



Free Movement of Goods: Priorities for 2019-2024

The free movement of goods is a key pillar of the Single Market. As such, it should remain a priority for the next EU legislature and for EU Member States. Since innovation, while highly valued, is often placed in context of product safety challenges brought by new technologies, stakeholders should be included in EU governance processes to ensure that innovation can thrive in the EU and European citizens can benefit from state-of-the-art yet safe products and services. At the same time, ‘traditional’ barriers to the free movement of goods require renewed commitment for the Single Market at national level.

Coherent legal framework

In order to sell products in the Single Market, economic operators should comply with EU regulations on product safety. Many product safety requirements have been harmonised at EU level. The legislative framework for these requirements has become increasingly layered and complex overlaps between various directives and regulations have emerged, which makes the landscape difficult to navigate for manufacturers.

BusinessEurope finds that it is key that the legislative framework for market access is coherent, transparent and unambiguous, and fit for efficient implementation. In forthcoming evaluations of sectoral pieces of legislation, such as the Machinery Directive and the Low Voltage Directive, emphasis should be placed on coherence with the existing New Legislative Framework (NLF) and elimination of ambiguity caused by unclear language, missing definitions or overlaps between different pieces of legislation. Unless the risk profile inherently does not allow it, there should always be a preference for self-certification of products by the manufacturer to enable playing to the fast-changing environment so that the user is confident in getting up-to-date and safe products. It would also be helpful to map current deviations from the NLF in existing legislation. Deviations from the NLF should only be made in duly justified cases.

Essential requirements and harmonised standards

In many areas, EU legislation is limited to essential requirements regarding health, safety, and environmental protection. Industry can use harmonised standards, containing state-of-the-art solutions, as a compliance tool. This system, which performed well in the past, is currently being slowed down and subjected to overly strict conditions by increasing Commission involvement both at the beginning and at the end of the standardisation process. While the Commission has a legitimate role in requesting the development of harmonised standards and validating the outcomes, its ambition to



specify the content, form and timeline of these deliverables in detail and to examine harmonised standards in a legalistic manner should not result in either detailed requirements regarding the content of the standard or in disproportionate verification schemes with as a consequence significant delays in listing in the Official Journal.

BusinessEurope finds that harmonised European standards should be put back in the hands of self-regulating stakeholders, with public authorities in a guiding and guarding role rather than the driving seat. The November 2018 ‘Communication on European Standardisation’ proposed actions aimed at reducing the existing backlog in the citation of harmonised standards and create more clarity on the new role of the Commission. However, these actions will not resolve the critical impacts caused by the increasingly prescriptive nature of the Commission’s involvement in the process which has to be proportionate in relation to the purpose that harmonised standards serve. The manufacturer is the sole party with legal responsibility for compliance of the product with EU law, also when there is a presumption of conformity. Furthermore, adequate mechanisms are in place to change or dismiss harmonised standards in case it shows that their application is insufficient to meet the legal essential requirements. EU legislation should contain principle-based essential requirements for products, which can be further turned into technical specifications in the form of harmonised standards containing state-of-the-art technical solutions developed by stakeholders. This also implies that the Commission’s standardisation requests should be framework mandates, leaving flexibility to accommodate innovation, market requirements and market relevance.

Market surveillance

In order to really harvest the risk reduction intended by EU legislation and to ensure a level playing field, enforcement of EU product rules is key. This enforcement is in the hands of national market surveillance authorities. New challenges in this area emerge continuously, for example with the proliferation of online retail and mass customised production of consumer goods. The new Regulation on Compliance and Enforcement¹ covers cooperation between national authorities and voluntary harmonisation of methods, which is to be welcomed. It however does not resolve issues of resources and capacity. Currently, highly diverging working methods and diverging levels of effectiveness between market surveillance authorities make it hard to raise efficiency and efficacy through scale effects, information exchange, orchestrated priority actions and mutual learning. This situation reinforces exploitation of the weakest links in enforcement by rogue economic operators, legal uncertainty and dissimilar treatment of similar cases in different parts of the Union.

