



Raising standards for consumers



POSITION PAPER

CE+ Marking = *Experto Crede* - trust the expert?

August 2013

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1. Executive Summary

ANEC, in common with other consumer associations at national and European level, does not support the affixing of CE marking on consumer products as it is often misunderstood by consumers. Our particular concern is the allusion 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)².

For most 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. Hence ANEC wants to see CE marking relegated to the technical file of a product and not affixed to the product or packaging.

So is the proposal to have a mandatory third party certified safety mark – "*CE+ marking*"³ – a good idea?⁴

Again, the Romans had words for it. *Experto Crede* – or "Trust the Expert" – would be the means through which consumers would be assured that products bearing *CE+ marking* are safe. However, in ANEC's opinion, the proposed *CE+ marking* creates even more confusion for consumers as its name is a play on CE marking (a mark not addressed to consumers) and, as proposed in the draft IMCO report, would be affixed on products not allowed to bear the usual CE marking. Moreover is not clear whether *CE+ marking* would be exclusively affixed by a third party or also by the manufacturer. If the latter, there would be no essential difference between CE marking and *CE+ marking*.

The value of any mark depends on the mechanisms used to award the mark and the requirements behind the mark. Hence, in principle, any discussion on a mark is about conformity assessment, the drivers behind the type of assessment used, and the controls of the system. We therefore believe it is better to focus on the aspects of conformity assessment than marks themselves.

Moreover, the present system of market surveillance and enforcement, organised and financed at national level in each Member State, is inadequate for policing the modern Single Market and global supply chain, including product marks.

¹ ECCG opinion on CE Marking, 20 February 2008

² ANEC Position Paper on CE marking "*Caveat Emptor* – Buyer Beware" (ANEC-SC-2012 G-026final – November 2012)

³ This paper italicises *CE+ marking* to stress the distinction from CE marking

⁴ EP IMCO draft report on Consumer Product Safety Regulation, June 2013 (2013/0049(COD))

2. Background

In the summer of 2007, in the aftermath of the crisis provoked by the import into the EU of unsafe toys bearing CE marking⁵, the European Parliament invited the European Commission to assess the added value of creating a common European consumer safety mark that would complement CE marking. The objective was to guarantee a higher degree of safety for consumer products.

Although there had been some calls in the European Parliament for a 'European Safety Mark' or a 'CE Mark Plus', the latter was rejected by the Internal Market & Consumer Protection Committee of the Parliament in its adoption of the Internal Market Package (New Legislative Framework, NLF) on 27 November 2007⁶. ANEC had already cautioned the Commission, in its associated consultation, against the adoption of a new mark into an environment of inadequate market surveillance and enforcement activities.

In December 2008, the Commission published a Staff Working Document on the "Feasibility of a consumer safety mark and its possible relation to CE Marking"⁷ as its response to the Parliament. The paper found more disadvantages than advantages in the introduction of a consumer safety mark and no support from stakeholders - market surveillance authorities included - so confirming the ANEC position.

In April 2009, ANEC joined with the European Engineering Industries Association (Orgalime) in calling on policy makers to take practical measures to reinforce border controls and the surveillance of products placed on the European market⁸.

In June 2013, we welcomed the European Commission's Proposal for a Product Safety and Market Surveillance Package⁹ as it addresses many of our concerns¹⁰. However, we believe adequate funding is central to unleashing this regulatory package's potential to meet the objectives of improved consumer protection, environmental compliance and the competitiveness of the European industry.

⁵ The so-called "Mattel recalls" case.

⁶ 768/2008/EC

⁷ SEC(2008)3065 final

⁸ <http://tinyurl.com/cx73dw>

⁹ The Package comprises a draft Regulation on Consumer Product Safety (CPSR), a draft Regulation on Market Surveillance (MSR) and multi-annual action plan on market surveillance

<http://tinyurl.com/d7ydmuy>.

¹⁰ <http://tinyurl.com/p64obce>

3. Comments on European Parliament Internal Market and Consumer Protection Committee draft proposal on CE+ marking

3.1 Consumer expectations

Most consumers do not have particular expectations of a contribution to safety from conformity assessment¹¹, as they believe products bought on the European market to be inherently safe. Hence they see no need to seek the reassurance of a mark of conformity for reasons of safety. Brand names are also a more popular gauge of product quality than conformity assessment marks and so, again, consumers see no need to seek the reassurance a mark might offer¹².

