ANEC position paper on the revision of the Low Voltage Directive (73/23/EEC)

Executive summary

The Low Voltage Directive (LVD) has been in force for many years and has generally worked well in providing a good level of protection for consumers throughout the European Union. However, after thirty years of its existence, ANEC calls for a revision of the LVD in order for it to be fully adapted to the New Approach principles as follows:

- Align the safety concept with the General Product Safety Directive in order to contribute to a single safety concept for all consumer products;
- Provide for a system of substantive control of harmonised standards in case they do not fulfil the essential safety requirements;
- Abolish the CE marking because of its misleading impact on consumers.
- Introduce a genuine, single European conformity mark based on third party certification;
- Establish co-operation between the Commission, Member States and stakeholders, including consumers, to specify in detail the essential safety requirements without having to change the Directive itself.

This document outlines the major issues, which should be taken into account in the revision of the Low Voltage Directive from a consumer's point of view.

Scope of application of the Directive

Lowering of voltage (art.1)

ANEC supports the lowering of the voltage to zero provided it is supported by a risk assessment. The Low Voltage Directive is a "total safety" directive covering mechanical hazards and energy or other risks, e.g. lamps, heat, lasers, high currents, lithium batteries, high brightness LEDs and moving parts etc. For this reason we believe that the manufacturer must carry out a risk analysis before products in this voltage category may be considered as benign.

Safety concept (art.2)

The safety concept of the LVD is not in line with the EU legislation adopted since its publication, such as the General Product Safety Directive. It ensures safety only in situations of intended use of a product ("when properly installed and maintained and used in applications for which it was made" according to art 2.1 of the LVD). From a

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consumer's point of view, this concept does not correspond with real life situations and neglects the expectations of consumers in modern society. ANEC calls to align the safety concept of the LVD with the concept formulated in art. 2b) of the General Product Safety Directive (GPSD) 2001/95:

"Safe product" shall mean any product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular:

- *The characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, for installation and maintenance;*
- *The effect on other products, where it is reasonably foreseeable that it will be used with other products;*
- *The presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product;*
- *The categories of consumers at risk when using the product, in particular children and the elderly. The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be "dangerous".*

ANEC urges that a revision of the LVD should contribute to a single safety concept for all consumer products. ANEC believes that consumer products falling within the scope of the LVD should not follow a different safety philosophy than other consumer products. Why are consumers more protected when they use furniture than they are when they use electrical household equipment? In this respect, European product safety law has been incoherent to date. ANEC believes that it is essential that a revision of the LVD addresses this point.

<u>Export to third countries (art.12)</u>

ANEC is of the opinion that this article should take into account that consumers from third countries are entitled to the same level of safety as consumers from EU Member States.

Risk analysis/assessment

Taking into account the categories of consumers at risk when using the product, a provision on risk analysis should form part of the legislation and should be applied in all cases.

Essential requirements

Unlike standards developed under the New Approach directives, LVD standards have never undergone a review by a consultant to establish whether they cover the essential health and safety requirements (EHSR) of the Directive. CENELEC regularly reviews LVD standards, but no independent consultant (paid by the European Commission) has ever verified them. ANEC is of the opinion that an assessment by a consultant should be done before the publication of standards, to establish whether a standard fulfils the safety objectives of the LVD.

Notified bodies

ANEC believes that the reference to EU Notified Bodies should remain in the revised LVD. In our opinion, Notified Bodies are embedded in the legal framework of the "New Approach" directives and in particular the conformity assessment procedures. Indeed the Commission document 'COM(2003)240 final' (Enhancing the Implementation of the New Approach Directives 7.5.2003) emphasise the importance of Notified Bodies. The document states that 'most of the modules foreseen in New Approach directives require the intervention of a third-party conformity assessment body known as a Notified Body'. It also includes a number of recommendations consolidating the requirements Notified Bodies have to fulfil and enhancing their role in the "New Approach" framework by the exchange of best practices. For these reasons we propose that the revised LVD should refer to Notified Bodies.

