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Moving the Single Market Forward: Orgalime response on the Single Market Strategy

INTRODUCTION

For decades, the European Single Market has been one of the main sources for jobs, prosperity and affordable goods and services for Europeans. The Single Market for products, which has been largely completed, has underpinned the growth of the engineering industry both on Europe's home markets in Europe, but also from this, on world markets. Therefore, the Single Market is not just any policy field but a crucial one for Europe and Orgalime welcomes the European Commission's proposal to both deepen and broaden it.

Orgalime also believes that it is essential that Europe's Single Market should be ready for digitalisation, which will be the biggest opportunity for Europe's manufacturing companies – both large and small - and a challenge for the next decade. Digital production will capture all sectors of the economy. Europe can maintain its high standards of living only if we manage to create the framework conditions that take on board this evolution and make Europe the place to innovate and to manufacture. Therefore, measures taken to strengthen the Single Market should focus on having a direct and positive effect on the competitiveness of the European industry and must help companies to be globally successful.

We therefore welcome the initiative of the European Commission to improve further the European Single Market and in the present position comment on some of the aspects mentioned in its Strategy that we consider are of particular importance for our industry:

- Simpler and faster removal of technical trade barriers
- Smarter market surveillance with more physical controls
- A true de-bureaucratisation and simpler conformity assessment rules
- A regulatory environment ready for the "Industrial Internet of Things"
- An approach to standardisation which takes into account the global markets of companies.

SIMPLE AND SMART RULES FOR ALL

The "New Approach" – as codified in a New Legislative Framework with Regulation EU 765/2008 and Decision 768/2008/EU – has proved to be the booster for further harmonisation and growth in our sectors for the last decades. However, this success is jeopardised by conflicting trends that undermine the reality or the accessibility of the Single European Market to companies. We especially refer to:

Orgalime, the European Engineering Industries Association, speaks for 42 trade federations representing the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.3 million people in the EU and in 2014 accounted for more than €1,800 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union.

- Creeping administrative requirements for companies that undermine the flexibility of the New Approach to regulatory harmonisation.
- Product groups where minimum harmonisation regulation adopted at EU level has both introduced more complex legislation, while maintaining market fragmentation and nationalist protectionism, such as in the areas of construction products or much of environmental legislation.
- Draft regulation proposed by the European Commission which proposes a harmonised approach, but which is accompanied by a Communication that suggests additional measures that can be taken at national level which undermine this harmonised approach, such as in the area of conflict minerals.
- Areas where existing rules are not properly monitored, while market operators are continuously burdened with further obligations, such as inconsistent market surveillance requirements.
- Areas where European legislation has undermined the home markets of European producers and thus hampered their international competitiveness.

This is why we think that it is important to keep rules simple and keep an easy application in mind. Contrary to the commitment of the European legislator to “Think Small First”, it seems that many legislative proposals are “too big” from the beginning and result in such compliance costs for legitimate market operators that they only widen the gap between those that respect the rules and those that do not.

Our general approach towards a functional legal framework therefore starts with better application of existing rules. If this is not sufficient, then real harmonisation should follow, with easy application through the “think small first” principle and international competitiveness in mind. Flexible conformity assessment procedures and market-driven standards help to comply these rules.

Key recommendations:

- Try better application of rules before creating new ones
- Think small first by really keeping rules simple
- Think global and global competitiveness when considering new rules
- Harmonise fully without providing a gateway for additional national rules.

MUTUAL RECOGNITION

Mutual recognition remains a very important pillar of the internal market for products which are not covered in full by EU harmonisation legislation.

Theoretically, this principle provides the internal market with powerful tools such as authorities’ obligation to justify any measure against products lawfully placed on the market of another Member State (article 6, Regulation 764/2008), the withdrawal of national standards conflicting with European ones (article 3, Regulation 1025/2012) and the establishment of product contact points (article 9, Regulation 764/2008).

