



ERF Position Paper

Improving the functioning of the system
of Notified Bodies for Vehicle Restraint
Systems (VRS)

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About the Authors



Established in 2000, the European Union Road Federation (ERF) is a non-profit association that defends the importance of roads as an indispensable element of Europe's economy and society. Through its activities in the field of road safety, asset management, sustainability and intelligent transport systems, ERF acts as a platform for dialogue on research on mobility issues and roads in particular.

The current position paper has been elaborated by the ERF Working Group on Vehicle Restraint Systems (hereafter VRS).

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1. Executive Summary



Despite progress achieved in the last decade, 70 people die and more than 650 are seriously injured every day on Europe's road. As one of the most cost-effective safety infrastructure solutions available to policy makers, vehicle restraint systems can greatly contribute to alleviating the consequences of road accidents and increase levels of safety on European roads.

Since 1 July 2013, all vehicle restraint systems for non-temporary use sold within the European Union and which are subject to the provisions of the Construction Products Regulation (CPR) must bear a 'CE Marking', i.e. prove that they comply with the requirement of Annex ZA of the European Standard hEN 1317-5.

As the responsible organisations for the issue of EC Certificate of Constancy of Performance (hereafter CE Certificates), Notified Bodies essentially act as the 'passport issuers' for the internal market and as guarantors of quality with the European Union where an appropriate European Directive or Regulation is in force. As such, it is imperative that any appointed or accredited notified body possess sufficient knowledge that is updated at regular intervals when dealing with the certification of vehicle restraint systems.

The purpose of the current ERF position paper is to raise its concern amongst the relevant bodies (European Commission, Member State authorities, Notified Bodies) about the current functioning of the system of notified bodies within Europe with respect to the certification of Vehicle Restraint Systems. Since 2011, ERF has become aware of specific practices amongst certain notified bodies that are inconsistent with the provisions of the CPR and which result in undermining firstly the coherence of the internal market for vehicle restraint systems and secondly, could result in unsafe or non-compliant systems being installed within the EU and non-EU countries that may utilise hEN 1317-5.

Moreover, the paper proposes a set of recommendations which, in the opinion of ERF, could substantially improve the functioning of the system of notified bodies for vehicle restraint systems if implemented.

2. The role of Notified Bodies and the CE marking



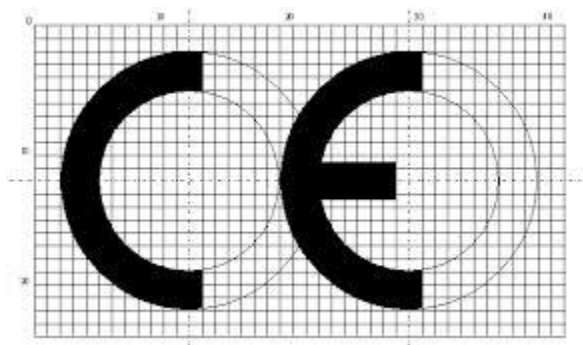
Since 1 July 2013, all road restraint systems falling under the provisions of the hEN 1317-5 must bear a CE Marking. A CE marking on a road restraint system is the manufacturer's self-declaration that performances were obtained using the procedures indicated in hEN 1317-5. It indicates to the appropriate bodies that the product may be legally offered for sale in their country and provides the responsible companies easier access into the European market to sell their products without adaptation or rechecking.

In order to obtain a CE marking for road equipment products, a company must seek the services of a **Notified Certification Body** which is responsible for assessing whether the product meets the necessary criteria. A notified certification body is an organisation that has been notified to the European Commission by a Member State.

As these organisations are ultimately responsible for assessing the compliance of a road restraint system against the hEN 1317-5 and the provision of a CE Certificate of Constancy of Performance to manufacturers, notified bodies can in essence be described as '**passport issuers**' to the EU internal market, which is acknowledged as the largest market in the world.

Given this important responsibility, it is essential that Notified Bodies for vehicle restraint systems have sufficient expertise when certifying road restraint systems. This will ensure that:

- the road restraint systems sold within the EU are indeed crashworthy and comply with the strict requirements of the European Standard hEN 1317-5 in order to guarantee their performance on European roads
- guarantee a level playing field for all legal entities within the internal market for road restraint systems



3. ERF Position on current situation concerning notified bodies



As an association that represents an important number of European manufacturers, associations and notified bodies alike and which has been active in the field of RRS and road safety for more than 10 years, it would like to express concern over the current functioning of the system of notified bodies when it comes to the process of certification for road restraint systems.

