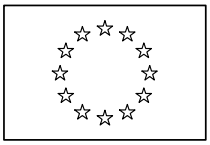

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COMMISSION STAFF WORKING DOCUMENT

Feasibility of a consumer safety mark and its possible relation to CE marking

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Executive Summary

In summer 2007, in the wake of a crisis provoked by the import into the EU of unsafe CE marked toys, the European Parliament invited the Commission to assess the added value of creating a common European consumer safety mark, complementary to the CE marking. The objective was to guarantee a higher degree of safety for consumer's goods.

This Working Document sets out the legal and technical analysis made by the Commission on the feasibility of a consumer safety mark as well as stakeholders' perception on this issue following a public consultation process.

The result of this analysis can be summarised as follows:

- From a legal point of view it would be possible to introduce a voluntary safety mark, but the evidence indicates that

- A new mark would overlap with CE marking and would create confusion in the consumer's mind.

- The necessary selection of products to which the mark would apply, would impose a heavy burden upon both manufacturers and market surveillance authorities. Furthermore it would create legal uncertainty which would go against the better regulation objectives of introducing more transparent and predictable legislation.

- It would be difficult to inform and explain to all customers in the European Union the meaning of the new mark and which products it could be applied to.

- There is no clear impetus from the stakeholders for introducing a new consumer safety mark

- On the consumer side, it appears that the consumers do not look for marks as much as for brands. Price is the dominant factor in consumers' purchasing decisions although they seem to be prepared to pay extra for certain products in exchange of safety.

- On the enterprise side, businesses are pointing out that the importance of voluntary marks has been decreasing in the past years. A mandatory mark will lead to both legal difficulties and problems of implementation. Furthermore, enterprises do not see how to make a new mark more credible than CE marking. Finally they fear, and this is the case in particular for SMEs, to be put at a competitive disadvantage because of the costs of affixing and maintaining the right to use a mark.

- The market surveillance authorities felt that a mark is only useful if they actually can rely upon its credibility, thus reducing the need for controls. They consider better enforcement mechanisms and border controls to be more effective than a new safety mark.

- Reinforcing the safety of consumer products is a shared objective

The analysis suggests that the problems relating to unsafe products are limited and that the possible solutions should concentrate on those areas where there are problems, as opposed to developing an overall new system.

It also suggests that the reinforcing of consumer product safety can be obtained by building upon the existing system of CE marking and reinforcing other types of product control, e.g. border controls and market surveillance.

This is the objective of the Regulation[1] on a common framework for accreditation and market surveillance which will enter into force on 1st January 2010. The Regulation contains common requirements with which all the Member States have to comply. It will improve the quality of market surveillance by setting specific requirements, imposing concrete obligations on national authorities and by introducing an obligation for authorities to cooperate with each other not only on a national level but also cross borders. The Regulation builds upon and complements the system put into place by the General Product Safety Directive[2]. In certain sectors, like the food sector, there are already comprehensive well-functioning systems in place. Together with this the Commission intends to launch a comprehensive information campaign addressed to all stakeholders across the EU.

The Commission is convinced that a joint effort of all stakeholders can further strengthen CE marking in order to guarantee it as a reliable European mark.

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1 Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, OJ L 218, 13 August 2008, p. 30

2 Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, OJ L 11, 15.1.2002, p. 4–17

1. INTRODUCTION

The free movement of goods is one of the cornerstones of the Internal Market, the effectiveness of which is crucial for the functioning and development of the European Union.

If the Internal Market is to work properly, all stakeholders including consumers, professional users and distributors need to be able to trust that the products that circulate on the European market are safe, which is exactly why the European Commission has made the issue of product safety a top priority.

Product safety is founded on interlinked elements which form part of a chain: safety requirements set out by the legislator, the "actions" of the manufacturers and importers, the quality of testing, certification and inspection bodies and the enforcement by the public authorities. The weakest link in the chain determines the strength of the entire system.

In this respect, reference has to be made to the New Legislative Framework. The Council and European Parliament adopted two proposals in July 2008, a Regulation[3] and a Decision[4], which together form this New Legislative Framework for Goods. The objective is to ensure free movement of goods by technical harmonisation of entire product sectors, whilst at the same time guaranteeing a high level of safety of all products placed on the European Union market, in particular ensuring the protection of consumers, of users and of the environment as well as the health and safety at the workplace, and imposing reinforced obligations upon manufacturers, importers and surveillance authorities alike. They aim to integrate into the legislative framework all the different elements that play a role in ensuring that products placed on the market are safe. The Regulation and the Decision build upon and complement the existing system for consumer products under the General Product Safety Directive.

The main elements which the New Legislative Framework takes on board, and which are fundamental for ensuring the safety of products, include clear obligations for all economic operators; requirements that notified bodies, i.e. independent third party testing, certification or inspection bodies, have to fulfil in order to carry out conformity assessment tasks; obligations on Member States to carry out efficient market surveillance and border controls; and last but not least the obligation for Member States to inform users of possible risks and to ensure follow-up to any complaints and accidents. In addition, the New Legislative Framework aims to clarify the conformity assessment procedures and to reinforce the quality and use of accreditation to ensure that certification bodies are truly competent to work in support of the application of Community harmonisation legislation.

