

Two special marks

We encounter them every day on millions of products. However, many of us are unaware of what the CE mark and the GS certification symbol actually mean. Here are the key facts at a glance:



The CE mark is not a sign of certification

CE is the abbreviation for »Communauté Européenne«. The CE mark was introduced by the EU Council of Ministers in 1985 as part of harmonization efforts and an attempt to break down obstacles to trade within the EU. Many products, from toys to electrical goods or DIY power tools, may only be distributed by manufacturers and importers in the EU if they carry the CE mark. This is decided by whether the product is subject to one or more of the currently 20 relevant EU directives. A CE mark tells the supervisory bodies which verify legality on the basis of spot checks that this product meets the basic requirements of the relevant directive (no details are provided as this is a matter for standards) for the protection of health, safety or the environment. Manufacturers and importers apply the CE mark themselves. They are required to provide the necessary declaration of conformity and documentation. In other words, the CE mark is not a certificate or a mark of quality from an independent certification body approved by the EU, but simply a declaration by a manufacturer or importer and the much-quoted technical »passport« within the Union and the European Economic Area. ■

The GS mark does entail certification

GS stands for »Geprüfte Sicherheit« or »Tested for Safety«. The GS mark is a statutory German safety mark which manufacturers can apply for voluntarily for particular products. Thousands of electrical or mechanical devices from our everyday lives



come under this group, whether produced in Germany or beyond. To date, the legal basis was the Equipment Safety Act (GSG), which is to be replaced by the new Equipment and Product Safety Act (GPSG). Only those test laboratories and certification centers accredited by the National Center for Safety in Technology (ZLS), such as TÜV Product Service, will be able to award the GS mark. A utility model test is carried out, production is inspected and both processes are documented. Certification by TÜV Product Service applies providing that an annual production facility inspection is carried out. Another new point is that so-called ready-to-used commodities, such as furniture or accessories for technical tools (e.g. drills) can carry the GS mark. If a test center withdraws certification, then it must inform all GS test centers and the responsible national authorities. The inspection by an impartial third party is the main difference from the CE mark. However, according to the Federal Institute for Safety at Work and Work Medicine, an increasing number of non-European products are appearing on the market carrying the GS mark on which repeated technical safety deficiencies have been found. The Institute recommends that if a dealer is in doubt about whether a certificate is genuine, he should ask to see the certificate and should have it checked out by the test center. ■

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Producing safely for the world

EU product liability law has global impact

The globalization of the world's economies has meant that product safety and liability no longer stop at national borders.

Here is a brief overview of the main aspects:

The subject of product safety occupies an extremely important place in the European Union. This is not simply because of the EU directive for general product safety (2001/95/EG, ProdSRL), which is to be implemented in all member states by 15 January 2004, ensuring the same rights for all (in Germany this will be enacted through the GPSG, see page 2). More than 20 other directives, such as the machinery directive, contribute to the harmonization of product safety. The EU's new approach has been applied since 1985, involving directives that regulate the fundamental safety and health requirements with the help of general legal terminology, however the specific requirement is formulated by harmonized standards. Special emphasis is placed on the standards of the CEN and CENELEC Institutes drafted on EU level on behalf of the Commission. The CE label which is mandatory for many products (see left) acts as proof of conformity. Important: the EU commission can take immediate steps if, for example, there is an infringement of product safety directives.

In principle, manufacturers of faulty products should expect to be held liable throughout the world in foreign courts. This is the case even if they were only the supplier and their product was not intended for export. The relevant national pro-

duct liability laws and the legal systems are authoritative in such cases. Thus, the worldwide principle that applies is that safe products are the best protection against product liability. The national rules for the licensing, certification and labeling of products represent a major hurdle on this path. Service providers like TÜV Product Service offer the full range of know-how for export-based business. International product liability law was considerably harmonized through the EU product liability guidelines dating from 1985. This has been implemented in the European economic territory and still serves as an exemplar for national law in many countries, such as Japan, Australia, Brazil, Russia or China. Key elements of the directive are the liability of the manufacturer irrespective of blame and the reversal of the burden of proof. Accordingly, the manufacturer must demonstrate that his product was safe at the time it was brought into circulation. Cases can be taken against manufacturers, suppliers, importers or dealers if they do not name the manufacturer. Special attention has been garnered by American compensation cases – because of the often used class actions and gigantic compensation sums in which plaintiffs are awarded a multiple of actual damages (up to multi-million amounts) under the title »punitive damages«. ■



Equipment and product safety law, § 4 paragraph 2:

» A product may only be brought into circulation if it is produced in such a way that the safety and health of users or third parties is not threatened when used correctly or if used incorrectly in a foreseeable way. In particular, the assessment should look at:

1. the features of the product, including its composition, packaging, assembly instructions, installation, maintenance and length of use,
2. its effects on other products if it is expected that it will be used with other products,
3. its commercial presentation and packaging, labeling, warning notices, use and operating instructions and directions for disposal, as well as all other product-related details or information,
4. those groups of users who are at a greater risk than others when using the product. «

Nine tips for businesses

Safe Products

1. Produce as safely as possible: This may seem obvious, but it cannot be emphasized often enough. After all, the liability risks have increased even further thanks to the new GPSG product liability law. Manufacturers, importers and traders can be held liable for a faulty product, irrespective of where the blame lies. So, it's better to have your product subjected to a recognized risk analysis prior to its market introduction, rather than leaving this to practical tests by the consumer.

2. Buy in expertise: Small and medium-sized businesses often lack capacity in the technical and legal areas. To ensure that they do not get a nasty surprise, particularly in the case of products intended for the international market, they should buy in external advice at the development stage.

3. It's best to underestimate consumers: Put yourself in the user's/ consumer's shoes when it comes to product safety too. In extreme cases, a user who holds a product in his hand for the first time will have absolutely no experience to fall back on. In the final analysis, anyone introducing a product to the market should expect »foreseeable mistakes«, which can represent a broad field. This is particularly to be expected with so-called migration products, in other words professional machinery, as used in the DIY sector for example.

4. Complete risk management: Complete risk management looks at all potential sources of error, which also include the externally produced parts of a product.

5. Remember innovations: Even the most minor change to a product should be checked out under safety aspects. Adjustments may be required in a variety of areas, including the operating instructions for example.

6. A warning does not exonerate blame: Anyone who believes his product has a weakness should not leave it at a warning sign. Instead the fault must be remedied immediately. A warning sign can only be used to amplify protection against incorrect use.

7. Note § 4 paragraph 2 GPSG: It is advisable to obey the duties listed there (see above) in detail. The experts at TÜV Product Service know how this works in detail and what requirements are to be met on the basis of relevant national and international standards, e.g. product design, warning signs, packaging, product labeling and operating instructions.

8. The client's word is not law: Manufacturers cannot have recourse to the claim that they produced a product as directed. If the product is faulty, then the manufacturer is liable in the event of damage with all legal consequences.

9. Get insurance: According to the non-binding product recall model produced by the German Association of Insurance Companies, a lot of aspects can be insured, from the cost of information policy to the cost of destroying products. In principle: The risk of recall costs and therefore the premiums are evaluated and set by insurance companies on a very individual basis.