Position



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German Electrical and Electronic Manufacturers' Association

## Brief Overview

Article 7 of the planned EU Product Safety Regulation provides for:

1. An obligation for products to bear an indication of origin
2. Origin rules in accordance with the Customs Code
3. Introduction of the designation "Made in EU"

### ZVEI position

- **ZVEI is firmly against the introduction of an obligation in the EU to provide an indication of origin.**
- **ZVEI is also against the linkage of the designation "Made in" with the Customs Code.**
- **ZVEI is also against the introduction of the designation "Made in Europe" or "Made in EU".**

### Background

After a number of abortive moves via various legislative proposals, the EU Commission is now attempting to make an indication of origin mandatory by way of the proposed Consumer Product Safety Regulation (CPSR).

To date companies have been able to decide for themselves whether or not to display an indication of origin. Once such an indication is in place, however, it must not be misleading, according to the internationally binding Madrid Agreement on designations of origin.

## The most important facts and their significance

- Subsection 1 of Article 7 of the not yet adopted CPSR provides that "manufacturers and importers shall ensure that products bear an indication of the country of origin".
- Advocates of the Regulation have repeatedly claimed that only importers would be affected. This claim is therefore false.
- Subsection 2 provides that "the non-preferential origin rules" set out in the EU Customs Code shall apply for the purpose of determining the country of origin. This means, in brief, that products will be deemed to originate in the country where the last substantial processing or working took place.
- This places the present link to the internationally agreed Madrid Agreement at risk. It confronts European manufacturers who are also exporters with a legal problem as well, however, since their exports continue to be bound by the Madrid Agreement but their sales in the EU would come under the EU Customs Code, which is internationally completely irrelevant.
- As a kind of concession subsection 3 article 7 of the CPSR provides that, instead of a particular member state, reference may also be made to the European Union as an indication of origin.

The designation "European Union", however, is not recognised as an indication of origin in many countries outside the EU – above all the USA – which means that this supposed concession is worthless for nearly all exporters based in the EU.

## Assessment of consequences

The designation "Made in Germany" on a product is known and recognised worldwide as a reference to the high quality of German products. For more than 60 years it has gone hand in hand with the drive for prosperity that is the "German Export Miracle".

It is frequently overlooked that the advertising slogan "Made in Germany" also achieves an effect when there is no "Made in Germany" on the product: all goods from Germany or goods under a well-known German company logo are recognised as having the "Made in Germany" quality.

If it became mandatory for products to bear a "Made in ..." indication, large numbers of European and foreign component deliveries would be transformed into a negative criterion – which would be a major loss for German exporters.

The vote on the proposal in the European Parliament on 15 April 2014 produced a surprisingly large majority – 400 MEPs – in favour of a mandatory "Made in"

indication. This left the Council of the European Union as the last hurdle still to be cleared by this project of the EU Commission. Although the current expectation is that the Council will say no, a close watch needs to be kept on the course of events, as the Council, reacting to pressure from Italy's fashion and luxury goods industry, has put the matter back on the agenda.

There are in fact good reasons not to burden the economy with new marking rules. Many countries have import regulations which prescribe a statement of origin. Free trade agreements still require proof of origin and supplier declarations. There is a further divergence in the case of trade arrangements which apply preferential rates of import duties, these being monitored by customs authorities. Many of these regulations are incompatible with the efforts to impose the planned mandatory European "Made in" marking.

Therefore, it makes even less sense for the EU Commission to plan to prescribe compulsory "Made in" marking in the amended version of the Product Safety Regulation and to link it to (ill-matched) customs regulations.

The ZVEI therefore calls for the proven marking requirements not to be replaced with mandatory indications of origin.

## **Further negative consequences**

### **Bureaucracy:**

Parallel to the obligation to provide an indication of origin, which is in any case wholly superfluous, there is the threat to tighten up the pertinent rules. The result will be a bureaucratic package without the slightest benefit to the safety of consumers.

### **Legal uncertainty instead of product safety:**

Due to the lack of harmonisation of European rules with the origin rules applicable worldwide, exporters based in the EU will be manoeuvred into a legal dilemma with uncertain outcome.

### **Worthless concession:**

As long as the European Union fails to get its own name accepted worldwide as a meaningful indication of origin, such alleged simplifications are only usable inside the EU and have no practical value for globalised firms.

