



Brussels, 15 June 2009
(14)05 two digits opinion.doc
LVDWP14/5

OBLIGATION TO PUT THE TWO DIGITS OF THE YEAR IN THE DECLARATION OF CONFORMITY

1. INTRODUCTION

A question was raised with respect to the obligations of persons who place a product on the market, if the product falls within the scope of application of LVD, to include in the EC declaration of conformity the last two digits of the year in which the CE marking was affixed. The question is whether the market surveillance authorities are allowed to request the withdrawal of a product from the market if this condition is not satisfied.

2. ANALYSIS

The question raises legal and enforcement clarifications.

- (1) Legally, it is necessary that the EC Declaration of conformity shall always contain the last two digits of the year in which the CE marking was affixed (Paragraph B of Annex III of LVD).
- (2) This requirement needs to be enforced in a proportional manner as is reflected in the Blue Guide:

National authorities must take action to enforce conformity, where products are not in compliance with the provisions of the applicable Directives. The corrective action depends on the degree of non compliance and, thus, must be in accordance with the principle of proportionality.

When non-compliance is substantial must be decided on a case by case basis. The Commission Services consider that the incorrect affixing of the CE marking as regards, for instance, the design, size, visibility, indelibility or legibility, can usually be considered as a non-substantial non-compliance. Examples of typically non-substantial non-compliance could also be the situations where other conformity markings provided for in the directive are incorrectly affixed, or where the EC declaration of conformity cannot be provided for immediately or it does not accompany the product when this is mandatory, or the requirement to accompany

other information provided for in the directive(s) is complied with insufficiently, or, where applicable, the identification number of the notified body has not been affixed to the CE marking.

In these cases the manufacturer should be informed and offered the possibility to correct the situation. More profound measures (like sales bans) should only be considered in case the reiterate action, originated by a deliberate ignoring of the advice, would endanger the environment, consumer interest, or the health and life of humans, animal or plants or a primary interest of a Member State.

Furthermore, a proportional approach could be followed with respect to the form of the last two digits. For example, under EMC Directive (EMC Directive is usually applicable when LVD is applicable) the manufacturer shall include the 'date of that declaration' (paragraph 2 of Annex IV of EMC). If this date which is included in the Declaration of Conformity is the same then it could be deemed to satisfy the requirement of the last 2 digits (of paragraph B, Annex III of LVD).

3. CONCLUSION

Market Surveillance Authorities are advised to take proportional measures in case of deficiencies in administrative requirements, for example if the last two digits of the year when the CE marking was affixed (for the first time) are missing from the EC Declaration of Conformity. That is, firstly the manufacturer should be offered the possibility to correct the situation. Only if the same person deliberately insists on ignoring the guidance given by the market surveillance authority, more profound measures should be considered. It should be noted that deficiencies of safety information can justify immediate action.