Consumers may look for marks associated with other characteristics of the product, such as its environmental impact or accessibility in order to differentiate between competing products and assure their expectations (for example, about the reduced energy consumption of a product).

Bearing in mind that numerous RAPEX notifications concern products that have been certified by a third-party – or claim to have been certified by a third-party - the value of third-party certification marking can be called into question, if the frameworks of accreditation and market surveillance are not sufficiently rigorous. And, as with any certification system based upon compliance with a standard, the system is only as good as the standard on which it is based. Hence it is essential in meeting consumer needs and expectations that there is effective consumer participation in the standards development process.

3.2 Proposal of the draft IMCO report on CE+ marking

Amendment 21, Proposal for a regulation, Recital 14 a (new)

(14a) Experience has shown that CE marking wrongly gives consumers the impression that the product has been approved by authorities as safe for consumers. The CE+ marking, indicating that the product has been tested and found compliant with the safety requirements laid down in this Regulation by an accredited independent third party body competent to assess the safety of the specific product clarifies that the original CE marking is the manufacturer's indication of conformity. The CE+ marking should clearly indicate to consumers that the product has been deemed safe by a competent body and should be seen as a supplement to the current CE marking

¹¹ "Conformity assessment" is any activity to determine, directly or indirectly, that a process, product or service meets relevant standards and fulfils relevant requirements. Conformity assessment can result in a product or service bearing a mark (i.e. a 'certification mark'). These marks are intended to be a source of information for consumers on safety, quality or performance aspects. (ISO/IEC Guide 2: 2004, EN ISO/IEC 17000:2004)

¹² GHK Consulting Ltd, "Evaluation of the feasibility of a consumer safety mark", October 2008

Amendment 52, Proposal for a regulation, Article 6 a (new)

Article 6a CE+ marking

1. *The CE+ marking shall be affixed only by the manufacturer or his authorised representative.*
2. *The CE+ marking shall be affixed only to consumer products covered by this Regulation, and shall not be affixed to any other product.*
3. *By affixing or having affixed the CE+ marking, the manufacturer indicates that the product has been tested and found compliant with the safety requirement in this Regulation by an accredited body competent to assess the safety of the specific product.*
4. *The CE+ marking shall be the only marking which attests that the product has been tested and found to be a safe product.*
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. *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.*

Justification

The CE-mark sends the signal to consumers that the product is safe. The CE-mark is, however, only the manufacturer's indication, that he takes responsibility for the conformity of the product with all applicable requirements set out in the relevant legislation. The proposed CE+ mark will be supplementary to the CE-mark and indicates that the marked product has been tested by an independent third party and found safe by a competent body.

3.3 ANEC proposal for amendment

As market surveillance and enforcement activities, with conformity assessment, are key components in realising consumer protection and welfare, ANEC does not believe conformity assessment marks should be considered *de facto* guarantees of product safety until (and unless) our reservations on market surveillance are met.

We consider there is urgent need to establish a European framework for market surveillance, in order to ensure a coherent approach to surveillance across all Member States, and make adequate financial and human resources available for market surveillance activities. Although we welcome the proposal of the European Commission for a Regulation on Market Surveillance (MSR)¹³ and the related draft

¹³ COM(2013) 75/2

IMCO Committee report, the system will deliver only if the lack of resources of market surveillance authorities is properly addressed at the national level.

However, we think that the draft CPSR should provide the possibility to choose an appropriate conformity assessment level depending on the risks a product may pose and/or the categories of consumers at risk¹⁴.

We therefore propose to delete the proposed text in article 6a on *CE+ marking* (and recital 14a) and replace it with an amendment about conformity assessment.

END

¹⁴ ANEC/BEUC Position Paper on European Commission proposal for a Consumer Product Safety Regulation, June 2013 (ANEC-SC-2013-G-029)

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 is open to the representation of national consumer organisations in 33 countries.

ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.



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ANEC is supported financially by the European Union & EFTA

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