CE marking signifies compliance of a product with the applicable requirements set out in the relevant Community legislation (such as toys, machinery, electrical equipment, personal protective equipment like bicycle helmets etc.). Usually, Directives providing for CE marking aim at ensuring the health and safety of consumers and other users[5]. If the requirements set

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3 ibid

4 Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, OJ L 218, 13 August 2008, p. 82

5 There is only one exception, namely Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (OJ L 139, 23.5.1989, p. 19), which does not aim at ensuring health and safety but at ensuring the electromagnetic

out in the Directives relate to safety, CE marking means compliance with the safety requirements and consequently that the product, to which CE marking is legitimately affixed, is safe.

The affixing of CE marking is based either on the intervention of the manufacturer himself who declares the product to be in conformity with the applicable requirements after having established the technical documentation or on the intervention of a third party (i.e. a conformity assessment body formally considered to be competent to carry out conformity assessment, a so called "notified body").

The CE marking is a visible symbol which confirms that a whole series of tasks, forming part of a comprehensive system, have been completed and that the product complies with all the applicable Community legislation. Thus, the objective of strengthening the CE marking, an integral part of the New Legislative Framework, entails practical reinforcement of the whole system underpinning the mark. It is the manufacturer, the certifiers and the authorities who have an influence on whether a product placed on the market is safe or not. CE marking's objective is merely to be a messenger passing down the message that a product is compliant. Thus, if the system behind the CE marking works properly, the product is safe and the marking is credible.

Unfortunately no system is perfect and the system behind the CE marking has, in the past, not always worked exactly as it was intended to. This may be due to many reasons, including mistakes by a manufacturer or importer or unscrupulous marketing of non-compliant or dangerous products; counterfeit marks or abusive affixing of CE marking to non-compliant products; a customs authority failing to notice a dangerous product when it crosses the border; a market surveillance authority not spotting a defective product already placed on the market or third party certifiers making mistakes when testing a product.

Following numerous recalls from the market of CE marked toys in the summer of 2007, the European Parliament invited the Commission to assess the added value of creating a common European consumer safety mark, complementary to the CE marking for use by all economic operators[6].

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compatibility of equipment, i.e. to limit electromagnetic disturbance generated by equipment and ensure that equipment has a level of immunity to the electromagnetic disturbance to be expected in its intended use. However products covered by the Electromagnetic Compatibility Directive are at the same time also included in the scope of the Low Voltage Directive (Directive 2006/95/EC of the European Parliament and of the Council of 12 December 2006 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage, OJ L 374, 27.12.2006, p. 10) or the General Product Safety Directive which *do have* the objective of ensuring health and safety.

6 Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, OJ L 218, 13 August 2008, p. 30, Recital 36, "Within one year of the publication of this Regulation in the Official Journal of the European Union, the Commission should present an in-depth analysis in the realm of consumer safety markings, followed by legislative proposals where necessary." See also Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, OJ L 218, 13.8.2008, p. 82–128, recital 52

This Working Document sets out the legal and technical analysis made by the Commission on the feasibility of a consumer safety mark as well as stakeholders' perception on this issue following a public consultation process[7].

2. COMMISSION ANALYSIS OF THE FEASIBILITY OF A CONSUMER SAFETY MARK

Given that the safety of consumers and the achievement of an even safer market place is the overarching concern, the question remains whether it is necessary to introduce a consumer safety mark or whether it is sufficient to ensure proper resources to enforce the mechanisms already in place.

Issues at stake

Any consumer safety mark can only be envisaged as a new mark. For a new mark to be successful, the following two conditions have to be fulfilled: A mark must bring benefit to those to whom it is addressed, i.e. consumers, and it must be accepted by all parties involved, i.e. consumers, enterprises and authorities. Acceptance presupposes credibility, a cost-benefit ratio tolerable by all parties involved and awareness of the message the mark conveys.

The discussion on a mark is in reality a discussion on the mechanism of how to award the mark and what is behind the mark as the mark is only the visible symbol of conformity. Therefore, in principle, any discussion on a mark is about certification and the drivers for certification and the controls of the system.

2.1. To which products could a consumer safety mark apply?

The products to which a new mark should be applicable have to be carefully selected which raises several questions.

2.1.1. Restricting a consumer safety mark to CE marked products?

The first issue to address is whether any possible mark should be restricted to products for which CE marking is already foreseen[8], or whether such a mark should have a broader scope.

If a consumer safety mark were introduced, a restriction to products which currently have to be CE marked would be artificial as there is no reason why the scope of a consumer mark should be linked to a certain type of Community legislation. There are many consumer products which currently do not fall under the CE marking regime such as clothing, textiles, furniture, food, cars, pesticides etc.

2.1.2. How to distinguish between consumer products and industrial products?

A mark which is designed for consumers should be affixed only on consumer products. Therefore, a distinction must be made between consumer and industrial products. This distinction requires not only the legal interpretation of the notions of "consumer" and "consumer product" but also careful assessment of the potential users of a product.

