

# European Commission Proposes Compulsory Country of Origin Marking Rules for Imported Goods

by Lourdes Catrain and Delphine Voillemot (Hogan & Hartson)

On December 16, 2005, the European Commission issued a proposal for a regulation requiring the marking of country of origin for certain products imported from third countries (e.g., imports from outside the European Union and certain other associated countries). The proposal introduces for the first time ever a mandatory country of origin marking system (“made in” requirement) for a number of imported products such as textiles, jewelry, apparel, footwear, leather, lamps and light fittings, glassware, and handbags.<sup>1</sup> The proposal does not cover the marking “made in EU” because it is only applicable to imported goods.

The rule is, at present, only a proposal, and must still be approved by EU Member States to become mandatory.

## The Current EU System—No Marking Requirement

At present, the European Union does not have harmonized legislation on origin marking for imported products. The meaning of “made in” differs among Member States, resulting in very diverse legal requirements.

## Background

The proposed regulation responds to growing concerns from EU Member States over the alleged increase in use of misleading and fraudulent origin marking on imported products. Taking this into consideration, the European Commission engaged in an active consultation process in 2004 with the main industries and stakeholders, and the proposal reflects the result of this consultation.

By introducing compulsory marking for certain imported industrial products, the EU aims to enhance the control of misleading or false origin marking, while increasing consumer information on the origin of the products. The stated aim is to facilitate consumer choice and improve transparency for the origin of the goods. The proposal also seeks to put the EU on a level footing with trade partners, such as Canada, China, Japan, and the United States, that require country of origin marking on imported goods.

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## Main Features

The proposed regulation applies to imported industrial products manufactured outside the European Economic Area (EEA) (i.e., EU Member States, Iceland, Liechtenstein, Norway), Bulgaria, Romania, and Turkey and includes the following:

- Products currently listed in an annex to the proposal for coverage include certain leather, footwear, articles of apparel, hand bags, ceramic products, glassware, jewelry, furniture and bedding, lamps and lighting, illuminated signs, brooms and brushes, hand-operated mechanical floor sweepers (not motorized), mops, paint pads and rollers, and others.
- The definition of the country of origin will be based on the EU non-preferential rules of origin. Therefore, goods will be considered as originating in a country if they are wholly obtained or produced in that country. Where the production of the goods takes place in

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***The stated aim is to facilitate consumer choice and improve transparency for the origin of the goods.***

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more than one country, the goods will be considered as originating in the country where the last substantial transformation occurred.

- The wording “made in [country of origin]” should appear in an official language of the EU which is easily understood by final customers of the Member State in which the products are to be marketed.
- The marking has to be clearly legible and indelible, must be visible during normal handling, markedly distinct from other information, and not be misleading.
- Member States will have individual competence to determine the applicable penalties for failure to comply with the Regulation.
- The Commission will adopt further implementing measures in order to determine the detailed form and modalities of origin marking, set up a list of commonly used terms and expressions and establish for which goods marking is not necessary.

## Timeline

The proposal was approved by the European Commission and presented to the Council of the European

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**Marking Rules** (from page 5)

Union on January 18, 2006. The Council consideration of the issue will be controversial. Member States are reported to have contradictory views, in particular as to the scope of the proposal (certain products) and the additional cost and administrative burden that this system will involve.

Under the EU voting rules, each Member State has a fixed number of votes allocated based on its population. Qualified majority voting requires support from more than half of the votes (232 out of 321), a majority of

Member States, and countries representing at least 62 percent of the total EU population (i.e., a large consensus would be needed in order for the proposal to be adopted). In addition, the proposal will also be reviewed by the European Parliament. Therefore, it is difficult to predict the outcome of the discussions at the Council and when the proposal will be adopted.

<sup>1</sup>The products subject to compulsory marking are listed in the Annex of the draft Regulation, which can be found at [http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005\\_0661en01.doc](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0661en01.doc) □

**Changes in Latest MiFID Draft Directive, Regulation**

by Mathew Rutter (Norton Rose)

**[Editor’s Note: The Markets in Financial Instruments Directive (MiFID) will result in a major rewrite of the business rules for investment services in the EU. This article examines changes envisioned by two recently issued drafts.]**

**MiFID Measures Move a Step Closer**

The latest versions of level 2 measures under the Markets in Financial Instruments Directive (MiFID) were published on February 6. The most striking change is that the five draft documents previously published have now been consolidated into just two documents, one a draft Regulation, the other a draft Directive.

**Regulation versus Directive**

The first big surprise is how much more is in the draft Directive than in the draft Regulation (see accompanying table). Only a couple of months ago, Commissioner McCreevy announced that “the bulk of the measures [will be] in the form of a Regulation rather than a Directive.” The reason for this was to ensure uniformity of implementation in Member States. So is this a u-turn on the part of the Commission? The answer is “not exactly,” although the picture is confusing and may explain the delay in the publication of these revised drafts. The Commission insists that “for the majority of the envisaged measures uniform solutions are desirable to avoid “goldplating” by Member States.” However, for technical legal reasons, it has had to fall back for the most part onto what it describes as “a principles-based though tightly-worded Directive, allowing Member States to only

make the necessary adaptations for the rules to fit into their national legal systems.”

**Room to Goldplate?**

So will the fact that most of the measures are in a Directive leave regulators in Member States with scope

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Measure	Directive	Regulation
Admission of financial instruments to trading		x
Best execution	x	
Client assets	x	
Client order handling	x	
Conflicts of interest	x	
Derivative financial instruments		x
Eligible counterparties	x	
Inducements	x	
Information to clients	x	
Investment advice—definition	x	
Organizational requirements	x	
Outsourcing	x	
Post-trade transparency (regulated firms, MTFs and investment firms)		x
Pre-trade transparency (regulated markets and MTFs)		x
Pre-trade transparency (systematic internalizes)		x
Record keeping	x	
Record keeping: client orders and transactions		x
Reporting to clients	x	
Suitability and appropriateness	x	
Transaction reporting		x

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