

Initial comments on “A vision for the internal market for industrial products” COM(2014)25

Brussels, 25 June 2014

General observations

DIGITALEUROPE welcomes the Commission’s ambition to strengthen the internal market through the review of the Union legislation on industrial products. The markets continuously change and accordingly the internal market legislative framework has to adapt to these changes or has to be made more adaptable to evolutions where necessary.

The Commission communication acknowledges the “overriding need to minimise administrative burdens, especially for SMEs” and aims for simplification of rules. Our experience from changes announced as ‘cutting red tape’ is however that the regulatory burdens have often increased for our sector. This is partly due to the application of horizontal principles for all sectors, without due consideration of its proportionality for any given sector.

An example is the New Legislative Framework (NLF) from 2008, which in itself added new administrative requirements without removing existing ones. The recent agreement within the ‘Alignment package’ and the revised Radio Equipment Directive applied a stringent interpretation of the NLF, while admittedly removing one obligation that had been introduced through NLF (the case of single DoC).

Specific comments on some proposals in chapter 5 (“A Vision for the Future”)

Point 5.1 – A well-functioning internal market for products needs strong enforcement mechanisms

DIGITALEUROPE fully supports efforts to strengthen market surveillance to ensure that only compliant products are placed on the market, while safeguarding public interests as well as fair competition. Enhanced cooperation between national market surveillance authorities and common work programmes should aim at maximum efficiency improvements. A harmonised approach to sanctions would be a positive step and would be helpful to drive a consistent and proportionate response to non-compliance. In particular all member states should treat formal non-compliances in a proportionate way as foreseen by [the LVD WP in 2009](#). However, the effectiveness of market surveillance in the EU will remain limited without additional resources. Therefore more financial resources will have to be allocated to market surveillance to raise the overall performance of enforcement activities in the EU and to compensate for different levels of market surveillance in the Member States.

Point 5.2 – “Horizontal” legislation on products

DIGITALEUROPE supports a harmonisation of definitions and certain common elements. At the same time we see the risks pointed out in the above general observations. Currently, there is a lack of a clear basis for the application of the proportionality principle, which however should be the guiding element in all legal measures. In concrete terms this means that the quest for horizontal legislation should not lead to disproportionate burdens for certain sectors, or categories of products within a sector.

Product legislation should be made more flexible and include special cases and exceptions instead of striving for one size fits all solutions. Strong stakeholder involvement should trigger necessary updates and revisions of specific legal acts. The horizontal umbrella has to be adaptable to the products it covers: instead of carving into stone a possible horizontal regulation based on Decision 768/2008/EC there should be enough flexibility to timely adjust and extend it to emerging needs - again driven by the feedback and practical comments of stakeholders.

Proposals to extend the legal framework to maintenance and after-sales should be considered with caution. The primary function of the NLF is to regulate the safety and environments compliance of products. Blurring the lines between these aspects and consumer affairs may lead to confusion, and conflicting overlap other regulations covering consumer rights.

Point 5.3 – Innovation and the digital future

DIGITALEUROPE welcomes the use of modern tools for traceability and market surveillance purposes. At the same time it is important that an active communication link is established between the authorities and the manufacturer during market surveillance, to ensure that relevant information is being used. In particular for complex products there is a risk of misunderstandings if such a link is not established from the early start.

In general DIGITALEUROPE supports the use of electronic tools, in particular e-labelling, as an alternative, effective and potentially less burdensome way to show compliance. It is nonetheless important that manufacturers and economic operators are still allowed to choose more traditional ways to show compliance, as well as, to organize their tools independently with flexibility, yet in respect of requirements.

Current legislation appropriately requires that important information for users is provided in a language appropriate to each member state. Normally, compliance information such as test reports and data which are intended for use primarily by authorities, are provided in a single language (often English) only. Translation of complex test report to other languages is a burdensome and costly exercise which may offer little practical benefit and we recommend a proportionate approach.

Economic operators are organised internally in different ways and have different security rules when it comes to allowing access to compliance related information on their web from external parties, or sending compliance information to external parties. To check for fitness of purpose and for the costs implicated it is therefore important to involve stakeholders early in the process of defining possible future traceability and data exchange technologies and methods.

Point 5.4 – The blurring distinction between products and their connected services (installation, maintenance, etc.)

DIGITALEUROPE welcomes the intention of point (5) of the Commission communication to minimise the obstacles laid down by national legislation regulating the use phase of products (e.g. installations and maintenance). But it is not evident if and how this can be achieved through harmonised product legislation. On the other hand the whole area of services which include activities like installations or maintenance is currently under review for future harmonisation. Once work programmes are established for regulation and standardisation of the service area the interdependencies of service legislation with product legislation have to be thoroughly assessed in order to avoid additional trade obstacles, to streamline corresponding legislative acts and to minimise the overall administrative impact on businesses and authorities alike.

Point 5.5 – More Regulations, less Directives...

Based on experience with the result of national transposition of existing directives, DIGITALEUROPE welcomes the proposal to use Regulations rather than Directives where possible. This removes gold plating

as one source of possible misalignment of national legislation within the internal market and will also reduce uncertainty arising from the timing of national transpositions.

Point 5.6 – ...and a business friendly approach to product rules

DIGITALEUROPE supports the ambition to adopt a business friendly approach to product rules. As mentioned in “General” above, our experience with the development in recent years is that the opposite is taking place. Thus when carrying out periodic reviews of sectorial legislation there is a need to critically scrutinize the proportionality of existing rules, looking at opportunities for simplifications. A mere regrouping of legislation may not result in any de-facto simplification for the economic operators, but could actually lead to the consequences described in 5.2 above. In addition to the Blue Guide which explains the fundamental ideas and framework of EU new approach product legislation a separate “product legislation overview guide” would be helpful which just details the regulatory acts and standards applicable to certain products and product groups to give support to SMEs (see also 5.2 above). A service to inform on updates and changes made to EU harmonisation legislation – the “single reference source” proposed in point (17) of the Commission communication – is welcomed to complement the “product legislation overview guide”.

Point 5.7 – the global market

The global market is very important for the ICT sector and should be addressed. Currently, the amount of non-tariff barriers (NTBs) seems to increase, partly due to the additional areas for regulatory measures (e.g. environmental legislation) with their own approvals procedures. It is important the EU engage in the simplification of regulatory systems globally, and to remove NTBs and similar trade obstacles.

A comment: With the requirement for a “postal” address on the product through the Alignment package, the EU itself has introduced a trade obstacle.

It is not entirely clear what the Commission actually proposes when it comes to “international convergence”. It is important that seeking convergence does not lead to additional burdens for product approvals in EU – like additional product registration or additional third party product testing schemes which are used in other regions. We insist that the Commission's ambition is still to minimize administrative burdens, and that it puts the use of international standards for the technical requirements in the centre of its international convergence efforts.

ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 59 corporate members and 36 national trade associations from across Europe. Our website provides further information on our recent news and activities:

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