However, the mutual recognition principle is undermined in many fields, where Member States excessively use their – originally rightly exercised – competence in certain policy fields to unfairly discriminate against other European competitors. For example, companies have encountered numerous divergent additional national requirements for products that have to comply with the Directive for the Restriction of Hazardous Substances 2002/95/EC, (RoHS 1). Therefore, we are hopeful that with the transposition of RoHS 2 these practices will be eliminated. Likewise, national requirements on products in contact with drinking water are widely used to create technical barriers to trade.

Especially SMEs are suffering from such additional requirements and are then discouraged from crossing borders, as they cannot afford long legal or administrative disputes. A fast track dispute resolution procedure could help SMEs to enjoy the benefits of the Single Market without having to fight their case through the national legal systems, which usually makes SMEs resign due to high costs that mostly exceed possible economic gains.

Much national legislation requires third-party certification for placing products on the market in the non-harmonised area. We suggest that the Commission asks Member States to justify this additional bureaucratic and usually very costly burden.

In these areas, we welcome the Commission ambition to encourage Member States prioritising self-declaration of conformity over third-party certification in national legislation.

Key recommendations:

- Examine and eliminate excessive trade barriers caused by national legislation
- Introduce a fast track dispute resolution procedure for non-harmonised products
- Reduce third-party certification requirements in the non-harmonised areas.

SMARTER MARKET SURVEILLANCE IS KEY

The key to make the Single European Market a reality is better application of existing rules, not creating new rules. In fact, the inadequacy of market surveillance is revealing a prime example how a reasonably consistent legal framework is getting fragmented by inconsistent application among Member States. The consequence is not only that non-compliant products are imported or otherwise placed on the market by economic operators that do not respect the rules, but - even more shattering - that manufacturers who spent a lot of time and money to comply with those rules suffer a competitive disadvantage vis-à-vis those irresponsible operators. This is why we welcome the renewed commitment of the Commission to improve the functioning of market surveillance across the entire EU.

In our view, no other tool is more effective than physical controls on the ground. As a matter of fact, the most severe and dangerous accidents to consumers or workers have been caused by products placed on the market by operators that violate EU product safety regulations or forge certificates, registering, labelling and other compliance obligations. Therefore:

- An improved market surveillance framework must foremost address legal “outsiders”. At this moment, less than one percent of the products of our industry imported through ports are physically checked for compliance with EU health and safety legislation, and almost none for compliance with energy or environment requirements. It is obvious that an online register that would store technical files of lawfully operating producers would not detect dangerous behaviour by non-compliant operators and instead would only add bureaucratic burdens to operators - especially SMEs - that are already having to strive hard to be fully compliant.
- To make everyday lives for legitimate operators easier and, as a true relief on bureaucracy, the electronic transmission in digital format of the Declaration of Conformity, the technical file and other required compliance evidence, when required by market surveillance authorities in the performance of their checks, should be accepted by all market surveillance authorities throughout the EU. Market surveillance authorities should co-operate and mutualise efforts, starting with reinforced physical checks already on arrival in ports and on the market by all Member States in accordance with the “culture of compliance” promoted by the Commission.

We believe that the decisive factor to make market surveillance effective is that all actors involved assume responsibility for their particular field of duty. Such a virtuous circle of responsibilities starts with the EU regulator himself, by adopting appropriate and easily applicable laws and by keeping compliance costs low, and proportionate to Member States’ enforcement ability. Producers and importers should provide the necessary information so that professionals and consumers can make

informed purchasing decisions and safely use products as foreseen by the manufacturer. Finally, market surveillance authorities should be enabled – among others through EU wide co-ordination by the European Commission – to perform their task efficiently and remove unlawful and dangerous products effectively.

Key recommendations:

- Intensify physical controls at ports, borders and in the market
- Accept electronic transmission of technical files and other compliance documents
- Spare companies additional compliance procedures such as online registers or labels
- Co-operate better and mutualise resources, with the support of stakeholders' intelligence.

