



Commentary

Legal certainty - quo vadis?

Clear instructions provide certainty and direction. They also prevent misunderstandings. Sounds logical, doesn't it? And if something is unclear, we simply leave it out or make a detour around it – which is certainly what the current method of dealing with some conformity regulations appears to be like at least. What sounds absurd is the sad truth in the electronics industry: different interpretations between manufacturers, notified bodies and authorities have led to the EU Commission withdrawing several guidelines. It's happened to the EMC Directive (refer to the commentary on the ICSMS website in relation: *"A guide will soon be available to assist with the common application of Directive 2014/30/EU. The guide has no weight in law, but deals with a number of practical issues that will be of interest to manufacturers and other stakeholders."*) and to the RE-D Directive as well in both contexts addressing component parts, modules/assemblies and "components". The legislation needs to be applied, that is for sure. The question is how this is to be done correctly, if it is unclear whether modules, as an example, are contained in the RE-D or not, and what requirements are made of them? Or if no definite guidelines exist and the "who", "how", "where" and "what" is missing? I'm saying this because, the related guidelines simply disregard critical passages and refer to ongoing discussions at the next committee meeting, without providing a date. Shame to him who thinks evil of it.

We, the distributors and importers, are asking ourselves, "How is this going to work in day-to-day operations?" and "What are we supposed to do now?" It is not acceptable that participants in the market are being forced to act without legal protection. We urgently need clarification to make sure that an end is finally put to these different interpretations! A solution will not be in sight, however, until the stakeholders stop disagreeing about the concerns, requirements and implementations, and the measures for monitoring and sanctions. For the European Commission, the forgoing task remains the responsibility of the individual countries and it is up to the member countries to implement it. So far so good. In Germany, however, the task has been delegated at federal state level, where apparently it is now languishing unloved and ignored. Since the legislation is not clearly explained in terms of concerns and requirements, the customs authorities are incapable of monitoring the market in line with

clear instructions. So, everything is lying idle. No one feels compelled to speak up and solve the problem.

But, as long as the various committees do not start being clear about things, there is no guarantee of legal certainty for importers and distributors, and ultimately no protection for the consumer. And even with all the will in the world, how on earth are you supposed to follow guidelines if there aren't any clear instructions? We are all familiar with William Shakespeare's portrayal of his hero Hamlet musing about, "To be, or not to be, that is the question," – well, if you were to ask the same question today, you can be sure that the answer would be a clear "Maybe". Which brings us to the question of when will someone finally have the guts to make a decision?

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About FBDi e. V. (www.fbd.de):

The FBDi e.V. – Fachverband der Bauelemente Distribution e.V. (Professional Association of Component Distribution), founded in 2003, is well-established in the German association community and represents a large portion of distributors of electronic components with operations in Germany. In addition to the preparation and advancement of numerical data and statistics concerning the German distribution market for electronic components, work group engagement and reporting on important industry themes (amongst others, education, liability and rights, traceability, and environmental themes) form essential pillars of the association's work. The FBDi is a member of the International Distribution of Electronics Association (IDEA).

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