

- Article for the June issue of Market Place

Questions and answers regarding PRODUCTS CONFORMITY and CE MARKING

The following are some of the answers provided by the Attorney at Law Maurizio Iorio – on the subject of products conformity and CE marking – in reply to questions submitted to him by clients or ANDEC’s members as part of his professional activity.

Question: Energy consumption - electric fans

We import and sell ordinary consumer electric fans. We were made to note that, with regard to energy saving, ventilation products are subject to different regulations depending on whether they are considered “Comfort fans” (subject to Regulation 206/2012) or “Ventilation units” (subject to Regulation 1254/2014). To which of these groups do our products belong?

Answer:

Regulation (EU) No 206/2012 – which concerns ErP requirements, i.e. how to manufacture energy efficient products – covers ordinary household fans, namely the basic table fans marketed by your company, defined as follows:

“Article 2.5.

‘Comfort fan’ means an appliance primarily designed for creating air movement around or on part of a human body for personal cooling comfort, including comfort fans that can perform additional functionalities such as lighting”.

Instead, **Regulation (EU) No 1254/2014** – which concerns eco-labelling requirements, i.e. how to label energy efficient products – covers equipment having the purpose of exchanging inside air with outside air, defined as follows:

“Article 2 Definitions

*For the purposes of this Regulation the following definitions shall apply: (1) ‘Ventilation unit’ (VU) means an electricity driven appliance equipped with at least one impeller, one motor and a casing and **intended to replace utilised air by outdoor air in a building or a part of a building**”.*

Consequently, the products sold by your company do not belong to this latter group.

Question: Placement of the CE marking

Our wireless mouse consists of 1 wireless mouse and 1 nano receiver. Is it sufficient to affix the CE marking only on the mouse or are we required to place the CE marking on both?

Answer:

The CE marking must be affixed to all devices subject to the regulation in question (as defined in Art. 1 of Directive 2009/5/EC and, as from 13 June 2016 onwards, in Art. 1 of Directive 2014/53/EU), according to which ‘device’ means any device which emits and/or receives radio waves. In this case we have a device that emits radio waves (the mouse) and a device that receives them (the nano receiver): the supervisory authorities consider, at least in the R&TTE field, that the CE marking should as normal practice be placed on both.

However, in my opinion it is quite different the case where, as mostly happens, the nano receiver is sold solely and exclusively with the mouse and has no useful individual function, i.e. it does not work with other mice other than that for which it has been designed. It is therefore correct to consider this as a mere component and not a finished product, with the result that the CE marking should be placed only on the mouse as it is the primary device.

The Commission's Guide to the R&TTE Directive 1999/5/EC (2010 Edition) – which we must take into account as there is not yet an interpretative guide to Directive 2014/53/EU – states:

“ 1.2.2 Radio equipment

When a product includes a radio or telecommunications terminal component, the component or, if it cannot be separated, the whole product is subject to the provisions of the R&TTE Directive ...” (R&TTE Guide - Version of 20 April 2009).

This would not be the case, for example, of a WLAN card for PCs sold separately and designed to work with any PC: in such a case the card, while constituting a component, would to all effects be a ‘device’ pursuant to the R&TTE Directive and Legislative Decree 269/2001 and, as such, subject to separate CE marking and separate Declaration of Conformity.

The new RED Directive 2014/53/EU, which replaced the R&TTE Directive on 13 June 2016, defines in Art. 2.1. as 'radio equipment': "***an electrical or electronic product, which intentionally emits and/or receives radio waves for the purpose of radio communication and/or radiodetermination, or an electrical or electronic product which must be completed with an accessory, such as antenna, so as to intentionally emit and/or receive radio waves for the purpose of radio communication and/or radiodetermination***". Therefore, according to the new definition, it appears that an 'accessory' does NOT fall under the definition of 'electrical equipment' covered by the Directive and, as a result, it does not necessarily have to bear the CE marking.

