Raising standards for consumers

POSITION PAPER

ANEC position on the evaluation of the New Legislative Framework (Decision No 768/2008/EC and Regulation (EC) No 765/2008)

Response to the EC Roadmap Consultation

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1 | Is the NLF fit to address the way products may be changing during their lifetime to both support the take-up of smart connected or remanufactured products, and to ensure safety?

No. The NLF should make an explicit reference to cybersecurity and Artificial Intelligence risks that can impact on product safety/compliance. A product should be safe/compliant over the whole of its expected lifespan.

The definitions of 'making available on the market', 'placing on the market', 'conformity assessment' need to be reconsidered to take into account the evolving, learning and predictive functionalities of a product, impact of interconnected products, and potential privacy considerations affecting safety/compliance.

The concept of 'substantial modifications' could be considered to reflect the changing nature of a product.

Consistency has to be ensured between the NLF requirements and creation of a right-to-repair for consumers, and the more sustainable use of products.

2 | Do the conformity assessment procedures remain fit for purpose and ensure the safety and compliance with the applicable requirements of the products placed on the Union market?

No. For many consumer products (e.g. under LVD) there is no conformity assessment procedure requiring the intervention of a third-party. Products under the LVD are self-assessed by the manufacturer. At the same time, electrical appliances remain hazardous and can kill, as shown by Safety Gate notifications. In our view, the higher the risk, the higher the conformity assessment procedure (module) needs to be. This should also be the case for everyday consumer products, and not only those under the PPE or Medical Devices Directives.

The criteria of 'burdensome procedure' should not feature in legislation because of its subjective nature.

3 | Are the rules for notified bodies robust enough to ensure the competence of those bodies?

Notified Bodies have a key role in guaranteeing the safety of products on the market and so ensuring the protection of consumers. It is essential they work in a competent and independent manner. However, the way their competence is assessed varies among Member States. Due to these differences, it is unclear how the competence of a Notified Body is assessed. Despite the introduction by the NLF of European-wide rules on the operation of accreditation and peer-evaluation system, accreditation is not mandatory. We think it should be mandatory to create a true level playing-field for Notified Bodies, based on competence.

4 | Does the accreditation system function well and ensure that that the competence of the notified bodies intervening in the conformity assessment procedures is sufficiently guaranteed?

Not always. Some certificates for consumer products claim compliance with a standard when the product is clearly not complying and even presents serious risks to users. One cause is due to the Notified Body not checking the product against all clauses of the applicable standards. These "partial" certificates may discredit the standards, are clearly misleading and make the work of market surveillance authorities more complex.

5 | Does affixing the CE marking and other product information to the product itself continue to be appropriate?

No. Even though CE Marking is not intended as a mark for consumers, its appearance on many consumer products (or their packaging) is misleading to consumers. ANEC wants to see CE Marking relegated to the technical file of the product. CE Marking is a legal requirement. It is not a safety mark nor quality mark. Also, only some products are required (and allowed) to bear CE Marking. Hence does the absence of CE Marking mean that a product is exempt or non-compliant?[1].

6 | Does the lack of a crisis instrument for urgent situations render the NLF less effective or efficient?

Before replying to this question, it is important to assess whether the product shortages experienced during the first COVID-19 crisis were due to market access issues or (lack of) preparedness in planning for pandemic situations.

ENDS.

[1] See https://bit.ly/38VpE3W

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and the use of standards, 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 34 countries.

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