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7 See annex 1

8 I.e. products within the scope of those New Approach Directives which provide for the affixing of CE marking, cf.: http://ec.europa.eu/enterprise/newapproach/legislation/directives/table1.htm

Identification of users of a product would impose a heavy burden upon both manufacturers and market surveillance authorities (and might also prove difficult for the legislator), who would have to clarify for each product type whether the user is a consumer or professional and should thus be marked or not. This would lead to considerable problems in grey-zone areas where products may be used by anyone, for example typical "do-it-yourself products" such as a drill or a hammer, but also computers, medical equipment, weighing machines etc. However, certain specific, high-performance products like "big" drills are specifically intended for and used by professionals.

Furthermore, separating consumer and industrial products would mean that different products falling under the same legislation could be treated differently, one needing a mark and the other not, depending on who will use them. This would lead to a situation of legal uncertainty with the risk of confusing the consumer.

Moreover such an approach would collide with the Commission's objective of better regulation.

One could, in theory, envisage introducing a safety mark also for professional use products. However, this would be a bureaucratic overkill given the limited value of a safety mark in the professional area because professionals have a technical engineering knowledge that the consumers are not expected to have and can therefore, in most cases judge the quality of the product themselves.

2.1.3. Application to all products which have been regulated at Community level (via harmonisation legislation) and those which have not?

Application to an area where there are different national safety requirements or where only the general safety requirement applies, raises the question as to the conditions under which the mark can be affixed. In other words, what would need to be tested in the case of a product for which no specific rules exist? Should certification refer to overall safety, including possible misuse, or only to specific features? Whose responsibility would it be to set out the requirements against which the certification would be carried out? Should that be the certification body itself (which in most cases is a private service provider to industry) or another player? For the sake of transparency, the requirements would have to be easily accessible to the public although it is doubtful that the consumer would understand the mark's meaning.

This shows the difficulty of the issue. An application to non-regulated products raises the issue of who sets the level of safety. Should this be private bodies which have vested interests or the public authorities?

2.1.4. How to identify product sectors for which a consumer safety mark is useful?

Even if the mark was restricted to consumer products, whether harmonised or not, it would have to be considered whether *all* or only specific products should be covered.

There seems to be agreement amongst the stakeholders[9], including consumers that an across the board application would not be useful (see chapter 3). When asked whether they would be

[9] GHK report, p. 52

willing to pay a higher price for a marked product, a certain percentage[10] of consumers responded they would for certain product types[11] (although paradoxically there remains a market for low cost dangerous products).

Therefore, restricting the mark to limited sectors could be considered. However this would need careful identification of those products to which the mark should apply. Again, this raises the question as to what criteria should be used to identify the products. Should only products presenting a risk be covered? Then, how would "risk" be defined? Finally, if such a mark is also to cover products which require stringent conformity assessment before they can be placed on the market, for example cars, certain food products or medical devices, we must be clear as to what additional, useful information the mark would give to the consumer.

2.2. Additional value of a consumer safety mark?

For a large proportion of consumer products there is already a mark in place at the EU level, namely the mandatory CE marking[12]. Before introducing a new safety mark it would, therefore, be necessary to clarify the relationship between such a mark and CE marking, in particular in those cases where the meaning would be identical.

Two different situations have to be taken into account:

1) A large proportion of sectoral harmonisation legislation provides for mandatory third party certification of a product, i.e. the involvement of an independent conformity assessment body. All those Directives which require CE marking with third party certification ensure the health and safety of the consumers/users of products: this is their main objective.

In that case, what additional requirements could a voluntary (or mandatory) certification scheme behind a consumer safety mark cover? It could only relate to the same safety requirements, as there is nothing else, and would therefore be a duplication of the existing requirements set out in the Directives which already ensure safety. Once this level of safety has been attested, any further tests would not bring any added value for the consumer in terms of safety. Instead, they would only increase the cost of products and burden for manufacturers.

2) Products for which no mandatory involvement of a third party is foreseen:

– Products under the scope of directives providing for CE marking which do not require the involvement of an independent body in order to have CE marking affixed to a product[13], where however CE marking covers safety requirements;

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10 76 % according to the IPM survey, GHK report, p. 56

11 Bicycle helmets, electric kettles, drilling machines were top of the list, whereas T-shirts and carpets were selected with the least frequency.

12 See annex 2, list of Directives providing for CE marking

13 I.e. products under the scope of Directive 2006/95/EC on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits (Low Voltage Directive); Directive 2004/108/EC on the approximation of the laws of the Member States relating to electromagnetic compatibility (EMC); and most products under the scope of Directive 88/378/EEC on the approximation of the laws of the Member States concerning the safety of toys

– Products under the scope of directives relating to product safety including the General Product Safety Directive, which do not provide for CE marking and which do not require the involvement of an independent body in order to market a product;

– Products which are not regulated at Community level.

In these particular cases, there is no overlap with CE marking for products which are not intended to be CE marked and an added value of third party certification for products for which manufacturer's declaration applies might be arguable.

