NLF interpretative Fiche

Orgalime Position Paper

Title Short:

Enforcement incentive to third-party certification

Fiche Nb: **15**

Subject:
Risk of devaluation of the declaration of conformity (DoC) and incentives for third party certification even for products falling under Module A.

Last Update:
18/03/2011

Category:
Market Surveillance

Legal basis:
Regulation, art 19.1 and 20.2

Legislative references:

- **Regulation No 765/2008/EC** 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 No 339/93/EEC – Published in the OJEU L 218/30 of 13/08/2008
- **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 – Published in the OJEU L 218/82 of 13/08/2008

ISSUE TO BE ADDRESSED:

The Regulation states at art 20.2 that the decision as to whether or not a product represents a serious risk shall be based on an appropriate risk assessment, which takes account of the nature of the hazard and the likelihood of its occurrence. It also establishes at art 19.1 paragraph 3 that where economic operators present test reports or certificates attesting conformity, issued by an *accredited* conformity assessment body (CAB), market surveillance authorities shall take due account of such reports or certificates. A misinterpretation of these provisions could lead to a devaluation of the DoC and to incentives for third party certification even for products falling under Module A (no obligation to resort to third-party testing):

- When under scrutiny by market surveillance, economic operators may use test reports from CABs to facilitate their obligation to demonstrate the conformity of their product. However, as such a service induces significant production costs, the way to comply with the obligations under module A should remain the decision of the economic operator, free from any incentives from authorities.
- A subsequent *de facto* obligation to resort to third-party certification for all products would generate unnecessary costs for lawful manufacturers and would, in our view, stimulate the multiplication of forged and unlawful test reports from rogue economic operators.

SOLUTION ENVISAGED:

The aim of art 19.1 paragraph 3 is to instruct market surveillance authorities not to rely just on their own risk assessment and conformity evaluation but also to take into account the actions taken by the manufacturer in this respect. This includes manufacturer's documents demonstrating product conformity (e.g. the technical construction file) as well as test reports or other documents obtained by the manufacturer from an external testing facility. The documentation provided by the manufacturer may include 3rd party documents, if these exist. Therefore, there is no justification for giving preference to 3rd party test reports or certificates when assessing the risk of a non-conforming product. It should be clarified that art 19.1 paragraph 3 should not lead market

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surveillance authorities to systematically disregard manufacturers' test reports or attestations issued by non-accredited conformity assessment bodies.