More specifically, the ERF has become aware of practices amongst **certain** notified bodies that are inconsistent with the law and which as a result, create situation of unfair competition within the internal market for road restraint systems as well as potentially resulting in the placement of non-crashworthy road restraint systems within the European Union and amongst adopting nations. The table below provides a list of practices that the ERF as an association has encountered:

Case No 1: Issuing CE Certificates without the permission of the owner of the crash test results

Incorrect Practice: An owner of test results may choose to share test results with a third party provided there is an agreement between the owner of the results and the third party. In the absence of the any agreement, any CE certificates issued without the agreement of the owner are illegal.

Solution: The CE Certificates must be withdrawn by the relevant notifying authority or the owner of the test results must agree to share the result with the notified body in question

Case No 2: Issuing of CE Certificates for non-harmonised parts of the standard

Incorrect Practice: A CE certificate can only be issued as long as the product standard in question is harmonised under the hEN 1317-5. In the absence of harmonised standard, it is still possible for notified bodies to assess the performance of a specific product (e.g. a transition or a motorcycle protection system), however, it is not possible to issue a CE certificate.

Solution: The CE Certificates must be withdrawn by the notified body in question and replaced with a certificate declaring compliance with the specific Technical Specification or Experimental Norm in question

Case No 3: Issue of CE certificate for different systems (without belonging to the same family of barriers as described in the standard) using the same test report

Incorrect Practice: A test report can only be valid for the specific product design it has been tested against. As such, it is not technically or legally possible to use the same crash report to non-identical products.

Solution: The CE Certificates must be withdrawn by the notified body in question and the product re-assessed.

Case No 4: Issue of CE certificate with incorrect information on it

Incorrect Practice: Notified bodies must ensure that the information on the certificate corresponds to the appropriate version of the standard. For example, when issuing a certificate according to the latest version of the hEN 1317-5 (published in 2012), a notified body must refer to normalised deformation indices and indicate them correctly in accordance with Annex ZA of the standard.

Solution: The CE Certificates must be withdrawn by the notified body in question and re-issued with the correct information

Case No 5: Inconsistent approach with respect to CE Marking for in-situ barriers

Incorrect Practice: in a single market, the same rules should apply to all products. However, in the case of in-situ concrete barriers (due to a lack of clarity of their legal status), there is an inconsistency amongst notified bodies about whether in-situ concrete barriers are products (and thus subject to the CE marking) or works (and thus, not eligible for CE marking). This is leading to a situation where CE marking is being used for competitive advantage and causing distortions in the market.

Solution: A uniform approach must be followed by all notified bodies concerning the certification of in-situ barriers once their legal status has been clarified.

Case No 6: Calculation of dynamic criteria (ASI, Working Width and Dynamic Deflection) using static methodology and issue of certificate

Incorrect practice: it is not possible to accurately calculate dynamic phenomena such (ASI, working width and dynamic deflection) using static calculations. Any such calculations are bound to generate performance values which are highly questionable from an engineering perspective.

Solution: The performance criteria for the concerned product must be re-assessed using a dynamic instead of a static calculation. If the product after re-assessment has different parameters the CE Certificates must be withdrawn by the notified body

Case No 7: Issuing of CE Certificate by a notified body that is not notified for the hEN1317-5

Incorrect practice: It is not possible for a notified body that is not notified for the hEN 1317-5 to deliver a CE certificate for a vehicle restraint system. Only notified bodies that are competent for the standard in question and which have been notified as such to the European Commission can deliver such a certificate.

Solution: The certificate issued by the notified body in question must be withdrawn

4. Proposals for strengthening the system of notified bodies for VRS in the EU



More than three years have passed since the mandatory introduction of the CE marking for vehicle restraint systems. Experience to date has shown that the system of notified bodies for vehicle restraint systems needs to be improved in order to enhance the safety performance of all vehicle restraint systems sold within EU as well as guaranteeing a level playing field for all manufacturers within the internal market.

In this respect, the ERF and, in particular, its working group on road restraint systems would like to propose to the relevant authorities (European Commission, Member State authorities, Notified Bodies) the following set of recommendations and actions:

Recommendation A: Strengthening the knowledge capacity of notified bodies

Experience to date has shown that the quality of notified bodies across the European Union varies significantly. Within an internal market, it is essential that all notified bodies for road restraint systems can fulfil their duties and act in a manner that does not undermine competition. The following actions could help strengthen the capacity of notified bodies:

➤ ACTION 1: Establishment of a pan-European training course for notified bodies

Notified bodies could greatly benefit from the setting up a commonly accepted training curriculum that would be available to all entities across the European Union. Such training courses could be set up under the auspices of an appropriate set of experts with a knowledge of the hEN 1317-5 emanating from different specialised bodies, e.g. members of the SG 04 Group of Notified Bodies and Members of the CEN TC 226/WG 1. People following the training would receive a certificate.