Even in this eventuality, the same concerns regarding certain issues would apply; i.e. the need to distinguish between industrial products and consumer products; the need to identify the product sectors for which a mark could be useful; questions linked to a possible application of a new mark to the non-harmonised area (see chapter 2.1. above) and the question of the mandatory or voluntary character of the mark (see chapter 2.3. below).

2.3. Voluntary or mandatory character of a consumer safety mark?

Marks can either be voluntary or mandatory. In the current context the question arises as to whether a mark linked to safety should have a voluntary or mandatory character.

The results of the study show that both industry and public authorities favour a voluntary scheme. 59 % of market surveillance authorities and 64 % of enterprises who replied to the consultation would prefer a voluntary mark if such a mark was introduced.

In the harmonised, i.e. regulated area, the level of safety is set out by the legislator in product safety legislation.

Safety is, under no circumstances, voluntary. Therefore, the voluntary character of a safety mark would go against the notion of a *safety* mark as it waters down the notion of safety. This could also lead the public to believe that there are different levels of safety, one basic level with which all products placed on the market have to comply and a further level of "more" or increased safety. However, there can only be one level of safety: either a product complies with the safety requirements and is thus safe or it is not. The level of safety set out by the legislator and which can therefore be expected by the consumer, is not an issue for negotiation. In this context it should be noted that a sometimes perceived higher level of safety is confusion with the notion of "quality" (e.g. functionality, durability etc.).

Moreover, the introduction of such a voluntary mark would require a complete revision of the CE marking as the two would overlap.

It could also give the wrong signal to the public who may think that products without it are unsafe. Consequently, this could lead to the voluntary mark becoming quasi-mandatory; consumer demand could effectively oblige all competitors to use the mark, i.e. to undergo certification, which is not necessarily the only answer to product safety. Market forces have a powerful effect on economic competition.

For these reasons it would be problematic that any mark which relates to legal requirements and which symbolises compliance to those requirements be voluntary; such mark cannot in principle be voluntary as compliance with legal requirements is not voluntary.

2.4. Inclusion of the requirement to affix a mandatory consumer mark into harmonisation legislation?

In order to avoid the interpretation problems as to whether a product is intended for professional use or is considered a consumer product (see 2.1.2.) it could be envisaged to include the requirement to affix a mark, following testing by third party, which certifies that a product is in compliance with the legal safety requirements, directly into the legal acts which set out those safety requirements.

Such an approach would have the advantage of providing a clear situation. It would, however, make CE marking redundant for a considerable number of products, namely for those products for which legislation already provides for the affixing of CE marking after mandatory third-party certification. Consequently, it would be necessary to revise the whole CE marking system as co-existence between mandatory CE marking and another mandatory mark would lead to confusion, not only amongst consumers but also amongst manufacturers and authorities.

In this context, it has to be stressed that the discussion about a consumer safety mark has to be linked to certification which ultimately leads to the affixing of a mark, its different modes and its effectiveness. It is not so much the introduction of a new mark that will guarantee better safety but the credibility of the system that verifies compliance of the product with all requirements it has to fulfil.

2.4.1. Does this mean we should systematically require third party certification …?

Even though in principle, it could be envisaged to introduce mandatory third-party certification where existing Community legislation currently provides for manufacturer's declaration of conformity, it has to be kept in mind that the legislator sets out the procedures he deems useful and necessary in order to ensure the proper level of safety. Thereby the legislator aims at achieving the right balance between pre-market requirements and post-market control.

In conclusion, certification is not the only answer. A solution is to build upon the existing system and to reinforce other types of product control, e.g. border controls. It should be underlined that the proportion of non-complying or dangerous products across all the product sectors remains limited. It is therefore not necessarily economically viable to impose systematic certification on all economic operators when the objective is to catch a minority. It should also be remembered that many of the unsafe or non-complying products are either certified or carry certification marks.

2.4.2. … or rather reinforce other elements, like post-market controls …

In this respect reference has to be made to the New Legislative Framework whose main objective is to ensure a high level of safety of all products placed on the European market and which imposes reinforced obligations upon manufacturers, importers and surveillance authorities alike. Surveillance authorities will have the obligation to carry out checks on an adequate level, not only after a product has already been placed on the market but also at borders, before products are released for free circulation. A reinforced cooperation mechanism which obliges market surveillance and customs authorities to cooperate both on a national level and cross borders will ensure fast and efficient information flows. An essential element to comply with all these requirements is the proper resourcing of authorities, an

element which is equally stipulated in the Regulation for Accreditation and Market Surveillance which, regarding consumer products, builds upon and complements the General Product Safety Directive.

Once the New Legislative Framework is implemented it will contribute to significantly improving the safety of the market place. The Commission is, therefore, given the technical and legal issues set out above, not supportive of a consumer safety mark.

2.4.3. … at the same time reinforcing CE marking?

When elaborating the proposals for the New Legislative Framework the Commission assessed various options regarding CE marking, inter alia its abolition[14]. However, the vast majority of stakeholders objected to the abolition of the CE marking. Furthermore, CE marking provides a first means for authorities to assess the compliance of products. Abandoning CE marking, without substituting it by another mechanism, would deprive those authorities responsible for the release of products for free circulation and their monitoring of a clear and visible indication of compliance. This could impair the free movement of products. On the other hand, keeping it but without reinforcing the system behind it was not an acceptable option either.

