

Guidelines for Product Identification

GUIDELINES FOR PRODUCT IDENTIFICATION

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With regard to the marketing (provision) of products in Europe, the requirements for distributors / providers (manufacturers, importers, traders, etc.) as to the **proper labeling of products in conformity with the law** have increased considerably in the last years.

Thereby special attention should be paid to the **mandatory labeling** required by law, as non-compliance (violation) readily provides a target for **infractions** and penalties in the case of checks by the authorities, just as well as for **warnings in accordance with the competition law** and associated fines and procedural costs.

Therefore, all responsible economic operators should be well informed about the current standards with regard to these labeling requirements, so as to implement them as precisely and completely as possible, and hence free from error.

General product labeling according to the Product Safety Act ProdSG

In the field of product safety, general requirements are established for product labeling:

Pursuant to § 6 para. 1 no. 2 ProdSG (Manufacturer identification)

The manufacturer is bound to affixing **the name and contact address** to the product when he makes it available on the market. If the manufacturer is not based in the European Economic Area, this obligation rests on the manufacturer's authorized agent or the importer.

These details serves the purpose of **identifying the manufacturer**, in order to locate him in case of product safety defects and be able to charge him.

For this reason, **the specification of a postal address** is required on the part of the manufacturer to which a postal delivery can be effected, since a contact person in the EEA should remain at the disposal of the supervisory authorities. The indication of merely an Internet or e-mail address as well as a post-office box is therefore **not** sufficient.

Pursuant to § 6 para. 1 no. 3 ProdSG (Product identification)

Moreover, the **product must be unambiguously identifiable** through appropriate labeling.

Here as well the chief purpose is **the traceability of the particular product and its delimitation** from other products. This way, an effective recall instrument is available in risk cases, as the products can be easily recognized.

The labeling also offers the manufacturer the possibility of narrowing the extent of the measures to be taken and the eventual associated damage (especially in the case of serial products with high number of units).

For the purpose of labeling, **specifications** such as

- Product description / brand / model / type designation
- Item number / EAN code
- Production dates / lot number
- Serial number
- Supplier code, etc.

are suitable to accomplish such an unambiguous identification.

Thereby, in line with the legal specifications, the information should be **primarily affixed on the product itself!** Only in cases when that is not possible shall alternative possibilities such as the package or accompanying documents be considered, and must in each case be justified by **a verifiable, factual reason**. The fact that this implementation process is carried out with much rigor (by way of market surveillance and control by the authorities) can be recognized already in the adjustment of the phrasing in the legal text (the former right of choice from the German Device and Product Safety Act – GPSG – no longer exists!).

As concerns the design, the details must be **legible and affixed permanently and firmly**; the label should thus be easily recognizable, permanent and indelible, e.g. through printing, engraving or lasering (an adhesive label only meets these requirements if it cannot be easily removed).

Exceptions according to [§ 6 para. 1 no. 3 ProdSG](#) **are only allowed** if it is reasonable to omit these specifications, in particular because they are already known to the user or because their affixing would be associated with a disproportional effort (technical or financial).

Accordingly, as a manufacturer or importer it is advisable to attempt to implement the labeling in accordance with the statutory provisions rather than allowing exceptions, for time or convenience reasons, for which one later must have good and accountable reasoning arguments, so that they can also endure the check test of the authorities.

Also here it pays off to be well positioned, particularly as **comparable labeling specifications** play a role again in other legal requirements and may be included.

CE marking obligation

LEGAL REFERENCE: ART. 30 REGULATION (EC) 765 / 2008

A further specific legal labeling is required for CE products within the frameworks of the product safety, pursuant to [§ 7 ProdSG](#). (cf. also [SOMM Guideline on the Product Safety Act – ProdSG](#))

The **CE marking obligation** applies to products which fall within the application scope of **European product directives** and for which such a marking is mandatory, e.g.

- [Low voltage \(2014/35/EU\)](#)
- [Toys \(2009/48/EG\)](#)
- [Electromagnetic compatibility of electrical and electronic products \(2014/30/EU\)](#)
- [Radio equipment \(2014/53/EU\)](#)
- [Ecodesign \(2009/125/EG\)](#)
- [RoHS \(2011/65/EG\)](#)

Specifications for the proper labeling in conformity with the law result from the **general policy according to [Art. 30 of the Regulation \(EC\) 765/2008](#)** regarding presentation, size (at least 5 mm) and affixing of the mark, in conjunction with § 7 ProdSG and the particular specifications from the respective European product directive (see below).

In special [the requirements for the CE marking in § 7 ProdSG](#) are organized comprehensively:

Also here the CE mark must be visible, legible and permanently affixed to the product. The lawmaker thus expresses the demand that the labeling be

primarily found on the product itself, just as for the general product labeling. Only in case this precondition cannot be objectively fulfilled, because the type of the product does not allow or justify it, may an alternative possibility on the package or in the accompanying documents be considered.

