



Position Paper

CE Marking

"Caveat Emptor – Buyer Beware"

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The European Association for the Co-ordination of Consumer Representation in Standardisation

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1. Executive Summary

The positioning of CE Marking towards consumers has been of much concern to ANEC, and our sister consumer associations at national and European level, since the adoption of the New Approach in 1985 and the subsequent use of CE Marking in 1993. Our particular concern is the implicit or explicit reference to CE Marking as a mark of safety for consumers¹.

As so often, the Romans had words for it. *Caveat Emptor* – or 'Buyer Beware' - is an appropriate tag for CE Marking because it offers no assurance to consumers that a product is safe, or compliant with other legal requirements (e.g. Ecodesign requirements).

For many consumer products, CE Marking is no more than a claim from the manufacturer that the product meets European legislation. Not only that, but the manufacturer does not have to provide an independent confirmation of the claim.

Moreover, not all products are required to bear CE Marking. Hence does the absence of CE Marking mean that a product taken at random is exempt or unsafe? This also raises some curious examples. A cot for a baby is exempt from having to bear CE Marking and yet a toy cot, covered by the Toy Safety Directive², carries CE Marking. Does this mean a toy cot is safer than a baby's cot? How is the consumer to know?

Then there is the problem of falsely-affixed CE Marking. The present system of market surveillance and enforcement, organised at national level in each Member State, is inadequate for policing the modern Single Market and global supply chain.

CE Marking is a legislative requirement. It is not a mark of safety, nor a mark of quality, and has never been intended as a mark for consumers. It is directed at market surveillance authorities and customs authorities. It should not continue to be a marking able to confuse and mislead consumers. Hence ANEC wants to see CE Marking relegated to the technical file of a product that European legislation also requires.

¹ ECCG opinion on CE Marking, 20 February 2008

² Directive 2009/48/EC on Toys Safety

2. What is "CE Marking"

Regulation 765/2008 on the requirements for accreditation and market surveillance relating to the market of products (New Legislative Framework, NLF) sets out the general principles of the CE Marking³.

CE Marking means *"a marking by which the manufacturer indicates that the product is in conformity with the applicable requirements set out in Community harmonisation legislation providing for its affixing"*⁴.

Moreover:

- 1. "The CE marking shall be affixed only by the manufacturer or his authorised representative.*
- 2. The CE marking as presented in Annex II shall be affixed only to products to which its affixing is provided for by specific Community harmonisation legislation, and shall not be affixed to any other product.*
- 3. By affixing or having affixed the CE marking, the manufacturer indicates that he takes responsibility for the conformity of the product with all applicable requirements set out in the relevant Community harmonisation legislation providing for its affixing.*
- 4. The CE marking shall be the only marking which attests the conformity of the product with the applicable requirements of the relevant Community harmonisation legislation providing for its affixing.*
- 5. The affixing to a product of markings, signs or inscriptions which are likely to mislead third parties regarding the meaning or form of the CE marking shall be prohibited. Any other marking may be affixed to the product provided that the visibility, legibility and meaning of the CE marking is not thereby impaired.*
- 6. Without prejudice to Article 41, Member States shall ensure the correct implementation of the regime governing the CE marking and take appropriate action in the event of improper use of the marking. Member States shall also provide for penalties for infringements, which may include criminal sanctions for serious infringements. Those penalties shall be proportionate to the seriousness of the offence and constitute an effective deterrent against improper use"*⁵.

³ Regulation (EC) No. 765/2008, 9 July 2008

⁴ Article 2.20 of Regulation (EC) No. 765/2008, 9 July 2008

⁵ Article 30 of Regulation (EC) No. 765/2008, 9 July 2008

According to Article 4 of the NLF Decision⁶, "*Where Community harmonisation legislation requires conformity assessment to be performed in respect of a particular product, the procedure which are to be used shall be chosen among the modules set out and specified in Annex II*" in accordance with certain criteria.

There are several conformity assessment modules. The module to be used depends on the balance between the degree of risk presented by the product or service and the cost implications. At one end of the spectrum are voluntary, self-assessment schemes (Supplier's Declaration of Conformity or SDoC) for lower-risk scenarios. At the other end are schemes for higher-risk scenarios where third-party audit and certification is mandatory. A range of combinations exists between these extremes.

