

New Approach: A case of better regulation at the service of European Competitiveness, 30 November 2005, Brussels

Gottlobe Fabisch: The New Approach from the consumer perspective

In the course of today's conference we have heard about the history, the functioning, the achievements and the success of the New Approach from a series of distinguished speakers. And I am very pleased to be here on behalf of ANEC, the European consumer voice in standardisation, to add the consumer view. As a matter of fact, the existence of ANEC is closely linked to the implementation of the New Approach concept. One could say that the New Approach was the force behind the establishment of ANEC ten years ago.

When having been invited, I was asked to identify both strengths and weaknesses of the New Approach from the consumer perspective and I am more than happy to comply with this wish. To this end I will first take a look at the special relationship between ANEC and the New Approach. On the basis of our experiences in standardisation under the New Approach, I will then outline where we see room for improvement.

ANEC's special relationship with the New Approach

Several speakers have stressed the success of the New Approach to Technical Harmonisation in terms of the completion of the Internal Market, removal of technical barriers to trade, free movement of goods and last but not least product safety. Certainly, consumers would not dispute any of this. On the contrary, we do acknowledge and appreciate that in the course of 20 years of its operation, the New Approach has had a considerable and positive impact. For instance, the Low Voltage Directive – even though it is a kind of prototype since it was adopted before the New Approach existed – has worked well in providing a good level of protection for consumers throughout the European Union with respect to electrical products.

From a consumer point of view, the New Approach, initially aimed at removing technical barriers to trade and serving as a means of improving and simplifying product legislation, has proven to be an effective tool to ensure product safety.

Under the Old Approach, the technical complexity of product regulations and the need for keeping up with technical progress went beyond the capacities of general parliamentary legislation procedures. Abolishing technical barriers to trade, which were due to differences in product safety law in Member States, however, meant a deregulation of product safety law in Member States. So in the development phase of the New Approach it soon surfaced that the European Internal Market could not be achieved without a common European approach to product safety.

This was also the reason why in the beginning of the 1990s, the New Approach was complemented by the General Product Safety Directive that defines general minimum requirements in terms of product safety and applies to all products unless there are specific legal provisions, this means it also applies to aspects and risks not covered by the New Approach Directives and thus complements existing gaps.

The New Approach entrusted private organisations, namely the European standardisation organisations with the task of defining European safety standards, or in other words the European level of safety, on the basis of defined safety objectives. This delegation of powers from the legislator, this privatisation of law-making was both its key to success, because it simplified law-making, and its drawback because it induced a democratic deficit.

Therefore the European Commission, politicians and consumer organisations in the aftermath of the introduction of the New Approach called for an independent consumer body in standardisation to ensure the legitimacy of the New Approach and to organise consumer representation in standardisation. They referred to existing structures in the bigger Member States, in particular France, Germany and the United Kingdom, where the standardisation process had been opened for systematic consumer participation in the 1970's or even earlier.

Thus ANEC was born in 1995. As a European federation of consumer organisations, funded by the European Commission and EFTA, we defend consumer interest in the process of standardisation and certification. We are a member of all three European standards bodies and our representatives directly participate in more than 70 technical and political bodies in European and international standardisation. The scope of our activities covers in the main the safety of products and more and more of services, but is not limited to this dimension. Because what's the use of a safe product if does not operate or fulfill its function. I do not necessarily refer to the little blue device we received this morning. So ANEC also deals with performance, quality, accessibility and the environmental aspects of products and services.

Clearly, we endorse standardisation as a useful tool to ensure consumer protection. Let's take for instance Child safety, an important area of our work, not least because children are a vulnerable group of consumers and accident data indicates that toddlers are the group of children with the highest risk of toy-related accidents in the EU. The European toys and games market is significant – we have just heard about it and I do not have to repeat the statistics.

Consumer organisations appreciate that the Toys Directive has established a harmonised regulatory framework based on the New Approach and enabled Member States to test products on a comparable and consistent basis to the benefit of the same level of safety. More importantly, the number of toy-related accidents has been reduced. Despite these successes, the toys sector remains an area of particular consumer

concern, because defining the safety level in standards bodies is not always only a technical question but often a political choice, and therefore it might be contentious and it is important to counterbalance the industry view, which will not necessarily embrace the consumer interest even though this is often claimed.

The initial drawback of the New Approach has evolved into a strength of the system: A decade of consumer representation in EU standardisation under the New Approach has proven that consumer participation is not a hampering stone for competitiveness but an important and accepted principle of the European standardisation system. Consumer participation is indeed important to counterbalance the industry view. The opening-up of the standardisation process for interested parties, meanwhile also for environmental groups, as a compensation for the delegation of legislative powers to private bodies has become a consolidated element of the New Approach that provides democratic legitimacy.

Room for improvement

Over the past ten years, ANEC has proven to be a reliable, competent and therefore critical partner in the standardisation community.

We welcome that the European Commission is in the process of reviewing the New Approach. On the basis of our experiences with the New Approach and our practical involvement in standard setting complementing EU safety law, we have identified a number of areas for improvement. I would like to focus on four of them in general terms while leaving detailed comments to detailed position papers.