## Further factual arguments

- The crucial aspects for consumers are product quality and product safety, which are exactly what they associate with "Made in Germany". But there is no place for these aspects in the amendments proposed by the EU Commission. It is therefore no surprise that consumer protection associations have dissociated themselves from the proposed changes.
- In today's economy, with its division of labour, it is often not easy to define the origin of a product except with a great deal of bureaucratic effort inside the company. Consequently firms want to continue to have the option, in case of doubt, of dispensing with an indication of origin so as not to contravene legal norms.
- Origin rules are not harmonised worldwide, so that companies would have to provide different origin designations depending on the importing country. Switzerland, for example, allows about 50 percent "foreign origin", while, to our knowledge, the EU is planning for 45 percent. It would be an anachronism for one and the same product to have to bear a number of different "Made in ..." designations.

## Background details

The origin rules in the Customs Code are primarily designed for the implementation of anti-dumping measures by customs authorities, and have absolutely nothing to do with product quality or safety. The result is an enormous amount of paperwork for the firms on the one hand, and almost worthless information for the consumer on the other. This is a view shared by German consumer protection organisations.

What is particularly critical is the departure from the internationally recognised Madrid Agreement as the basis for origin designation and the application of a rule in the EU Customs Code which is effective only in the EU. The result would be that a product to be placed on the market in the in the EU would have to be marked according to the rules in the Customs Code (currently: "last substantial processing or working"), but for export it would continue to be subject to the Madrid Agreement ("not misleading").

There is also the danger of a dilution of the internationally recognised hallmark of quality, "Made in Germany", by the designation "Made in EU", which is anyway not recognised by many states (USA, Arab and Latin American states).

At a time of new free trade agreements it is particularly important to take a critical view of the creation of new barriers to international trade. Against the backdrop of globalisation and integrated trade channels worldwide, manufacturers would be faced with a great deal of extra work because, in spite of the abolition of all

customs barriers, they would have to mark their products in different ways, depending on the country of destination. This in turn would entail the conversion of their administrative and IT systems, which for smaller companies is not affordable – and often the importing country is not readily identifiable.

The problems cited by the EU Commission – the lack of traceability or the raising of safety standards – cannot be solved by an indication of origin. A designation like "Made in China" does not help the market surveillance authorities in their attempts to trace the origin of specific products because it is much too imprecise. Moreover, the requirements defined in other articles of the draft Regulation (statement of name and contact address of manufacturer) suffice in most cases to trace the origin of the products.

## Situation in Italy

Italy uses two types of "Made in":

"Made in Italy" and the recently introduced "100 percent Made in Italy"

"Made in Italy" is already orientated to the EU Customs Code. Contrary to current case law from the Court of Justice of the European Union (and case law in Germany as well), percentage rules are applied (popular with the chambers of commerce and industry in Northern Italy) or the criterion of the last substantial processing (from the text of the law) or change of tariff heading rules (in individual cases).

In Germany, by contrast, individual cases are in principle assessed by the courts on the basis of the quality standards assumed for the consumers affected, the fundamental aim being to prevent consumers being misled about the origin of the product. The reference to percentage rules and change of tariff heading rules is on the other hand, in line with current case law from the CJEU, expressly rejected.

The result is that if the Commission's proposals were implemented case law in Italy could remain unchanged, but in Germany it would have to be readjusted on a large scale.

The claim that the German approach is laxer than that of other EU states must also be rejected. German courts, for example, require that all the production stages decisive for the quality of the final product must have been carried out in Germany, and not simply the last stage.

Note: "100 percent Made in Italy" is orientated to the planning, design, production and quality control stages, which must all have taken place in Italy. Strangely enough, it is unimportant which country the primary or basic materials came from. It is thus possible for goods marked "100 percent made in Italy" to contain less Italian primary material than goods which only bear the designation "Made in Italy".

In this respect Italian laws are inconsistent and show that laws need to be very carefully drafted and not subjected to the influence of individual sectors (in Italy the luxury, leather, textile and shoes industries to the fore).

## **ZVEI Position**

**In accordance with the wishes of the member companies, ZVEI takes action in the form of statements of response and participation in European hearings to oppose the obligation to provide indications of origin.**

**ZVEI therefore calls for the proven marking requirements not to be replaced with mandatory indications of origin.**



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