AN EVOLVING, FUTURE ORIENTED SINGLE MARKET

Our industry is at the forefront of the technical evolution and much innovation comes through digitalisation. Europe has always come out of difficult economic times through innovation. It is our companies that are making the next – this time digital - industrial revolution a reality. This will create new jobs with new skills. Humans and robots will interact better and factories will be connected along entire value chains. We believe that digitalisation will be the key driver of industrial investment for the coming years, which is why we could have expected the digitalisation of the European economy to be more thoroughly considered in the “Single Market Strategy”.

The REFIT programme of existing EU legislation should include a screening for technologically obsolete regulation. Such an update of existing legislation is essential for the European economy to fully benefit from new inventions and appliances. Indeed, smart data collection, analytics and smart systems will have an increasing influence on the economy as a whole and not only on ICT or service businesses.

Several innovations that come along with increasing digitalisation of products, processes and systems may affect the way we apply laws: conformity assessment procedures and product guarantees need to be applied in a way that they takes into account software updates of machine controls and systems, safety laws need to be applied in a way that autonomous processes, such as autonomous driving, automation, collaborative robots, etc., can be rolled out on a large scale.

We therefore suggest the Commission to start a structured, forward looking dialogue with the relevant sectors of the industry and its clients in order to see how far and where an update of the “acquis communautaire” may be useful above all to remove barriers in the existing regulatory framework which can hinder the development of new products, services and business models. While safety may not be compromised, the application of relevant laws and procedures must leave room for new technical solutions, so that our companies can innovate and remain competitive.

It is a matter of fact, many innovations – even the main disruptive ones – have been developed by long established companies, be it smart phones, digital cameras or high-speed data transfer. While start-ups and SMEs should be, as the Strategy affirms, encouraged to develop their business and grow, they can – like all companies – in the end only be successful if a better and more business-friendly framework conditions are in place.

Key recommendations:

- Make digitalisation a chance for all businesses
- Screen the acquis communautaire for technologically obsolete legislation
- Apply existing rules in a way that enables innovation
- Improve framework conditions for all companies.

BETTER STANDARDS FOR GLOBAL MARKETS

The European engineering industry accounts for more than a third of the manufacturing exports of Europe. This shows, that our markets are global and our products must comply with the rules in different regions of the world. Standardisation by industry for industry has proved to be an efficient and flexible enabler to help companies to comply with different rules. It is no surprise, therefore, that legislators in many countries follow the European “New Approach” type of legislation.

The success of the “New Approach” stems from regulators recognising the fundamentally different roles of standards and legislation. For the past 30 years, legislation has been setting essential regulatory requirements and objectives, while market relevant standards have been progressively developed by manufacturers in the standards organisations as a means to demonstrate compliance with those regulatory requirements. This has reduced the need for detailed legislative acts, which would have been rapidly outdated and thereby would have hindered innovation. For instance, the essential health and safety requirements of the Low Voltage Directive are successfully serving as a benchmark since 1973. At the same time, this system has encouraged companies to participate in the standardisation process with their technical knowledge, make them market relevant and use them broadly once they have been adopted.

This successful division of tasks is, however, put in jeopardy if regulators use mandated standards as policy instruments to fulfil general policy objectives and attempt to interfere in the private governance of European standardisation organisations. The principle of better regulation should also apply to the standardisation policy of the European Commission. Today, the industry perspective should be more adequately taken into consideration in the Commission’s decision-making process on the planning and monitoring of mandated European standardisation. This perspective, however, could not be adequately and independently reflected by the European Standardisation Organisations which need to remain neutral to represent the views of all their stakeholders. By reinforcing the dialogue with industry on standardisation policy initiatives, both European and national legislators will be able to improve their understanding of market needs, avoid bureaucracy and support flexible, sector-specific solutions. We hope that the envisaged joint initiative on standardisation will serve this purpose without adding administrative burdens on industry experts that are today by far the main contributors to the development of standards.