Further **specifications and concretizations** arise according to the product requirements of the respective **EC directives**:

E.g.: Low voltage → [Art. 6, 16, 17](#)
Toys → [Art. 4, 16, 17](#)
EMC → [Art. 7, 10, 17](#)
Radio installations → [Art. 10, 19, 20](#)
Ecodesign → [Art. 5](#)
RoHS → [Art. 7, 14, 15](#)

Also the code number of the Notified Body may stand after the CE marking, if it participated in the conformity assessment procedure. Moreover, a pictogram or another symbol may appear after it which adverts to a special risk or a special application ([§ 7 para. 4 ProdSG](#)).

Essentially, the CE marking must be concluded **before** the product is **made available on the market** by the manufacturer or importer.

Product identification of electrical and electronic devices according to the Electrical and Electronic Equipment Act **ElektroG**

LEGAL REFERENCE: DIRECTIVE WEEE II 2012 / 19 / EU

Insofar as the concerned products are electrical and electronic devices that fall within the **area of application of the ElektroG** ([§ 2 ElektroG](#) – allocation to one of the ten categories), they are liable to comparable identification requirements as those of the ProdSG (see above) with reference to manufacturer and product identification.

Nevertheless, as this legislation has a waste-law and not a product-safety-law purpose, **special marking obligations arise from the [§ 7 ElektroG](#)**:

- electrical and electronic devices shall be permanently marked in such way that the manufacturer can be clearly identified and
- it can be established that the device was placed on the market definitely after the date of August 13, 2005
- it shall further be marked with the symbol according to Annex II (crossed-out wheeled bin)

The information regarding the **identity of the manufacturer** by specification of the name, the brand name, the trademark, the registered company number and the date of placing on the market should be placed permanently (according to requirements of the [DIN EN 50419](#)) on the device

itself. Here, the law does not provide for divergent alternatives.

Only in respect of the **mark with the crossed-out wheeled bin** does the law allow exceptions, if factual reasons such as size or function of the product justify the symbol being affixed to the package, the operating manual or the certificate of warranty.

Should such an exception not be present or reasonably justifiable, then electrical and electronic devices must be properly marked with the symbol of the crossed-out wheeled bin in accordance with Annex II (with a solid bar under the symbol as **evidence for the correct date of placing on the market**).

Product identification of electrical and electronic devices according to the Ordinance on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment **ElektroStoffV**

LEGAL REFERENCE: DIRECTIVE ROHS II 2011/65/EU

For all electrical and electronic devices that fall within the objective **area of application of the ElektroStoffV** ([§ 1 ElektroStoffV – 11 device categories](#)) ensue the product identification obligations from the ElektroStoffV.

According to the marking obligations, the manufacturer must ensure the **product identification** (through type, lot, serial number or another attribute) and the manufacturer identification (through name, registered trademark and address) on the device.

For both cases, the law allows **exceptions** if the designated marking is not possible due to the size or type of the electrical or electronic device; alternatively, the information can be provided on the package or in the enclosed documents. Here as well **the manufacturer has no right of choice**; rather, he may make use of the exception only if a justifying factual reason exists.

In addition, the marking is equally compulsory for the importer, which under certain circumstances (as provided) leads to a **dual labeling**.

Electrical and electronic products that are covered by this ordinance henceforth **require the CE marking** as well, and are thus liable to the European policy on CE marking (see above), according to which it should be primarily affixed to the product and only exceptionally, if this is not possible by reason of the size or type of the electrical or electronic device, relocated to the package and the accompanying documents.

In this context, the **transitional provision** of the ElektroStoffV (§ 15 para. 1), should be observed, by which electrical and electronic devices that did not fall within the objective area of application of the ElektroG until the date of May 8, 2013 do not have to observe the requirements from the ElektroStoffV **until July 22, 2019**, and hence also not its marking requirements. (other exceptions and transition periods of particular device groups cf. § 15 para. 2 ElektroStoffV)

Conclusion

The requirements for the proper labeling of products in conformity with the law have become more complex and complicated for responsible manufacturers, authorized agents and importers, especially as several regulations have to be regarded at the same time. In addition, exceptions to the marking directly on the product, replaced by marking on the package or accompanying documents, will be legally permitted in lesser extent than is still assumed today in the implementation practice.

In order to avoid errors and failures as much as possible and be able to counteract supposed sanctions on the side of the authorities and competitors, economic operators should be continuously juridically up to date about this topic or make amendments and operate in the market in conformity with the law.

Annex

Representation of the marks

1. CE marking

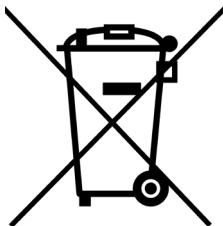
Source of law: [Art. 30 Regulation \(EC\) no. 765 / 2008 in conjunction with Annex II](#)



Download: [CE logo](#)

2. Mark "crossed-out wheeled bin"

Source of law: [Art. 14 para. 4 Directive 2012 / 19 / EU \(WEEE II\) in conjunction with Annex IX](#)
(Designed to DIN EN 50419:2006-06)



3. Practical implementation: Labeling / Tagging

- The labeling should take place already during the production process in order to enable a permanent and firm affixing of the mark e.g. with special, sophisticated technology: printing, engraving, lasering, etc.
- The subsequent labeling only represents an alternative solution: various suppliers provide label templates on the market (without further prioritization).

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