In the different electromagnetic compatibility field, the 'Guide for the EMC Directive 2004/108/EC' of February 2010, provides as follows, with a clarification that would seem valid also in the present case:

"3.4.1.1 CE marking of systems

A system which is only placed on the market as a whole need carry only one CE marking, which may be placed on any one of the constituent parts or units. However the manufacturer may, if he wishes, place additional CE marking on the other parts of the system. This could be appropriate, for example, if the user were able to easily separate the constituent parts and make use of them separately. Additional CE marking does not incur the need for separate conformity assessment or additional declarations of conformity for the constituent parts. If separate use could lead to a part or unit failing to comply with the protection requirements, a suitable warning should be included in the instructions for use, for example: The units of this system are intended to be used together, and must not be operated separately. If the manufacturer places any part of the system on the market separately, the relevant provisions of the Directive, conformity assessment, documentation and CE marking, apply separately to that part or unit, in addition to the requirements for the system as a whole".

Question: Language used for the Declaration of Conformity and Instructions

Our parent company has prepared:

(a) an EC declaration of conformity only in English (attached);

(b) an instruction manual in 12 languages along with the DoC drawn up in summary form in the same 12 languages of the instruction manual (attached).

With regard to point b) in particular, we would like to know if we are required to draw up the instruction manual with the declaration of conformity in summary form not just in the 12 languages already catered for but also in all EU languages.

Answer:

The instructions must be in a language understood in the Member State in which the products are marketed (see for instance EMC Directive 2014/30/EU, Art. 9.4; RED Directive 2014/53/EU, Art. 10.8), and thus Italian law requires the Italian language.

The drafts of the legislative decrees implementing the new Directives 2014/30/EU (EMC), 2014/35/EU (LVD) and 2014/53/EU (RED) require the Declaration of Conformity to be 'translated into Italian language'.

Question: Equipment excluded from the EMC Directive since 'benign'

We would like to know if the following product is subject to CE marking:

MHL2.0 PLUG CONVERTER-HDMI PLUG + USB.

Via the MHL 2.0 HDMI Adapter it is possible to view the mobile phone's content on HD screens, in addition to integrated supplementary functions allowing smartphones to be controlled via the HDTV remote control.

Answer:

The product described by you seems to fall under the equipment potentially covered by the EMC regulation (electromagnetic compatibility, now within the scope of Directive 2014/30/EU) but that are however exempt (and thus also exempt from CE marking) since 'inherently benign', **i.e. incapable of generating or contributing to electromagnetic emissions to such an extent that it would be somewhat relevant** (Directive 2014/30/EU, Art. 2.2.d). Are therefore excluded, by way of example, the following products: wires and cables, batteries and accumulators (without active electronic circuits), headphones and loudspeakers without amplification, portable lamps without active circuits, high-voltage inductors and transformers, power factor correction capacitors, asynchronous motors,

quartz watches, incandescent lamps, domestic switches with no active components, radio and television receiving antennas, sockets, plugs, terminal blocks, etc. .
The Commission's Guide to the EMC Directive (2010 Edition) deals with this type of equipment in paragraph 1.1.4.

Question: Address of the entity placing a product on the Italian market

Since our company is part of a multinational corporation, can we just specify the registered office of our parent company or are we required to indicate the address of the branch placing the product on the market?

For consistency's sake, we would like to affix a sticker at the production stage on the products that will be placed for sale on different markets – and thus not only in Italy – with the following indication (by way of example):

Imported by XX Group - Registered office address: “..... XXX Germany”

Is this acceptable or do we have to specify the registered Italian address if the product is imported and marketed by our branch?

Answer:

Pursuant to Regulation (EC) No 765/2008, Decision No 768/2008/EC (Annex I) and various product Directives (EMC; LVD; R&TTE, now RED) the entity making the product available for the first time on the Community market is the Manufacturer (if established in the EU) or the Importer.

Therefore:

for products placed for the first time on the EU market by your company established in Italy must be indicated your company established in Italy;

for products placed for the first time on the EU market by the German subsidiary of your company must be indicated the German subsidiary;

for products placed for the first time on the EU market by the German subsidiary, and later introduced on the Italian market by the Italian subsidiary, must be indicated the German subsidiary.

