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Suggestions for improving the application of the mutual recognition principle

1. Introduction

Orgalime welcomes the European Commission's efforts to improve the application of mutual recognition, a principle that remains a very important pillar of the internal market for products which are not covered by Union harmonisation legislation.

In particular, mutual recognition provides the internal market with powerful tools such as:

- the 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)
- the establishment of product contact points (article 9, Regulation 764/2008)

However, there is still room for improvement in the implementation of the mutual recognition principle.

We consider that the ultimate purpose of the mutual recognition principle, which is to ensure the free circulation of products in the internal market, could be achieved if the Commission does carefully examine the full list of conditions for placing products on the market, such as product related services or additional national requirements linked with EU environmental legislation.

Therefore, Orgalime would like to make some suggestions that go beyond the scope of Regulation EU 764/2008.

2. Focus on removing additional national requirements

We request the Commission to focus on the scrutiny of technical rules on products and apply legal action against the remaining unjustified national technical barriers.

For example, companies have encountered several 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 II these practices will be eliminated.

Another example where national legislation is creating technical barriers to trade is that of requirements on products in contact with drinking water. In absence of harmonised legislation, we think that the Commission should step up the efforts to improve the actual application of mutual recognition of such products or even suggest harmonisation legislation.

Orgalime, the European Engineering Industries Association, speaks for 41 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10 million people in the EU and in 2013 accounted for more than €1,700 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.

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3. Considering product-related services (Servitisation)

We call the Commission to scrutinise national legislation related to the installation, maintenance, rental, support and after-sales services. The economic weight of services on the turnover of engineering companies is estimated between 5 and 20%, as differences exist among sectors. Nevertheless, it is generally agreed that the importance of services to the engineering industry is constantly increasing, whether in relation to the placing of harmonised or non-harmonised products.

Therefore, diverging national rules on product related services often restrain companies for placing products on multiple Member States' markets. In this framework, it is crucial to:

- Examine the justification of diverging national conditions for setting up a factory, such as rules for acquiring permits and equipment installation.
- Stimulate EU Member States to promote the mutual recognition of education and training certificates to improve the mobility of qualified professionals in the public and private sectors.
- Remove national requirements that require health certificates to be re-issued or validated by a local doctor for professionals that have already undergone medical tests in other Member States.
- Reduce the translation needs, by ensuring that national authorities accept standardised administrative forms in all languages (such as E101) EU wide.

4. Removing national certification requirements for products

Orgalime suggests that the Commission should ask Member States to justify the cases where national legislation foresees third-party certification for placing products on the market in the non-harmonised areas. The Commission should encourage Member States to prioritise self-declaration of conformity over third-party certification in national legislation.

Otherwise, the application of the principle of mutual recognition could be jeopardised by national certification requirements. Authorities or economic operators may request third party certification, if this is foreseen in national legislation, even for products that are lawfully marketed in another Member State that does not require such products to be certified by a third party.

5. Improving trust by improving market surveillance

Orgalime considers that improving market surveillance in all Member States is a key factor in embedding the universal application of the mutual recognition principle.

Effective market surveillance could:

- reduce the duplication of conformity assessment controls by authorities, because it would create a culture of trust among market surveillance authorities of different Member States
- set a level playing field for all economic operators
- improve the compliance rates of products throughout the internal market.

You can find more suggestions on the improvement of market surveillance in Orgalime's [past position papers](#).

6. Improve the product contact points

Orgalime considers that the functioning of the product contact points (article 9, Regulation 764/2008) could be improved and strengthened.

We support the Commission's suggestions in the "vision for the internal market for industrial products" ([COM\(2014\) 25 /2](#)) and we furthermore suggest different supportive structures to be merged into a single contact point at national level. For example, this would include SOLVIT, Enterprise Europe Network, product contact points and authorities responsible for intellectual property issues.

This has been partially achieved in Denmark, where it brought tangible results in terms of communication with the public and providing companies with comprehensive advice.

7. Fast track dispute resolution procedures

Orgalime suggests that the product contact points should also provide fast-track dispute resolution procedures whenever a Member State impedes a product that is lawfully marketed in another Member State from being placed on its market.

A fast-track procedure would significantly reduce the recourse to the courts. Thereby, it would reduce the cost and time necessary to settle differences among economic operators and market surveillance authorities. Moreover, the cooperation among product contact points would reduce the translation needs.

Consequently, a fast-track dispute resolution procedure would have the potential to encourage SMEs to become active in multiple Member States and thereby enjoy the benefits of the internal market.

8. Conclusion: further harmonisation is unnecessary

Overall, at the present time, manufacturers wish for the principle of mutual recognition to apply broadly.

The vast majority of products in the mechanical, electrical, electronic, metalworking and metal articles industries are already covered by harmonised legislation.

National legislation, along with the mutual recognition principle, have proven sufficient for placing the remaining non-harmonised, non-consumer industrial products on the market, as these are mostly products manufactured according customers' specification. Further harmonisation, could potentially harm these sectors, as the new rules may not be adaptive to the use of innovative technologies.

Therefore, we consider that any further harmonisation of manufactured products should only be triggered by a clear request from concerned manufacturers.

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