

## UGAL COMMENTS ON THE DRAFT CONSUMER PRODUCT SAFETY REGULATION (CPSR)

### UGAL objectives

- ✓ Clearer wording as regards to distributors' obligations (Art. 11)
- ✓ Maintenance of the provision on so-called 'isolated cases' (Art. 13)
- ✓ Reconsideration of the current 'country of origin' requirement (Art. 7)

### Obligations of distributors (Article 11):

- Clearer wording is needed. This way, distributors, especially independent and SME retailers, will be able to apply the regulation more efficiently and with legal certainty.
- Legal certainty is **not guaranteed** with the current wording setting down that distributors "shall verify that the manufacturer and the importer have complied with the requirements set out in Article(s)..." (Art. 11 (2)).
- The wording "*shall verify*" on its own is too vague because it might entail that the retailer must conduct a full evaluation e.g. through product testing to *verify* that the serial number, address, safety instructions provided by the manufacturer/importer are accurate. In practice, this would be an impossible task for any distributor, not least independent and SME retailers. It should be remembered that distributors should not be asked to fulfil the role of a supply chain control authority.
  - ⇒ UGAL proposes a clearer wording for Article 11 (in line with the draft Commission 'Blue Guide'<sup>(1)</sup>, Decision 768/2008 on a common framework for the marketing of products<sup>(2)</sup> and Commission Guidelines on the Toy Safety Directive<sup>(3)</sup> in as far as): "distributors shall verify that the product **bears the required marking** set out in Articles 8(6), (7) and 10(3) and is accompanied with the elements set out in Articles 8(8) and 10(4), as applicable".

This should remove the risk of a distributor needing to evaluate the accuracy of manufacturer/importer supplied information. Distributors (particularly SMEs) are not equipped to perform such technical evaluations. Distributors should only need to check for the presence of the required information. This would enable all distributors, particularly SMEs, to apply the regulation more efficiently and in a legally certain way.

### Exemption from certain obligations of manufacturers, importers and distributors (Article 13):

- UGAL welcomes the Commission's recognition of problems posed by so-called 'isolated cases', which is expressed through this article. It refers to particular situations, where "**only a limited number of products are not safe and the risk has been fully controlled...**" (Art. 13(1)).

(1) Revised 'Blue Guide' on the implementation of EU product rules

(2) Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, Art.R5.2

(3) European Commission Guidelines on Toys, rev. 1.6 of 11.09.2012, p. 146

- The provision addresses what was an issue for distributors (notably SMEs), which was already recognized in the guidelines accompanying the General Product Safety Directive (GPSD). Under the GPSD, distributors risked being sued by manufacturers if they unnecessarily reported a product to the competent authorities.
  - ⇒ For the reasons stated, **UGAL supports the current provision** and the presence of Article 13 in the draft Regulation.
  - ⇒ Due to its relevance as a general principle of the product safety regime, the provision on isolated cases should be generally applicable (i.e. applicable for all products, harmonised and non-harmonised). This can be achieved by moving the provision to chapter 1 CPSR.

**Indication of the origin (Article 7):**

- The draft CPSR requires the indication of the country of origin. This provision goes against previously defined norms, such as a Commission impact assessment from 2005, which had already dismissed ‘made in labels’ and “the possibility of a regulation covering all products...[as being] too far reaching, as well as too burdensome, both for the producers to apply and for the public administrations to enforce”<sup>(4)</sup>.
- The country of origin requirement is determined by a customs code (Council Regulation (EEC) No 2913/92 of establishing the Community Customs Code<sup>(5)</sup> to be replaced by the Union Customs Code in the course of 2013).
- This can be misleading for consumers as the customs code of a product may not be the true origin of the product and its components. This can expose distributors to the risk of unintentionally misleading their customers.
- In recital 21 of the draft CPSR, the presence of the ‘country of origin requirement’ is claimed to increase the traceability of the product. However, given that manufacturers are already obliged to “ensure that their products bear a type, batch or serial number” (Arts. 8(6)) the real benefit of an addition ‘made in label’ seems negligible.
- The definition of country of origin as used in the CPSR creates great legal uncertainty and generates questions, such as ‘what really determines the “last substantial, economically justified processing”?’

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(4) Commission staff working document - Annex to the Proposal for a Council regulation on the indication of the country of origin of certain products imported from third countries - Impact assessment, of 16.12.2005

(5) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, OJ L 302, 19.10.1992