Market surveillance and traceability (art.8)

The best legislation or standard is of no use if it is not properly enforced; indeed it undermines the authority of the legislation and related standards.

ANEC is particularly worried by the fact that the LVD has no requirements for non-EU countries to nominate an authorised representative, or for the importer(s) to be identified on the product or its packaging despite many unsafe products which are imported from the Far East. In addition, the Declaration of Conformity often does not contain enough information to assist traceability.

ANEC believes that the part on market surveillance within the LVD should be oriented towards the concept formulated in the General Product Safety Directive (GPSD) 2001/95.

Technical documentation

ANEC suggests that there should be an obligation to lodge a technical file (to be specified in the directive) with a Notified Body, which would have to check the file.

Formal objection and safeguard clause (art. 9)

At present, the LVD does not provide for a system of substantive pre-market control of harmonised standards with respect to their conformity to the essential safety requirements. The safeguard procedure contained in Article 9 is product oriented, not standard oriented. Even if a product turns out to be unsafe due to a shortcoming in a harmonised standard, the safeguard procedure has consequences only for the product which can be withdrawn from the market, not for the standard or the presumption of conformity which remains in place.

ANEC is of the opinion that the new LVD should provide for a system to review harmonised standards that is in line with the New Approach principles. This procedure should provide for the challenge of harmonised standards. As a last resort, the Commission should be empowered to withdraw the reference to such a standard and revoke the presumption of conformity. ANEC believes that art.6 of the Machinery Directive 98/37/EC could serve as an example for such a procedure:

PROPOSAL:

“Where a Member State or the Commission considers that the harmonised standards do not entirely satisfy the essential requirements, the Commission or the Member State concerned shall bring the matter before a committee, giving the reasons therefore. The committee shall deliver an opinion without delay.

Upon receipt of the committee's opinion, the Commission shall inform the Member States whether or not it is necessary to withdraw those standards from the published information”.

CE marking (Annex III)

Being based on a complex modular system, the real value of the CE marking is impossible to assess. The high visibility of the CE marking on the one hand and its misleading impact on consumers on the other hand, are of great concern to ANEC. Bearing in mind the confusion the CE marking generates for consumers and considering that it is not addressed at all to consumers but to public authorities, ANEC calls for abolishing the CE marking. As an alternative, it is suggested removing the CE marking from the product itself and to affix it on the technical file.

This said, ANEC is convinced that there is a need for a single European conformity mark based on third party certification.

For many years now, ANEC has called for a single European conformity mark based on third party certification as a source for genuine information for the consumer; a mark that the consumer can have confidence in.

Comitology

ANEC believes that there should be a provision in the LVD to allow for co-operation between the Commission, Member States and stakeholders, including consumers, to specify in detail the essential safety requirements without having to change the Directive itself. This should also include the possibility of setting limit values, e.g. when the Standards Bodies fail to set adequate limits in the standards.

From a consumer's perspective it is essential to include the major stakeholders in a future Comitology procedure. At present, consumers, as well as industry, are represented in the LVD Working Party. However, this group is not embodied in the Directive.

Such a transparent Comitology procedure is needed for the following reasons:

- There is clearly a need to have a more flexible instrument that allows to react quickly on market changes (new products) or new identified risks and which allows to establish requirements (specify essential requirements) without having to revise the whole Directive which is a long process involving the Parliament and the Council.
- Highly political issues should be resolved at the political level and not shifted to the Standards Bodies. This is highly relevant for the establishment of limit values in the standards.

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ANEC is the European consumer voice in standardisation, representing and defending consumer interests in the process of standardisation and certification, also in policy and legislation related to standardisation. Our aim is a high level of consumer protection.

ANEC was set up in 1995. We represent consumer organisations from the EU Member States and the European Free Trade Association (EFTA) countries. The European Commission and EFTA fund ANEC, while national consumer organisations contribute in kind. Our areas of priority are Child Safety, Design for All, Domestic Appliances, the Environment, the Information Society, Services and Traffic Safety.