For most consumer products, only Supplier's Declaration of Conformity (i.e. module A) is required. So, for most consumer products, CE Marking is clearly not a *mark* or an *approval*. It is a marking solely under the manufacturer's own responsibility. In other words, it is where the manufacturer says, "I met all the relevant legislation - trust me!".

The main aims of CE Marking are:

- to indicate the product's conformity to the essential requirements of the relevant legislation;
- to allow products to be placed on the market;
- to ensure the free circulation of goods in the Internal Market;
- to permit the controls by customs and market surveillance authorities.

But what does the acronym "CE" represent? Although no explanation is provided in Regulation 765/2008, it is thought to mean "Conformite Europeenne". The absence of clear explanation as to its exact meaning contributes to the confusion around what CE Marking is.

3. What do consumers think it is

As part of the EU Consumer Policy Strategy⁷, in 2010, the European Commission carried out a study about consumer empowerment⁸. The Consumer Policy Strategy, adopted by the European Commission for the years 2007-2013, sets as its main

⁶ Decision 768/2008 of 9 July 2008 on common framework for the marketing of products.

⁷ COM(2007) 99 final, 13.3.2007

⁸ Special Eurobarometer 342, Fieldwork: February – April 2010, Publication: April 2011

objectives to empower EU consumers, to enhance their welfare and to protect them effectively.

The Strategy defines an empowered consumer as a consumer with real choices, accurate information, market transparency and the confidence that comes from effective protection and solid rights.

The aim of the study was to assess, *inter alia*, consumers' familiarity with, and understanding of, packaging and labelling information - including logos - in order to help them make informed choices. Part of the information given to consumers with products and services about price and quality is mandatory and subject to EU-wide legal requirements, in particular where health and safety (food labels and claims) are concerned, or when consumers need help in evaluating crucial characteristics of products (energy labels) ⁹.

Consumers were asked to identify several logos, among which CE Marking (called logo B in the study), which was presented as follows:

Logo B: *The product conforms with the relevant European legislation (actual size of logo shown to respondents)*



The results of the survey show EU-wide logos on product packaging, such as CE Marking on electrical equipment and toys, are often misunderstood by consumers.

Despite more Europeans claiming to be familiar with Logo B (66%) than with any of the other logos, when asked to select its correct meaning, most respondents (33%) incorrectly believed that it indicates a product that was made in the EU and only a quarter (25%) correctly identified the logo's meaning as *the product complies with the relevant European legislation*. 13% gave other definitions while another 29% of respondents said they did not know of the meaning of the logo.

⁹ COMMISSION STAFF WORKING DOCUMENT ON KNOWLEDGE-ENHANCING ASPECTS OF CONSUMER EMPOWERMENT 2012 – 2014, SWD(2012) 235 final, 19.7.2012

ANEC's interpretation of the study results are that consumers are indeed confused by the meaning of the CE Marking. However, we are surprised and worried by the description given in the study about the CE Marking as a logo indicating that "*The product conforms with the relevant European legislation*".

As illustrated in Section 2 of this Position Paper, CE Marking means "a marking by which the manufacturer indicates that the product is in conformity with the applicable requirements set out in Community harmonisation legislation providing for its affixing"¹⁰. It is the symbol of the manufacturer's declaration about compliance, not of (guaranteed) compliance.

CE Marking was never intended to provide information to the consumer and is certainly not the appropriate means to provide meaningful consumer information. In fact, it provides no information on the quality of the product. Being based on a complex modular system of conformity assessment, the real value of the CE Marking is impossible for the consumer to assess. Hence CE Marking should not appear on the product or its packaging but appear on the technical documentation of the product.

Against this background, we doubt the European Commission's intention to consider CE Marking as a means to empower consumers and allow them to make informed choices, as shown by this survey. This is particularly worrying if put in the context of the Communication 'A European Consumer Agenda — Boosting confidence and growth'¹¹ which highlights the role of consumer policy in achieving the Europe 2020 Strategy objectives of smart, sustainable and inclusive growth.