So the clear support for CE marking together with the problems abolition was likely to create, led the Commission to propose the reinforcing of the system behind CE marking as opposed to its abolition. The Commission was and is convinced that an enforcement of the current system will contribute to make the market place safer. It is not necessarily third party certification which can help improving the safety of products on the market but correct implementation and enforcement of the existing legislation. Crucial elements are coherent market surveillance throughout the European Union and rigorous controls, both when products have already been placed on the market and at borders, those being the best place to detect and stop unsafe products. To this end the Regulation on Accreditation and market surveillance obliges Member States to properly resource their surveillance authorities, to provide the mechanisms for cooperation and information exchange, both on a national level and cross borders and to carry out adequate controls.

Therefore, instead of proposing an entirely new concept, whose introduction would be costly and whose success cannot be guaranteed, it is suggested to build upon an existing European mark, which is widely known to stakeholders, i.e. CE marking, and which already covers the product sectors that are the subject of debate, such as toys and domestic electrical appliances.

All but one[15] of the Directives which require CE marking ensure the health and safety of the consumers/users of products: this is their main objective. Therefore, the requirements in this legislation are safety requirements, so as to ensure that a product which has undergone the conformity assessment procedure is indeed compliant and thus safe. Consequently there are no other safety requirements because if there were, then these would be included in the legal act. CE marking means compliance with the applicable requirements; therefore, if a product is compliant it is safe. This means that, if used properly, CE marking means safety.

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[14] Impact assessment COM (2007) 37 final, COM (2007) 53 final, SEC (2007) 173, 14.2.2007, p. 37

[15] Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility

The Commission is convinced that a joint effort of all stakeholders can further strengthen CE marking in order to guarantee it as a reliable European mark.

3. STAKEHOLDERS' OPINION ON THE CONCEPT OF A CONSUMER SAFETY MARK

3.1. Consumers

The Commission used two different ways to get to know consumers' views, i) an IPM consultation, i.e. an on-line consultation questionnaire, which was published on the Commission's Interactive Policy Making (IPM) Website and ii) 300 face-to-face interviews with consumers in a range of Member States: Hungary, Belgium, France, Germany and the United Kingdom (see Annex 1).

When reading the results received from the IPM consultation it should be noted that many of the respondents who considered themselves as consumers, appeared to have had a significant interest in and an in-depth knowledge of product safety and, in particular, certification[16].. Results gathered from the street interviews are also only indicative due to the limited sample size. Given the sample size and the limited access to and reach of this online consultation, the results should not be considered as representative for the European consumer.

In order to assess the perceived benefits of a possible European consumer safety mark for consumers, three questions have been taken into consideration:

Do consumers look for marks?

Consumers that took part in the face to face interviews do not look for marks as much as they look for brands. Germany and the GS mark are possibly an exception (according to the results of the IPM-survey)[17]. However, in the cases where consumers actually do look for marks, the replies have shown that they often do not know the meaning of the marks.

Safety information has some, albeit a relatively limited influence on the consumer's purchasing decision. Interestingly, only 1 % of consumers in the street interviews spontaneously mentioned safety as an issue they would take into account when making purchasing decisions. Unsurprisingly, the most common thing to look for was the price, where 83 % of the IPM-respondents and 91 % of the consumers interviewed, stated that they often or always look at the price when making a purchasing decision (which seems to contradict consumers' willingness to pay a higher price for marked products, see next paragraph.)

The consumer interviews yielded interesting results: When asked for which products a safety mark would be important, consumers rated cars the highest and shampoo, saucepans and T-shirts the lowest[18]. That is somewhat paradoxical as cars must already undergo very stringent conformity assessment procedures, which leaves very little possibility for added value of any mark. Whereas it seems that consumers do not see any need for marks on shampoo, saucepans

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16 GHK Consulting Ltd, " Evaluation of the feasibility of a consumer safety mark", 1 October 2008 (hereafter GHK report), p. 5

17 See also EFTA study, p. 16

18 The products chosen for the purposes of the IPM questionnaire are typical consumer products across the board, with different degrees of an actual or perceived safety risk, partly falling under legislation providing for CE marking, partly falling under legislation which does not provide for CE marking, and partly not regulated apart from the general safety requirement.

or T-Shirts as they feel that they pose little or no safety risk. This is interesting as cases occurred where some of these products contained carcinogenic or otherwise dangerous substances.

Are consumers actually prepared to pay a higher price?

As for consumers' willingness to pay for safety, as much as 76 % of the consumers who participated in the street interviews said that they would pay extra for certain products in exchange for the reassurance that these are safe. Clearly, the willingness to pay extra for higher safety is more evident for safety-sensitive products such as drilling machines and bicycle helmets.

These statements seem to contradict enterprises' concerns that, as a result of a price mark-up of safety marked products, consumer demand would decrease and consumers would switch to unmarked products. However, as pointed out in the consultant's report, caution is always required in interpreting responses to questions regarding a consumer's hypothetical willingness to pay for a product[19].This is all the more valid in the context of the consumer and throw-away-society and against the background that a huge market exists for low cost products.