Key recommendations:

- Make European standardisation compatible with international standards for easier global market access
- Respect the different role of standards and legislation in EU law and policy making
- Concentrate on preserving the right framework conditions for voluntary standardisation
- Ensure harmonised standards remain a means to simplify the application of EU legislation.

SERVICES AND NOTIFICATIONS

“Servitisation” has been continuously transforming industry for the past decades. For many technical products, today, installation, regular maintenance support and after-sale services are equally important as the original production process. Additionally, the success story of many of our companies is due to the fact that they have evolved from a product supplier into a systems provider.

The “Services Directive” has made life for many of our companies a lot easier, especially those who, as part of their business, install machines and complex systems. As a matter of fact, though, the European Single Market for Services is not yet functioning as it should. Still, some Member States wall off their countries against service providers from other Member States by setting up bureaucratic hurdles. Therefore, we welcome the initiative to establish a “Service Passport” to make everyday lives easier for our companies and facilitate administrative procedures, especially if they reduce translation needs for standard documents.

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Still, such a “Service Passport” cannot replace a determined and consequent enforcement of existing European rules and the removal of prohibited obstacles. In this context, it might be useful to further strengthen the obligation of Member States to properly notify planned national legislation that might interact with European rules. Concerning trade barriers for goods, Directive 2015/1535 has proven its effectiveness and this should not be put at risk. For services, however, such a notification procedure is not in place, yet, even though it has proven to be a useful and effective tool for the European Commission to act as guardian of the Treaties. Therefore, a directive similar to the Directive 2015/1535 now applicable to goods should be set up that requires Member States to notify planned national legislation for services.

Key recommendations:

- Design a “Service Passport” to facilitate administrative procedures and translation needs
- Improve enforcement of the “Service Directive” and single market rules
- Maintain Directive 2015/1535 as a corner stone against illicit trade barriers
- Add a notification directive for national legislation affecting services.

TAXES: A WIDE FIELD TO MAKE ENTREPRENEURS’ LIVES EASIER

We are convinced that the harmonisation of the corporate tax base would be a good first step to make everyday lives of companies a lot easier. It is especially SMEs that get discouraged by different administrative patterns in other Member States and we are surprised that this obvious obstacle has not been tackled earlier. We believe that national sovereignty to determine how to levy taxes would not be harmed by this measure and therefore welcome the idea of issuing a new proposal for a “Common Consolidated Corporate Tax Base” to show the way.

Key recommendation:

- Harmonise corporate tax bases.

CONCLUSIONS

The Single European Market will remain the cornerstone for growth and new jobs in Europe.

While much of the legislation required for it has been put in place, we see a need for effectively applying it across the European Union: market surveillance must be strengthened especially through more physical checks without putting more bureaucracy on compliant companies; national protectionism must be ended through better harmonisation, a scrutiny and elimination of excessive trade barriers caused by national legislation; especially SMEs could profit from the proposed “Services Passport” and a fast track procedure against single market infringements; third-party certification requirements in the non-harmonised area must be reduced to a minimum; standardisation should be maintained as a useful and flexible tool for companies.

We hope that through the actions proposed by the Single Market Strategy a number of steps that help to make the European Single Market for Goods and Services a reality for all European Companies will be undertaken.

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Advisers responsible: Philippe Portalier and Christoph Riedmann
 Email: first name.second name @orgalime.org
 European Union 'Transparency Register' - [ID number: 20210641335-88](#)

The European Engineering Industries Association

ORGALIME aisbl | Diamant Building | Boulevard A Reyers 80 | B1030 | Brussels | Belgium
 Tel: +32 2 706 82 35 | Fax: +32 2 706 82 50 | e-mail: secretariat@orgalime.org
 Ass. Intern. A.R. 12.7.74 | VAT BE 0414 341 438