1. Rules and rights for participation

Rules and rights for stakeholder, consumer participation need to be reinforced, in particular when extending New Approach principles to new policy areas so as to ensure legitimacy. As you know and as we have heard this morning, standardisation plays a prominent role in the 2005 re-launch of the Lisbon objectives and is considered one of the key factors to enhance Europe's competitiveness. The intention to use standardisation instead of legislation in the services area will have a direct impact on consumers and it is vital that the consumer view is an integral part of this concept.

The challenge here is two-fold. First, there is no overarching legislative framework, in which standards could operate, as is the case in the product area. Second, there is a need to innovate the European standardisation system so as to ensure that it is equipped to cope with these future tasks. One of our main proposals relates to the concept of balanced representation. By this, we mean equal and fair chances for all stakeholders to influence the standardisation process and to have their views taken into account.

2. Improved consistency

ANEC believes that there is a need for more consistency across the board of the New Approach Directives. For instance the safety concept should be aligned with the safety concept of the General Product Safety Directive that is based on the notion of reasonably foreseeable use. This is of particular importance with respect to the Low Voltage Directive.

3. Effective market surveillance

Despite the indisputable success of the New Approach and despite the General Product Safety Directive, we as consumer advocates do know too well that not all products circulating in the Internal Market are actually safe. In the UK, for instance, tests by WHICH, the Consumers' Association over many years show that about 7% of the products they test, have serious safety problems and in the Netherlands enforcement officers identified 15 -20 % of unsafe products. Notifications under the RAPEX system in its first years of existence tell a similar story. As you know, RAPEX serves as a single rapid alert system for dangerous consumer products under the General Product Safety Directive. In 2004 we had 388 notifications, compared to 139 in 2003. More striking, a large number of the notifications relate to toys, followed by other types of products for children. The main risks were associated with choking, suffocation, fire and electric shocks.

Take for instance these examples: On the left, you see a bow with arrows and knives or daggers. There is a risk of suffocation and injury because the protective caps of the arrows can be easily removed and swallowed by a child. In addition there is excessive kinetic force. The toy does not comply with the Toys Directive nor with the relevant European standards. One fatal accident occurred in the past with a similar. However, the product bears the CE marking. On the right, you see an electric child night lamp in the shape of a sitting dog. The product carries the risk of an electric shock. Due the absence of cord fixation a child can be exposed to live parts. The product does not comply with the Low Voltage Directive nor with the relevant European standards.

These examples show that the best legislation, the best standard is of no use if not properly enforced. Therefore, ANEC strongly supports the Commission's intention to improve market surveillance in the European Internal Market and to establish a genuine European market control strategy.

4. Role and meaning of the CE marking

We also know from experience, and our example illustrates it yet once more, that the CE marking is deliberately misused. Some products circulating in the Internal Market do not meet the minimum requirements even though they bear the CE marking. I assume that

all of you have heard the nasty joke that CE stands for Chinese Export. Faulty and unsafe products, however, trigger a loss of consumer confidence in the European Internal market. This is reinforced when unsafe products bear the CE marking.

On top of this misuse of the CE marking, which is directly linked to deficiencies in market surveillance, we are very concerned about the misperception of the CE marking. And MEP Chichester is just a prominent example of this misperception when this morning he claimed that the CE marking is a consumer friendly indication. We strongly disagree. The CE marking is not at all addressed to consumers but to public authorities indicating that the product is allowed to be on the market and complies with legislation – like your CE marked badge allows you to be in this room.

The rules governing the CE marking are complicated and very different, ranging from self-declaration by the manufacturer to the use of notified bodies. It is also hard to understand why some consumer products bear a CE marking and others do not. As you know products falling under the General Product Safety Directive do not bear the CE marking. But consumers expect all products they buy to be safe and fit for use. Confused? Well, ask the average consumer!

Some indeed did and a study published by the Commission, DG SANCO in 2000, showed that a large majority of consumers across Europe do not know what the CE marking stands for but do rely on it when buying products. These findings were confirmed recently by a survey in Sweden, where 90 % of the consumers believe that CE means that the product was manufactured in the EU or that it is a quality mark and had been tested by third parties.

Bearing this in mind, ANEC very much welcomes that in the context of the review of the New Approach, the European Commission proposes to explore whether the CE marking needs to be maintained. We believe that the Commission proposal on this issue is an intelligent and courageous paper that reflects the problems consumers have encountered with respect to the CE marking.

Given the confusion the CE marking generates for consumers even after 20 years of existence and considering that it is not at all addressed to consumers but to public authorities, ANEC calls for removing the CE marking or at least taking it off the product and affixing it on the accompanying papers, the technical file. In our point of view, this would be best in order to avoid further erosion of consumer trust in the Internal Market.

Ladies and Gentlemen, the misperception of the CE marking also shows that European consumers are interested in a European mark and therefore we believe that the Single European Market needs a genuine single European conformity mark, providing added value to consumers, based on third party certification, and putting an end to the mushrooming of marks.

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