

Position paper

The transitional provisions laid down in Article 47 of PPE Regulation (EU) 2016/425

We, as representatives of the European PPE industry, strongly advocate for a smooth transition period from the Directive 89/686/EEC to the PPE Regulation (EU) 2016/425.

The PPE Regulation (EU) 2016/425 was published in March 2016, starting its two-year transition period to replace the current Directive 89/686/EEC and shall apply from April 2018. However, there is no consensus among the European Commission and the industry on the interpretation of the transitional provisions laid down in Article 47.

If the European Commission interprets Article 47 (2) as requiring all manufacturers to have an EU-type examination certificate under Regulation (EU) 2016/425 from April 21, 2019, it would not be possible for PPE manufacturers nor notified bodies to meet this requirement.

Neither parties are staffed to reapply for or reissue the very high number of type-examination certificates necessary to meet this interpretation. The 5-year renewal of certificates cycle will result in a significant peak in the workload for all concerned parties.

This is currently causing a high degree of legal uncertainty in the marketplace. Economic operators are still very much uncertain about which actions to take. Disruption of product availability will result in risks for the health and safety of the users.

Moreover, the original intention of Article 47 (2) of Regulation (EU) 2016/425 is precisely to enable a smooth transition allowing sufficient time to reapply for EU-type examination certificates under the new Regulation up till 2023, considering the following:

- The EU Commission itself, by way of the wording of Article 47 (2), originally intended this smooth transition (see Thierbach, Gefahrstoff-Reinhaltung der Luft 76 (2016) No. 5, p. 189, 3.);
- The EU Commission confirms that Article 47 (2) is not intended to restrict the making available on the market of goods, if they are placed on the market before 21.04.2019. (see EU Commission Guidance document on the transition - Page 20 - Transitional period for manufacturer). Taking this into account, it is clear that Article 47 (2) should be interpreted as allowing smooth transition. Interpreted any other way, Paragraph 2 would be completely meaningless;
- The EU Blue Guide (2016 on implementation of EU Product rules) argues in favour of our interpretation to ensure a smooth transition (see Blue Guide 2016, 2.10., P. 29).

We therefore call upon the EU Commission to:

- Eliminate this legal uncertainty as soon as possible by writing an official explanatory communication, in order to
- Advocate for a smooth transitional period, stating clearly that reapply for EU type examination certificates under the Regulation are admitted up till 2023 and allowing products certified under the Directive 89/686/EEC to be placed on the market up till 2023.