Question: Placement of the CE marking

In the case of radio products, our instruction manual always includes the declaration of conformity with the appropriate CE logo.

In the case of non-radio products, the CE logo must always be present also on the manual/quick start guide enclosed in the packaging/blister or is it sufficient to place it on the product and on the packaging/blister?

Answer:

The CE marking must always be affixed to the product, regardless of whether it is a radio or non-radio product. Only when this is exceptionally and objectively not possible it may be affixed on the packaging (in case of equipment subject only to the R&TTE Directive, now RED Directive) or on the packaging and on the accompanying documentation (in the case of the EMC Directive and/or LVD Directive).

In case of Declaration of Conformity attached to the documentation accompanying the product (as currently provided for in Art. 6.3 of Legislative Decree No 269/2001 for the products referred to in the R&TTE Directive), it is common practice to affix the CE marking also on the Declaration of Conformity, even if this is not expressly required by law.

Question:

With reference to the Low Voltage Directive (LVD) and Electromagnetic Compatibility Directive (EMC), our parent company has arranged:

(a) an EC Declaration of Conformity only in English;

(b) an instruction manual in 12 languages along and a declaration of conformity drawn up in summary form in the same 12 languages of the instruction manual.

In particular, with regard to point b), we would like to know if we are required to draw up the instruction manual with the declaration of conformity in summary form not just in the 12 languages already catered for but also in all EU languages.

Answer:

The instructions must be in a language understood in the Member State in which the products are marketed; the Italian Consumer Code provides that the Italian language is used (Art. 6 and 9), similarly as required by Italian industry regulations. Some Member States, however, accept also English as language.

The Declaration of Conformity must be made available in Italian (Art. R10(2) of Annex I to Decision No 768/2008/EC; see also in this regard the Blue Guide 2016, page 56).

May I remind that in the case of the R&TTE Directive, now RED, a summary copy of the Declaration of Conformity must accompany each product.

Question:

The deadline for the implementation of the new Low Voltage Directive 2014/35/EU and the new Electromagnetic Compatibility Directive 2014/30/EU was 20 April 2016. We would like to know what is going to happen to the products held in stock by the distributor or reseller but not conformant to the aforesaid directives at such date.

Answer:

I point out that the Article 43 of Directive 2014/30/EU (EMC), provides that ***“Member States shall not impede the making available on the market and/or the putting into service of equipment covered by Directive 2004/108/EC which is in conformity with that Directive and which was placed on the market before 20 April 2016”***. A similar provision is contained in Article 25 of Directive 2014/35/EU (LVD).

Question:

I would like to arrange an ‘all-round’ declaration of conformity that will remain valid even if the En standards progressively applying to my products (mobile phones) change. In particular, I would like to know if I could just limit myself to specify the following: *“This product is compliant to: Directive 1999/5/EC (R&TTE Directive) 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”*, without listing the applied technical standards?

Answer:

The answer is NO. In fact, the declaration of conformity must contain – in addition to indicating the conformity with RoHS and Eco-design requirements – the list of all gradually and continually modified EN standards to which the product conforms.

Question: Automotive field: aftermarket car navigation and car entertainment products, including DVD players.

We would like to know if there are any legal risks in the event of an Italian company selling products – such as the ones mentioned above – customized for the EU market (and thus with ‘E’ marking and ‘CE’ marking) in non-EU countries; in particular, do you see any legal risks if the non-EU buyer or the Italian exporter (our client) is expressly advised that such products comply solely with EU regulations and that in the region in which they will be used they might not work properly?

Answer:

No, I do not see any problem in this specific case. The Italian company will specify in the contract and on the invoices the distinguishing characteristics (products solely intended for the EU market) of the products being sold.

Question: Energy Labelling (Directive 2010/30/EU)

Is it possible to specify the power consumption in watts of our TV sets only on the label attached to the product and on the energy label, without mentioning this information in the instruction manual? And what about other products?

Answer:

All equipment subject to the regulation in question (thus also, but not only, TV sets), must include an information sheet – possibly duplicated in the user manual – containing data on energy consumption.