PREAMBLE

*This motion has been elaborated with intent to **evaluate the possibility for the European manufacturers to define a common position** on the problems which are still waiting to be clarified in the PPE industrial and economical area.*

It has been made after consultation of the SYNAMAP members and constitutes, according to us, a good basis for our reflections on that project.

SYNAMAP'S STATEMENT

In the scope of its numerous activities, the SYNAMAP has done the following report: **in the PPE economic area**, **a lot of problems**, harmful to the business safety and to the French manufacturer interests, and generator of a great confusion from an economic and legal point of view, **are still waiting to be cleared up.**

As a matter of fact, PPE professionals are compelled to notice that, throughout Europe, the standard legal significance is still an **object of confusion** and that, on various items, the notified bodies interpretations are **too dissimilar to create a safe environment for business and *in fine* may be dangerous for safety of the end-users of their products**.

Therefore, we all know that unsolved questions and uncertainties are the main enemies in our jobs and that the aims of the European legal strategy are to avoid them to achieve an open market in an enlarged Union.

So, to face up our liabilities, SYNAMAP believes that the European manufacturers' organizations need to clear that matters up, to define a common position, and to defend it with one voice in all the places they used to frequent.

First disorder factor: the standards legal significance

First of all, we think that it would be useful to specify the principles on which is based the common law (a), and to apply them to the most current solicitations of our members, that is to say: the standard influence on the already marketed products (b), the standards implementation date (c), and the risks tied up to a market's withdrawal (c).

a) Principles

Standards are regulation tools. They are of voluntary application and **they are devoid of any compulsory nature**.

There are only three “exceptions” to that principle.

1°) A standard can be made compulsory by legislation. This case is quite uncommon. (the last one was concerning the lift)

2°) A standard can be made compulsory by contract. Its compulsory strength is just the same that the one which is attached to a normal contractual provision.

3°) At last, a standard becomes “compulsory” when its explicit project is to codify the rules of Art. This project must be proved. This case appears in the building trade.

b) standard’s influence on the already marketed products

It goes without saying that if the standards are of voluntary application at the product elaboration stage, this rule is *a fortiori* valid for the products that are already marketed. Moreover, regulations themselves do not impose a market withdrawal because there’s a change in a technical reference.

From a legal point of view only a legislative provision can raise questions about an established situation**.** So, marketed products can’t be considered as dangerous or obsolete owing to the fact that a new version of a standard has been published.

c) Standards implementation date

Every standard mentions the date when it comes into force. At that time, the former version lapses.

Standard index, and particularly its date, is a very important element of contract signings because it will determinate the technical features binding the parties.

Products designed after the date of application of the standard may (**but must not**) respect the new version. (*Nota Bene* : by the way, we don’t see any commercial interest for a manufacturer to design his products on the basis of the former version, even if it’s not unlawful from a legal point of view).

d) Risks tied up to a market's withdrawal

The French consumption code and some European directives are allowed to compel a manufacturer to withdraw his products or to warn his clients. Leaving aside any administrative injunctions, it might be a clever management for a manufacturer to act spontaneously that way, when circumstances require that kind of initiative. But, all the way, the publication of a new standard does not constitute such a circumstance, **except cases where the former standard lapsed because it was - in itself – a source of dangers and has been withdrawn for that reason.**

Second disorder factor: the dissimilar interpretations of notified bodies and of public authorities

There is throughout Europe an objective political consensus to consider that a genuine freedom in the product circulation (which is the ultimate aim of the Rome treaty) involves the necessity to eradicate all the technical interferences to the exchanges.

Unhappily, notified bodies' pratices are too dissimilar to create the safe and steady environment that the manufacturers need to lead their business in good conditions. And it's wellknown that uncertainty is the better way to generate technical interferences with the required steady flow of economical exchanges.

So, it appears logical that our duty is to work at this uncertainty clearing up.

Two concrete examples will be exposed in support to our allegations.

The first one concerns the debate related to the validity period of the CE Type Examination Certificate's (CETEC).

The second will try to illustrate the idea we defend which is that the lack of harmonization between notified bodies' interpretations can lead to worrying preoccupations where the most elementary rules of law are broken … to the exclusive detriment of the one who respects them! It concerns the EN 795.

In the both cases, SYNAMAP will only base its argumentation on the common law principles (as defined *supra*) and on a certain form of economical good sense to suggest some tracks of improvement or reform.

As a matter of fact, we think that it's time for the European manufacturers to elaborate a common doctrine on all these problems and that ESF is the right forum to make that thing happen.

I. CETEC validity period

a) Objective elements

Three points must be pointed up.

Primo, we observe nowadays that some notified bodies deliver their CETEC accompanied by a period of validity which is discretionarily defined. Others don't ;

Secundo, there isn't any period of validity mentioned in the 89/686/CEE Directive ;

Tertio, there is a recurrent debate on that point in the bosom of the normative area.

You'll find below some of the most recurrent (and unprompted) reflections that these problems have inspired to SYNAMAP members.

Point 1.	There isn't any period of validity mentioned in the 89/686/CE's Directive;
Point 2.	*If the validity of the CETEC had to be called into question, it would involve a very confused transitory period which will be quite difficult to manage;*
Point 3.	*Every recourse to a new material or every formal change of a component involves, after the expertise of a notified body, either an extension of the CETEC, or a new CETEC issue.*
Point 4.	*Only standard revised for security reasons must be the occasion for a new CETEC issue.*

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Resolution's project

According to the foregoing, we think to conclude that an objective consensus can be found, between ESF members, to federate themselves about the following items:

a) On the standards legal significance:

1°) we ask the authorities (particularly in the scope of the market supervision) to act in perfect harmony with the **positive law**, as it has been above defined ;

2°) we ask the authorities to confirm that the PPE which have obtained a CETEC on the basis of former standards can keep on circulating on the market, even if these standards have been revised, except if these authorities consider explicitly (and are able to prove) that the former version does not give presumption of conformity to the directive basic health and safety requirements (BHSR);

3°) We ask them confirmation that the fact for a product (designed after the publication date of a revised standard) to be certified on the basis of a new standard version may be **advisable** but not **compulsory**.

b) On the dissimilar interpretations of the notified bodies:

1°) It is to be hoped that an harmonized and clear decision could be made on the CETEC validity period in concordance with our profession interests;

2°) Its is to be hoped that an harmonized and clear decision could be made on the PPE positioning;

3°) At last, we wish that the production certification procedures carried out by notified bodies will be harmonized.