Will it be possible to communicate the message of the mark?

Consumers are already confused by the vast array of labels and marks that are affixed to products. However, the mark's raison d' être heavily depends on its acknowledgment by consumers when making a purchasing decision. Should the mark not be clearly and easily understood, it would not serve its purpose.

Some consumer organisations show certain reluctance towards the idea of a consumer safety mark; for instance, the German "Stiftung Warentest" does not rely on marks and proceeds with their evaluation independently from the presence of any mark[20].

3.2. Enterprises

Enterprises are reluctant to the concept of a consumer safety mark.

Brands are more important than marks

As many companies have pointed out in their responses to the IPM-survey, they believe that most consumers place more importance on brands than they do on marks. About half of the responding enterprises (46 %) do not use voluntary marks at all, while only 7 % use them for all of their products. Most of the big enterprises often choose not to affix voluntary marks since they consider that their well-known brand is as good a quality or safety label as any other mark.

The importance of marks has been decreasing in the past years

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19 GHK report, ibid

20 Certification and Marks in Europe – A Study commissioned by EFTA, January 2008, p. 41

Furthermore, the importance of voluntary marks has been decreasing in the past years, and many products are now only affixed with one mark – the CE marking[21]. The reason for this can be attributed to several factors that enterprises experience when using marks:

- Marks are frequently counterfeited: As a matter of fact, all marks can be and are counterfeited or misused. A new consumer safety mark would most certainly not be immune to counterfeiting either, with the result of giving the consumers a false sense of security.

- Geographical differences in consumers' acceptance: 45 % of enterprises responding to the IPM consultation mention differences in geographical acceptance as one of the main difficulties they experience in the use of marks. The Eurobarometer from 2000[22] shows that consumers are usually more familiar with national marks. Due to the fact that it is a costly exercise for enterprises which are active on a multinational level to affix various national marks, it is more and more common to only display the CE marking, which is mandatory.

- Experience has shown that the consumer is usually not sure about the meaning of the marks that are displayed on a product[23].

- The IPM-survey displays results that point to the fact that enterprises do not really believe that their consumers look for specific marks, which also could explain why enterprises see no advantage in affixing voluntary marks.

No added value of a safety mark

84 % of the enterprises that responded to the IPM-survey see no added value and do not think that a new mark would lead to a higher level of product safety; in particular they do not see how to make a new mark more credible than CE marking.

Enterprises fear competitive disadvantages

Enterprises fear that a new mark would lead to a disadvantage in terms of cost-effectiveness and competitiveness as the certification procedure which leads to the affixing of the mark increases the manufacturers' production costs. This is further illustrated by the fact that 80 % of the enterprises responding to the consultation would not be willing to undergo the certification procedure in order to be entitled to affix a new mark.

In relation to competitiveness, one has to take the situation of the small and medium-sized enterprises (SMEs) into account. Whilst SMEs might sometimes perceive voluntary marks as a means to enter new markets in order to compete with well-established enterprises, the use of these marks triggers at the same time considerable costs. 65 % of the responding enterprises thought that a voluntary mark would be detrimental to SMEs, compared to only 11 % who

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21 This fact is further indicated by the findings of the recently published EFTA study, which show that voluntary certification, used in particular for internal quality assurance, does not necessarily lead to the affixing of a mark, p. 13

22 "Europeans and the EC logo", INRA (Europe), Eurobarometer 52.1, Report drawn up for DG SANCO, 2000; http://europa.eu.int/comm/dgs/health_consumer/library/surveys/sur16_study_en.pdf (hereafter Eurobarometer), p. 16 ff; and GHK report, p. 30 ff

23 See CE – A Study of consumer's and retailers' knowledge of the CE mark, The Swedish Research Institute of Trade (HUI), 2004, p. 24; Eurobarometer p. 14 and; compare GHK report p. 61

believed that it would have a positive effect. More than half of the enterprises who said that a new mark would be detrimental for SMEs expect pressure of competition to force the use of such a mark without having an added value, leaving it to the consumer to pay the price mark-up[24]. The huge majority of respondents are, however, against a special treatment for SMEs, inter alia because it would be difficult to communicate to consumers why some companies receive special treatment and why a safety mark may or should have a different meaning depending on the size and number of employees of the manufacturer. Special treatment for SMEs would thus risk undermining the whole mark and contributing even further to the confusion of the consumer.

Many of the respondents expressed that introducing a new consumer safety mark would be counterproductive in relation to the Commission's objective of cutting red tape for European enterprises[25]. Concerns are being mentioned that a new mark would create additional burden in terms of bureaucracy for European enterprises, and for SMEs in particular.

3.3. Market Surveillance Authorities

The general reaction of those market surveillance authorities and customs authorities who took part in the survey[26] was that a mark is only useful for them if they actually can rely upon the credibility of the mark, thus reducing the need for controls. They consider better enforcement mechanisms and border controls to be more effective than a safety mark. 84 % of respondents to the IPM-survey believe that the safety of products on the market can best be improved by a better enforcement mechanism. Another 67 % feel the need for more rigorous controls at external borders, while only 32 % of the responding authorities believe that the solution is to create a new consumer safety mark.