➤ ACTION 2: Introduction of mandatory participation requirements for notified bodies within relevant national and European committees

Participation in relevant committees is a simple and effective manner of keeping up-to-date with technical developments in any field. In the case of road restraint systems, the principal committee at European level is the CEN TC226/ WG1 and its related Task Groups and the SG04 group of notified bodies. In addition, each Member State has national mirror groups which gather the principal actors at national level in the development and certification of road restraint systems.

The ERF would support introduction of mandatory participation requirements for notified bodies with such committees. More specifically, notified bodies wishing to keep their notification should attend relevant expert committees at least once a year. In addition, participation to the SG04 should be made compulsory (currently optional).

Recommendation B: Strengthening market surveillance for hEN 1317-5

Market surveillance is a key element of the internal market. This is a shared responsibility between the European Commission and the Member States. With respect to the latter, the responsibility is shared between national market surveillance authorities and their ADCO, i.e. the administrative cooperation mechanisms amongst member states.

➤ ACTION 1: Ensuring a more effective handling of infringement complaints by the European Commission services

As the guardian of the European Union Law, the European Commission has an obligation to ensure that Member State do not place obstacles with respect to the free movement of goods and services. This also applies to the field of Construction Products falling under the Construction Products Regulation and as such, road restraint systems.

Experience to date has shown that an infringement procedure at EU level is unnecessary lengthy. In the case of ERF, it took more than two years to receive an initial response to a complaint it had submitted. This leads to lengthy distortions within the internal market which risk causing at times significant damage to economic operators with the common market. As such, it is essential that the European Commission services deal with infringement complaints in a timelier manner and dedicate sufficient attention to problems arising in the market without undue delay. Initial responses to complaints should be given within 6 months of the reception of the complaint.

➤ ACTION 2: Ensuring a more active role of national market surveillance authorities

As co-responsible for smooth operation of the internal market, national surveillance authorities have a key role to play in rooting out incorrect practices when these appear on the internal market. Experience to date has shown, nevertheless, that national surveillance authorities do not fulfil their obligations with respect to market surveillance in the field of CPR. This is leading to a loss of the credibility of the internal market for construction products and road restraint systems. As such, it is imperative that national surveillance authorities undertake their fair share of responsibility with respect to market surveillance and cooperate closely with road authorities in this respect.

➤ ACTION 3: Establishment of harmonised methodology for notifying Notified Bodies and reviewing their license

Currently, there is no harmonisation of criteria within Europe for notifying notified bodies and reviewing their licences. Different countries use different criteria and there are huge inconsistencies with respect to the formal criteria different notified bodies have to fulfil in order to keep their notified status. For example, in the United Kingdom, notified bodies are subject to annual audits by the national accreditation services which check amongst others, the attendance of the notified body in question to relevant committees, the competence of the staff carrying out certification, previous Technical Construction Files (TCF) submission and assessments and the Factory Production Control Audit Reports undertaken.

These large inconsistencies create an imbalance first with respect to the administrative burden of notified bodies operating within the EU and most importantly lead to important deviations in terms of expertise with respect to the knowledge of notified bodies. As such, it is imperative to establish common evaluation criteria for the accreditation of Notified Bodies and reviewing their license.

➤ **ACTION 4: Establishment of an inventory of CE Certificates issued and withdrawn from the market that is publicly accessible road authorities**

In terms of market surveillance, it is important for road authorities to have a simple and easy access to a central (national or European) database that can inform of whether CE certificate presented to them or valid or not. Otherwise, it is practically impossible for road authorities to be able to know whether the CE certificate presented to them remain valid or has been withdrawn. In this context, it is important to set up an inventory either at national or European level where authorities can have up-to-date information about the validity of CE certificates.

5. Concluding remarks



It is clear that the current system of governance for notified bodies is insufficient to ensure a smooth operation of the internal market within the field of road restraint systems. The significant variation in knowledge capacity amongst notified bodies within the European Union is causing significant distortions within the internal market and creating significant problems to certain economic operators active in this important field.

Provided there is the necessary consensus at EU level, the ERF would ultimately favour the establishment of a centralised body at European level that would be supervisory powers over notified bodies operating within the European Union. This would solve many of the governance problems currently encountered within the internal market and lay the foundations for a more coherent system when it comes to the certification of road restraint systems within the EU.

Recognising the institutional obstacles of such an approach, the ERF is trying as a first step with this position paper to raise awareness of some of the problems present as well as to make a set of modest recommendations that it believes can improve the integrity of the CE marking within Europe and which are in line with the principle of subsidiarity at EU level.

As a next step, it looks forward at establishing a constructive dialogue with relevant stakeholders in order to explore how we can all work together to create better governance system that ensures the rule of law and prevents potentially unsafe products from entering the market.



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