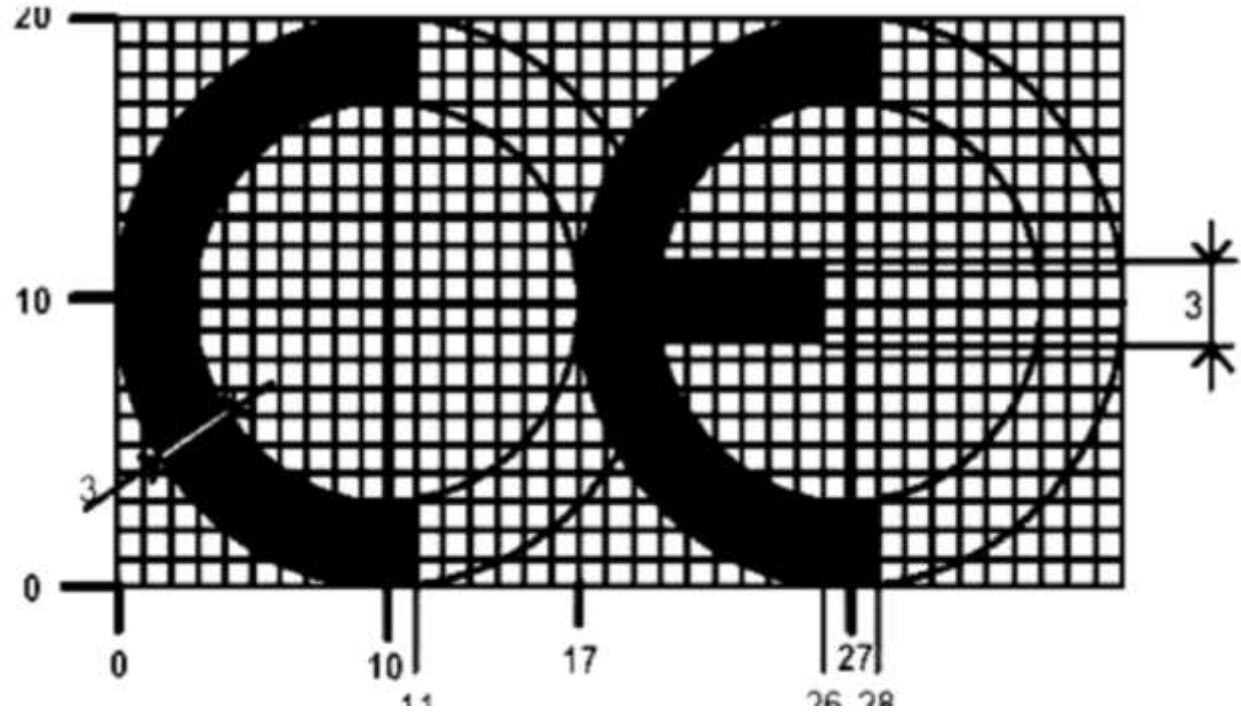


CE, digital passports and liability issues

Charlotte Ducuing

Copenhagen, 2nd and 3rd May 2024

'CE'?



Digital Product Passports (DPPs)?



Source: Knitting Industry

Digital Product Passports (DPPs)?

- ‘Materials passport’, ‘product passport’ concepts originate in the materials engineering literature
- Connection to the ‘circular economy’ concept – industrial ecology
- Location where data and information (D&I) relevant for the transition to the circular economy (CE) are gathered and made reusable for the circular strategies of other stakeholders



Digital Product Passports (DPPs)?

- **Big EU legislative uptake!**
 - ‘Battery passports’ in the Battery Regulation
 - ‘Digital Product Passports’ in the Ecodesign Regulation proposal
- **DPP: No clear legal definition!**
 - Circular definition; not (much) defined by the semantic content of D&I - CE and other purposes
 - Mainly (i.) the electronic / digital character of the conveyer; (ii.) centralization of D&I or at least a certain level of coordination through the DPP.
 - EP version (24th April 2024): DPP as the preferential means to convey D&I
- **Product legislation as the legal anchor**
 - DPPs as ‘information requirements’
 - Condition for CE affixing and for the placing of the product on the market

A new old approach to harmonisation?



DPPs and product legislation: A 'complicated' relationship

- Questionable relationship to 'products'
 - Partly disconnected from 'product': Raw resources; Supply chain due diligence, ... → Actually relates to organizational level
 - D&I production / sharing requirements *between businesses* → Compare to Chapter II Data Act
 - Product vs service dichotomy (*Krone case, C-65/20*)
- Espouses the servitization turn
 - Origins in CE regulation: **Extended Producer Liability**
 - Origins in digital regulation: 'Product-oriented paradigm' (Dheu et al, 2020) for digital technologies → e.g. cybersecurity of cars and medical devices; revised Product Liability Directive



Mariuzs T, Digital Product Passport (DPP) as an Important Mechanism Supporting the Circular Economy, in *Current Trends in Quality Science. Innovative and sustainable products, materials, and technologies*, The Poznań Society for the Advancement of Arts and Sciences, 2024

DPPs and liability?



Data or information as a defective product or component? (Product Liability)

- D&I as relevant element to determine the ‘safety expectation’ of consumer >< D&I as ‘defective’
- Specificities of DPPs
 - Connection to the product through CE affixing & digital unique identifier
 - Data governance potentially disconnected from product relationships – i.e. B2B data sharing
- Revised Product Liability Directive proposal
 - Data (‘any item’) can be considered as a component if ‘under the control’ of the manufacturer
 - Nota bene: no functional requirement
 - ‘under the control’? → i.a. ‘consent’
 - Seemingly a liability regime for defective components
- → ‘It will depend’



B2B liability?

- D&I reliability and accuracy requirements
- B2B liability exposure in case of ensuing damage?
- No specific provision thus falls back on national tort law



- *Lex generalis* for the conditions of B2B data sharing obligations
- Mandatory contract (?) to arrange conditions under and beyond Data Act requirements
- At least 'it is covered'

Thank you for your attention!

KU Leuven Centre for IT & IP Law (CiTiP) - imec
Sint-Michielsstraat 6, box 3443
BE-3000 Leuven, Belgium

charlotte.ducuing@kuleuven.be
<http://www.law.kuleuven.be/citip>