67 % of the respondents to the IPM-survey said that they use CE marking as an indicator for compliance with applicable safety requirements, and 46 % would look for additional safety marks.

79 % of the respondents stated that they think products that have been tested by an independent body provide a better guarantee that products are safe. The latter perception seems, however, to be in contradiction with numerous RAPEX notifications of products which have been certified by a third party but nevertheless pose a serious risk to the health and safety of consumers. Furthermore, many respondents declared that marks that are subject to third-party testing are sometimes misused.

Therefore, powerful enforcement mechanisms are the key factor to effective market surveillance. One would furthermore be inclined to conclude that, if already the existing marks are not sufficient and appropriate to ensure the safety of products, then why should a new mark be introduced.

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[24] According to the results from the IPM-survey, only 9% of respondents think that it would not be necessary to pass over the certification costs of a consumer safety mark to the consumer via an increase in price.

[25] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "Action Programme for Reducing Administrative Burdens in the European Union", COM (2007) 23 final.

[26] In total, 107 authorities replied to the IPM consultation.

Authorities' preference for better enforcement mechanisms is in line with the result that only 12 % think that a voluntary European consumer safety mark could have prevented the toys recall last summer, while 63 % do not think that it could have. More than half of the respondents (53 %) do not consider that they have sufficient staff and resources to actively promote and enforce even existing product legislation let alone a new mark. The introduction of a consumer safety mark would thus not improve the actual safety of products on the marketplace, as long as the authorities who are supervising the use of marks are short of the proper resources needed to discover possible counterfeiting or misuse of the mark.

4. THE OUTCOME

All the arguments in favour and against a consumer safety mark have been carefully deliberated, and the pertinent questions relating to CE marking have been taken into account. Based on the Commission services' analysis and the stakeholders' feedback as set out above, the following conclusions can be drawn:

(1) The Commission services consider that the legal and technical analysis shows that introducing a consumer safety mark is not appropriate as it might create more problems than it could solve.

(2) The Commission services deem it essential to rigorously enforce and properly implement the existing mechanisms which support, inter alia, the system of CE marking. Thereby, market surveillance and border controls are the key elements. Those elements have been reinforced by the New Legislative Framework. Once the New Legislative Framework is implemented, it will contribute to significantly improve the safety of the market place.

(3) Consumers (and other stakeholders) do not necessarily know CE marking's meaning[27]. The best way to raise awareness is enhanced communication. A visible Community-wide information campaign could improve the understanding of CE marking. The Commission is therefore launching an information campaign addressed to all stakeholders, in particular business, including SMEs, and consumers. A visible EU-wide information campaign which reaches a large number of consumers across Europe will improve consumers' understanding of the meaning of the CE marking and lead them to have a clearer picture of what CE marking represents and does not represent.

(4) Experience shows that CE marking has been frequently abused. However, the New Legislative Framework, aiming at strengthening and enforcing the system, will considerably improve the situation. Furthermore, the Commission has instigated the procedure to protect CE marking as an Intellectual Property Right, which will give

[27] An example from Eurobarometer 2000: When asked about the meaning of the CE logo, 34,1 % responded that it means "manufactured in Europe". The GHK report also stresses deficiencies: Only 47 % of the people that participated in the street interviews could explain the meaning of CE marking. See also CE - A study of consumers' and retailers' knowledge of the CE mark, The Swedish Research institute of Trade, 2004

authorities an additional means to go against abuse of CE marking and give competitors the means to file suit before the courts which will then be able to impose fines and damages.

ANNEX

Annex 1 – The Consultation Process

1. ONLINE CONSULTATION

Following the request from the European Parliament to carry out an in-depth study on a consumer safety mark[28] and independently from their thoughts relating to the technical and legal issues the Commission services launched an on-line consultation questionnaire, on the Commission's Interactive Policy Making (IPM) Website, to gather views as to whether a consumer safety mark is of benefit to consumers and whether such a mark would be likely to be accepted by stakeholders. The questionnaire also solicited consumer perception regarding the concept of "safety" and expectations of a safety mark.

The consultation was open to the public for 8 weeks and proved to be successful compared to previous surveys with a total of 1246 replies[29] received. Most previous surveys of this kind have only received around 200 replies.

In order to get an overview of all stakeholders' opinions, the questionnaire was split into three parts, one part dedicated to consumers, one for enterprises and one for market surveillance authorities.

By means of the IPM consultation, the Commission services intended to identify trends and perceptions among consumers, enterprises and market surveillance authorities about products' marking. It has to be noted that given the limited access to and reach of this online consultation the results are not representative for the average European consumer.

2. EVALUATION REPORT AND STAKEHOLDER INTERVIEWS

In parallel to the work undertaken by the Commission services, certain tasks have been outsourced to a consultant, GHK Consulting Ltd, who supported the Commission services in processing and summarising the replies to the questionnaire. The consultant also carried out interviews with consumer organisations (BEUC, ANEC etc.) and the public. As the Commission services deem it important to get close to the "man and woman on the street" they commissioned the consultant to carry out consumer interviews in a range of Member States; Hungary, Belgium, France, Germany and the United Kingdom[30].