4. Conclusions: Why ANEC does not support CE Marking

CE Marking is no more than a message from economic operators to the market surveillance and customs authorities about compliance with legal requirements. Although we acknowledge that CE Marking helps these parties, we remain insistent that CE Marking has no meaning for consumers. Given the lack of obligation on manufacturers to carry out an independent check on the conformity of a product to the essential requirements of a directive, CE Marking cannot be an indication that a product is safe, or compliant with other legal requirements.

CE Marking is misleading for consumers. It is not at all obvious in which instances it has to be fixed on a product. For instance, a child's soother is not allowed to bear

¹⁰ Article 2.20 of Regulation (EC) No. 765/2008, 9 July 2008

¹¹ COM(2012) 225 final, 22.5.2012

CE Marking as there is no sectoral directive for childcare articles and so the General Product Safety Directive applies¹². But if the soother is attached to a doll, it is considered a toy, and hence falls under the Toy Safety Directive and so must bear CE Marking. For a consumer, products need to be safe, regardless of which directive applies, and whether the product carries CE Marking or not.

Moreover, ANEC believes a significant minority of products available in the Internal Market do not meet minimum legal requirements, even though manufacturers affix CE Marking. As an example, the 2007 Mattel case showed that 22 million toys could be placed on the global market - all of which carried CE Marking - and yet were not in compliance with European toy legislation. The Mattel recalls clearly demonstrated that CE Marking is no guarantee of safety and gives no value to consumers. Unsafe products with CE Marking products are continuing to be found on the EU market¹³.

Once more, and as a consequence of this, ANEC wants to see CE Marking relegated to the technical file of the product that is also required by European legislation. CE Marking should not continue to be able to confuse and mislead consumers.

ANEC is not confident the idea of differentiating between CE Marking requiring the third-party involvement of a Notified Body, and CE Marking requiring only a declaration by the manufacturer, is possible or feasible given the confusion that has surrounded CE Marking for the past 20 years. The lack of an effective system of enforcement also leads us to doubt that systematic certification would solve the underlying problems of non-compliance and misperception.

Consumers expect products on the European market to be safe and compliant with all legal requirements, regardless of the country of origin of the product or whether the product is covered by sectoral or general product legislation. Consumers should not be encouraged to look for CE Marking, which only certain products bear and anyway means no more than *Caveat Emptor* on most consumer products (as it can be affixed by a manufacturer without an independent check).

For all of the above reasons, ANEC does not support information campaigns aimed at consumers.¹⁴ Instead, we support Commission information campaigns about the meaning of CE Marking solely when they are directed to operators in the supply chain – from manufacturer to importer to retailer – as means to highlight their responsibilities in ensuring only compliant products are placed on the market. An

¹² Directive 2001/95/EC on general product safety (GPSD)

¹³ The Rapid Alert System for Non-Food Products (RAPEX), Weekly overview report of RAPEX notifications -report 45 - 2012

¹⁴ Joint ANEC/BEUC letter on CE robot campaign, August 2012 (ANEC-SC-2012-G-015)

information campaign with such a scope is considered a useful supporting measure able to precede creation of a genuine European framework for market surveillance and enforcement.

The prominent visibility of CE Marking and its ability to mislead consumers are of real concern, and undermine the credibility of both the New Legislative Framework and confidence of consumers in the Single Market. It is the system behind the mark that is at fault, expressly the lack of a European system of market surveillance and enforcement. This is why ANEC reiterates its call for reinforced market surveillance in Member States¹⁵, and welcomes the European Parliament position¹⁶ on the issue as well as the expected European Commission proposal.

¹⁵ Joint ANEC/ORGALIME position paper on market surveillance (ANEC-SC-2009-G-014)

¹⁶ 2010/2085 (INI) EP Own Initiative report

APPENDIX – About ANEC and other documentation

A.1 About ANEC

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment as well as related legislation and public policies. ANEC was established in 1995 as an international non-profit association under Belgian law and represents consumer organisations from 33 European countries. ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.

ANEC has signed the European Commission's Register of Interest Representatives and accepted its Code of Conduct: Identification Number 507800799-30.

A.2 Contact person at the ANEC Secretariat

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More information about ANEC and its activities is available at www.anec.eu

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