

One step closer to get rid of national deviations!

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There are several national deviations and requirements for products which are not harmonized within the EU. This discussion is about these deviations and products.

- Examples, sockets, plugs, REACH, gas products, and you probably have some more -

764/2008

Already since 2005 I am discussing with several Member States that having different requirements which lead to a different construction of such an item is a technical trade barrier. This is not allowed according to directive 764/2008/EG (laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State.)

Discussions with various Member State market surveillance organizations usually lead to the reply that they do not follow the 764/2008 as such, and that they are entitled to enforce their deviations. Which surprised me.

This year I filed a complaint against Belgium regarding the requirement of a breaker in extension leads with more than 4 sockets. This is a clear deviation from requirements in other EU countries and therefore, to my opinion a trade barrier.

Result

The result of this is that I have the confirmation in writing from the DG Enterprise and Industry of the EU, that:

- A Member State (here Belgium) is allowed to have deviating requirements, but;
- if they want to enforce these requirements towards products already legally sold into any other EU Member State and
- this product complies to the (safety) requirements of this Member State then
- Belgium (or any other enforcing State) must scientifically prove that their deviating requirement are supported by a different technical or cultural base, which would lead to safety issues for their people if these national deviations are not enforced.

SO... now THEY must SCIENTIFICALLY prove that their national requirement is really needed! I only need to prove my product complies to EU safety requirements.

Open issues

Deviations can still only be addressed AFTER enforcement and that deviations cannot be removed before enforcement. However this is a good step in the right direction.

What does this mean for you?

Based on the confirmation from the DG, this means that

- 1) national laws can no longer be leading for market surveillance. They will need to consider the real safety issues and EU harmonization
- 2) there will be a stop of the increasing national deviations (eg REACH)
- 3) you must make sure when introducing a product into the market, you do NOT start in a country with a national deviation (the base is that the product is "already legally sold in another Member State")

It is probably not interesting for market surveillance to stretch the evidence procedure, since if they lose, claims for damages and lost sales will be the result.