



EUROPEAN COMMISSION
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

Regulatory policy
Regulatory Approach for the free movement of goods

NOTE TO THE SENIOR OFFICIALS GROUP ON
STANDARDISATION AND CONFORMITY ASSESSMENT POLICY

Title:	CERTIF 2010-02 SANCTIONS FORESEEN IN THE NATIONAL LEGISLATION OF MEMBER STATES AGAINST INFRINGEMENTS OF THE PROVISIONS OF REGULATION 765/2008/EC		
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Abstract: By means of the present document, the Commission intends to trigger discussions in SOGS regarding the steps Member States intend to take in order to enforce the provisions of Regulation 765/2008/EC.			
Keywords:	Regulation 765/2008/EC, CE Marking, sanctions.		
References:	Regulation (EC) No 765/2008 of the European Parliament and of the Council Decision No 768/2008/EC of the European Parliament and of the Council Commission's letter to SOGS of 8th May 2009, Ref: D(2009)/15216		



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SANCTIONS FORESEEN IN THE NATIONAL LEGISLATION OF MEMBER STATES AGAINST INFRINGEMENTS OF THE PROVISIONS OF REGULATION 765/2008/EC

1. Context and objectives of the document

Regulation 765/2008, requires from Member States to ensure the correct implementation of its provisions and take appropriate action in the event of infringement. The Regulation requires that those penalties shall be proportionate to the seriousness of the offence and constitute an effective deterrent against abuse.

However distortion of competition and legal uncertainty for stakeholders may arise due to possible differing systems with uneven rigour in the Member States. While it is up to the Member States to lay down and implement the mechanism of enforcing the provisions of Regulation 765/2008 in their territories, the Commission considers imperative that these mechanisms have an equivalent effectiveness in all Member States.

In this respect, the Commission, after having solicited the agreement of the Member States, has disseminated via circa the following information as provided by Member States and without processing or compiling it:

- the information provided by Member States in response to the letter from the Commission dated 8th May 2009, where Member States have been asked to provide information on what is (will be) the mechanism of policing the CE Marking system (resources allocated, authorities involved, methods used etc.) and what penalties are (will be) foreseen in the national laws;
- the information provided by Member States in their communication to the Commission according to Regulation 765/2008/EC related to sanctions foreseen in the national legislation.

Member States are invited to take note of this information, start discussions in SOGS regarding the effectiveness of the sanctions and inform the Commission regarding the steps they intend to take in order to enforce the provisions of Regulation 765/2008.

2. Remarks

- Sanctions are imposed by means of fines, whose sums vary from one Member State to the other.
- Most Member States have integrated the legal provisions for sanctions against the abuse of CE Marking (referring to Art. 30 of Regulation 765/2008) into the legal provisions for sanctions against any infringement of Regulation 765/2008(referring to Art. 41 of Regulation 765/2008). However some Member States dispose of specific legal instruments for sanctioning CE Marking abuse.
- The most common legal instruments providing for sanctions are general product safety acts and/or sector specific legislation.

However, in some Member States sanctions are provided in CE-Marking acts, customs code or acts on conformity assessment system.

- It seems that discussions are ongoing in most Member States, concerning the eventual need of revising national legislation in order to implement the provisions of Regulation 765/2008 on this issue

An overview of the information provided by Member States is given in the annex.