The results of the consultant's work are presented in a report[31] which is publicly available on the Commission Website at http://ec.europa.eu/enterprise/……[32]

3. ADDITIONAL SOURCES OF INFORMATION

Whilst the key stakeholders in this field reacted to the consultation by filling in the questionnaire and also by sending written comments, the Commission services deemed it

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28 Regulation for Accreditation and Market Surveillance, recital 36

29 638 consumers and professional users; 501 businesses; 107 market surveillance authorities

30 300 interviews carried out, 197 street interviews and 103 phone and face-to face interviews

31 GHK Consulting Ltd, „Evaluation of the feasibility of a consumer safety mark", 1 October 2008

32 The purpose of the survey was to identify *tendencies* in stakeholder opinions. However, the figures contained in the report should not be taken to be fully representative of all stakeholder groups.

important to hold deeper discussions with those key stakeholders in order to get some feedback which might not necessarily be linked to the questions posed in the online consultation. So, the Commission services entered into discussion with various European consumer and business organisations, in particular ANEC, BEUC, NORMAPME, Business Europe and Orgalime.

As for publications, the EFTA Study on Certification and Marks published earlier this year[33] provides a basis for certain conclusions. Moreover, the results of a Eurobarometer survey "Europeans and the EC logo" carried out at the end of 1999 by the Directorate-General for Health and Consumer Protection[34] as well as the results of a CE marking-study of The Swedish Research Institute of Trade from 2004[35] provided background information on consumer understanding of marks in general and CE marking in particular. These surveys may be a little outdated, but they nevertheless still provide useful data for cross referencing and for tracing the developments in public perception of CE marking.

[33] http://www.efta.int/content/publications

[34] "Europeans and the EC logo", INRA (Europe), Eurobarometer 52.1, Report drawn up for DG SANCO, 2000; http://ec.europa.eu/public_opinion/archives/ebs/ebs_137_en.pdf

[35] CE – A Study of consumer's and retailers' knowledge of the CE mark, Josefina Lund, The Swedish Research Institute of Trade (HUI) commissioned by SWEDAC, Stockholm, 2004

Annex 2 – List of Directives providing for CE marking

Directive 2006/95/EC of the European Parliament and of the Council of 12 December 2006 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits

Council Directive 87/404/EEC of 25 June 1987 on the harmonization of the laws of the Member States relating to simple pressure vessels

Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys

Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products

Directive 2004/108/EC of the European Parliament and of the Council of 15 December 2004 on the approximation of the laws of the Member States relating to electromagnetic compatibility

Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment

Council Directive 90/384/EEC of 20 June 1990 on the harmonization of the laws of the Member States relating to non-automatic weighing instruments

Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices

Council Directive 90/396/EEC of 29 June 1990 on the approximation of the laws of the Member States relating to appliances burning gaseous fuels

Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels

Council Directive 93/15/EEC of 5 April 1993 on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses

Council Directive 93/42/EEC of 14 June 1993 concerning medical devices

Directive 94/9/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres

Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft

European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts

Directive 97/23/EC of the European Parliament and of the Council of 29 May 1997 on the approximation of the laws of the Member States concerning pressure equipment

Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery

Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices

Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity

Directive 2000/9/EC of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons

Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments

Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products

Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles

EXPLANATORY MEMORANDUM

On 14 February 2007, the Commission adopted the internal market goods package which contained inter alia a draft Regulation on Accreditation and Market surveillance and a draft Decision on a general legislative framework for the marketing of products on the EU market[36].

On 9 July 2008 the European Parliament and the Council of Ministers formally adopted the final versions of these two texts, which have since been published in the Official Journal of the European Union (13 August 2008)[37].

During the discussions in the European Parliament in particular, an intense debate took place on the issue of the controls of products imported from third countries, toys and electrical domestic appliances more specifically, which in turn centred on the issue of certification and marking of consumer products.

The European Parliament included a recital in the Decision and the Regulation inviting the Commission to carry out an examination of the issue in order to see whether an answer to the public preoccupations expressed during the summer 2007 triggered by the massive recall of dangerous toys, could be answered by the setting up of a European consumer product safety marking system, in spite of the requirements of the Regulation which sets out in strong terms how to ensure a strong market surveillance system in the Union and an effective control of products from third countries.

A legal and political analysis of the issues has been carried out as well as a public consultation (non representative in statistical terms but which gives some indications as to perceptions of the major stakeholders in this area) in order to provide some answers to the questions expressed in 2007 and in particular by the European Parliament.

The present Staff Working Document sets out the results of these reflections, demonstrating two major elements: there is a distinct lack of support for the creation of a new European consumer mark, and secondly, the requirements of the newly adopted Regulation should, if implemented correctly by the national authorities, and a strong enforcement of the General Product Safety Directive, answer the EP's preoccupations.

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[36] COM (2007) 0037 and COM (2007) 0038 of 14 February 2007

[37] OJ L 218, p. 60 – 81; 82 - 128