BusinessEurope finds that there should be a continued focus on capacity of national market surveillance authorities, both in terms of expertise and resources to do physical checks. The rise of e-commerce underlines the importance of proper surveillance in order to ensure a level playing field. For product safety, we advocate for an approach that focuses on enforcement towards products and economic operators that present the biggest risk to users. In the implementation of the Multiannual Financial Framework, sufficient funding should be allocated to capacity building and mutual

¹ Approved by EP plenary in April 2019.



learning in market surveillance. In the implementation of the Regulation on Compliance and Enforcement, the Commission should follow up on national market surveillance strategies and national information obligations. Market surveillance of harmonised and non-harmonised products should be balanced, and further co-operation and convergence of market surveillance methods should be considered for goods in the non-harmonised area.

Mutual recognition

Products that are not covered by EU harmonisation legislation benefit from the mutual recognition principle, which allows product lawfully marketed in one Member State to be marketed in another Member State as well. However, the principle does not always work in practice as market access is still too often refused by national authorities. The new Regulation on Mutual Recognition² foresees in the use of SOLVIT for companies as a problem-solving tool and in the recitals refers to non-binding guidance from the Commission on the concept of overriding reasons of public interest, which are both positive developments.

BusinessEurope finds it key to have more guidance on overriding reasons of public interest, and better transparency and data on the implementation of the mutual recognition principle. SOLVIT should deliver as a problem-solving tool for companies and be used for EU-wide data-gathering on the functioning of the mutual recognition principle and free movement of goods in general. We would also like more emphasis on the proper use of TRIS, which aims to prevent that Single Market barriers are raised but does not work well for goods. The Commission has an important role in providing guidance on the overriding reasons of public interest, so that companies can better assess if a refusal to mutual recognition is legitimately denied and if they should resort to a remedy. The Commission should also ensure proper implementation and evaluation of the Regulation on Mutual Recognition.

Access to information and problem-solving tools

Recently, some steps forward have been made regarding access to information and remedies for companies. The Regulation on the Single Digital Gateway, which will be included in the existing 'Your Europe' portal, aims to improve access of companies and citizens to information, problem-solving tools and online procedures. And as mentioned above, in the Regulation on Mutual Recognition the SOLVIT complaint system is explicitly foreseen as a problem-solving tool with the possibility for the national SOLVIT centres to request a Commission opinion.

BusinessEurope finds that companies should have an easy way to find out what rules apply to their product and have access to online procedures and effective remedies. Therefore, it is key that existing Product Contact Points are operational and well-resourced. The Single Digital Gateway should provide comprehensive and up-to-date information about all legislative requirements for products, including requirements for market access in another Member State. It is crucial that online procedures for companies will be featured in upcoming reviews of the Gateway, now that the company

² Regulation (EU) 2019/515 of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State.

law package has been adopted. Regarding the use of SOLVIT, for all cases relating to the free movement of goods companies should have the direct possibility to involve the Commission in the process, rather than depending on the referral of the national SOLVIT centres as is the case in the Regulation on Mutual Recognition.

Liability for defective products

The Product Liability Directive (PLD) establishes a strict liability for defective products which cannot be contractually excluded. This means that the consumer always has recourse to a manufacturer in case of damage by a product. The working of the PLD is said to be challenged by new technologies such as Artificial Intelligence (AI) and the Internet of Things (IoT), which would make it more complicated for consumers to obtain compensation. By summer 2019, the Commission will publish a guidance document on the PLD.

BusinessEurope finds that the existing Product Liability Directive establishes a future-proof framework for product liability. New technological developments, such as AI and IoT, are addressable under the current legal framework as the PLD always allows for the identification of a manufacturer, who in turn will have recourse to other parts of the supply chain. There are no proven problems with the working of the PLD, while opening the Directive would bring significant legal uncertainty for industry. The upcoming Commission guidance can facilitate interpretation in case of doubt. Instead of regulating either situations that may easily get outdated or hypotheticals, we should ensure principle-based regulation, allowing for new technological developments to emerge within the EU for the benefits of consumers.

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