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COMMENTS

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THE ROLE AND SIGNIFICANCE OF CE MARKING

INTRODUCTION

The Commission has raised a number of questions[1] on the role and significance of the CE marking, an issue which has been discussed in the SOGS in connection with the revision of the New Approach. These questions include:

- Whether the CE marking needs to be maintained?
- How its meaning can be clarified?
- Whether there should be different marks according to third party involvement in conformity assessment procedure or not?
- Whether systematic certification would be an alternative?
- How the mark can best be protected?

By means of an answer to these questions UNICE would like to outline its opinion on CE marking.

WHAT IS THE CE MARKING?

UNICE would like to stress that the CE marking is more than just a mark and represents more than "just a manufacturer's declaration".

As stated in the Council decision 93/465 which established it "*CE marking symbolizes conformity to all the obligations incumbent on manufacturers for the product by virtue of the Community directives providing for its affixing*". According to Article 95 (3) of the European Treaty the Directives presume *a high level of protection in health, safety, environmental protection and consumer protection.*

The mandatory affixing of CE marking to a product is the final step in a comprehensive procedure which verifies the conformity of the product to the essential requirements of the appropriate directives. It requires the manufacturer to:

- Specify appropriate directives;
- Define appropriate standards (harmonised, if relevant);
- Determine applicable essential requirements;
- Carry out risk assessment to the extent that existing legislation requires it;
- Fulfil conformity assessment procedure prescribed by existing legislation;
- Establish technical files;
- Elaborate instructions for use, handling, maintenance etc.;
- Elaborate declaration of conformity.

The message to all stakeholders expressed by the CE marking affixed to a product is that the product:

- fulfils all the essential requirements outlined in all of the applicable Directives which define a high level of protection in health, safety, environmental protection and consumer protection, and;
- has passed all required conformity assessment procedures.

[1] in its paper ***Draft CERTIF 2005 - 11***

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For the manufacturer (regardless of whether or not a third party certification body is involved) CE marking involves a lot of resources and is a complex process. For example it will always remain the manufacturer's responsibility to ensure that a product fulfils the legal requirements, even if a third party body is involved in checking the procedure and/or specific tests.

It is worth pointing out in any case that producers are responsible in any case irrespective of whether the product has or should have had a CE mark. However, the very motion of affixing a mark has an educational effect equivalent in value to that of a signature and as a result for the product in question, CE marking has become a kind of free-market trade symbol and a global marketing trademark.

Furthermore, on the global market CE marking is considered to be sufficient proof that a product is safe, and that companies can often avoid additional testing if they adhere to CE marking rules. This is a very positive side effect of the CE marking.

As stated in the Commission paper, CE-marking is, however only one part of a whole system, involving many actors (manufacturers, laboratories and certifiers) in the pre-market phase.

Procedures in the pre-market phase need to be balanced by efficient market surveillance by Member States' authorities in the post-market phase. Confidence in the CE marking consequently not only depends on the pre-market observance of the rules, it depends on the whole system which includes adequate post-market surveillance. To date, however, in many countries market surveillance does not live up to a standard which is able to provide the right balance.

It is crucially important to the successes of CE marking that the importance of enforcement by market surveillance and the need to develop the existing system is recognised by the European Institutions and Member States. National authorities need to spend adequate resources on enforcement. They specifically need to target unreliable businesses (free riders) rather then the reliable businesses that have a proven track record. The EU needs also to consider some form of overseeing role which could help deliver effective enforcement by Member States[2].

The urgency for effective market surveillance is underlined by the large amount of certified products / products bearing a third party certification mark which are subsequently discovered to be unsafe. The statistics for 1999-2001 show that 25% of all notifications were referring to products bearing third party certification mark(s)[3].

ANSWER TO QUESTIONS RAISED BY THE COMMISSION PAPER

Industry is of the opinion that within the domain of the CE marking there should be no differentiation based on whether a third party is involved or not. The possible mandatory involvement of a third party, is a matter for decision makers when setting up the requirements for conformity assessment. It is not a matter for the user or consumer, it is always the manufacturer (or for imported products maybe the importer or distributor) who is liable vis-à-vis the user or consumer.

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[2] This issue is being dealt with under the revision of the New Approach. For more information on UNICE's position please refer to its October 2005 position paper: ***A Community Framework for Market Surveillance***

[3] Source: Market Surveillance of Electrical Equipment in Finland (2002) http://www.tukes.fi/julkaisut/9_2002.pdf

Systematic certification (which UNICE interprets as more third party certification) is not an alternative. It would only lead to increasing costs without actually delivering improved safety. Furthermore, the existing confusion as to the meaning of the CE marking would not be solved. The meaning of voluntary third party certification marks are not as clear to the consumer as that of CE marking.

As the Commission rightly states in its paper, CE marking is automatically seen by consumers, even if originally addressed to authorities. This is why more information and communication campaigns (e.g. directed at partners in the supply chain) could be appropriate actions. UNICE suggests that information campaigns be carried out at the national level, especially addressed to distributors and shop assistants. Distributors and shop assistants are the closest to the consumers, and they are the right people to explain the meaning of CE marking to the consumer. The Commission might facilitate such campaigns by elaborating arguments and provide tools for exchange of experience between Member States. However, each campaign must be adapted to an individual country and culture.

The message to be conveyed remains a complex one because not all EU regulated products are obliged to carry CE marking. As a result any messages conveyed to the consumer needs to bear in mind that while all products must be safe only some products are required to be CE labelled while others do not. It should be kept in mind that educating the general public on CE marking is a complex issue. CE marking was never meant for the general public. It was meant to facilitate market surveillance authorities.

In order to raise confidence in the market one must ensure that unsafe products (whether they are rightfully or wrongfully carrying CE marking or not) are found and removed from the market. This is the role of Member States and the European Institutions4, and it necessitates a higher level of knowledge among market surveillance authorities and customs officials and an adequate (and possibly even a homogenous) level of enforcement throughout the community.

DIFFERENT LEVELS OF CE MARKING

As already said, industry strongly opposes the introduction of different levels of CE marking, e.g. for (voluntary) involvement of 3rd party conformity assessment bodies. Such differentiation would sooner or later lead to a quasi-mandatory certification due to strong market pressure and thus undermine the one important basic principle of the New & Global Approach which is *not to impose unnecessary burdens to industry*.

[4] See the above mentioned position paper.