



REPLY TEMPLATE

Public Consultation on the future of the Internal Market

Brussels, 23 June 2006

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Profile of the respondent - Representative organisation

ORGALIME as the European Engineering Association speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic and metalworking industries of 24 European countries (NACE categories 28 to 33). The industry employs some 10 million people in the EU and in 2005 accounted for some 1,598 billion euro of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

Reply to the questions in the consultation document

Orgalime agrees with the general analysis of the benefits of the Internal Market but we would like to elaborate more on some of the challenges and shortcomings of the Internal Market as we answer the questions of the public consultation:

1) Do you agree with the preliminary analysis of the current situation of the internal market and the challenges it is facing? If not, what is your analysis?

Yes, we agree with the analysis in general terms, but would like to stress that if much remains to be done at the level of developing an internal market for new areas, such as those mentioned in the consultation document, the internal market for products is far from complete: this is the case of our industry where extensive product legislation already exists (machinery directive, Low voltage directive, Pressure equipment directive, EMC directive, etc...). As examples we can cite:

- Lack of harmonisation in certain aspects of the application of supposedly harmonised product legislation arising from grey areas.
- Barriers to trade created, for example, by national product-related requirements in the field of environmental and workers protection legislation, which are applicable in addition to those requirements specified in the above EU directives, such as:
 - Requirements for stairways used by workers to fill certain machines
 - Requirements for mobile machinery with respect to road safety. A study by the IFO Institute in Munich found that of the 115 million Euros spent each year to homologate Non-Road Mobile Machines (NRMM), 60% could be saved if the requirements were harmonised across Member States. According to IFO it takes 32 weeks to gain road approval in the largest markets, which is 12% of the average 5-year product life.

The solutions to this problem include an in depth analysis of differences arising out of such national requirements and a commitment of the Commission and member states to a thorough implementation of EU regulation without either gold plating or improper interpretation of the requirements.

2) In which ways have you benefited from the opportunities offered by the internal market? Where, in your view, does it function well? Where do you see shortcomings?

Our industry has indeed derived significant benefits from the development of the internal market. We believe that the New Approach, which celebrated its 20th Anniversary in 2005, has been instrumental to the development of the Internal Market of goods, while at the same time ensuring a high level of product safety. Orgalime therefore strongly supports the main principles of the New Approach. However, as the EU has increasingly developed its regulation in the area of the environment and social legislation and as production becomes increasingly globalised, the competitiveness of our industry can only be maintained in the long term and particularly in the area of consumer goods, if market surveillance performs well in its task of preventing the placing on the market of non-compliant products. In our opinion there are **some shortcomings in the area of market surveillance** that need to be tackled.

Efficient market surveillance starts by **simple and easy-to-understand product legislation** that would match modern trade practices in an enlarged, richer, globally-open single market. The more complex legislation is, the more costly compliance to it becomes and the more burdensome the controls that are required.

Market surveillance should be effective for all products placed on the EU market regardless of where they are manufactured or how they are distributed. We therefore believe that the full enforcement of EU regulation is doomed to failure should the manufacturer continue to be considered the only responsible person vis à vis the market surveillance authorities. Consequently, Orgalime recommends **reviewing the obligations of market operators in product-directives** in an equitable and pragmatic manner. *(Please see Orgalime position paper “Towards comprehensive and efficient market surveillance”, October 2005)*

3) Do you agree with this choice of priorities? Are there others in your view?

Yes, in principle we do agree with the choice of priorities. Regulatory coherence at international level underpinned by standardisation is important for the competitiveness of European businesses. We welcome the Commission’s drive in this direction (e.g. regulatory issues meeting with China and Russia). However we do not believe that the concept of “lead by example” is sustainable. The engineering industries, which Orgalime represents, have been affected by a mass of regulation and in recent years especially environmental legislation have a negative impact on the competitiveness of manufacturers in Europe. It would be preferable to choose the approach of “regulatory cooperation” in areas such as WEEE, ROHS and also emission trading, which affect our major suppliers and customers before producing our legislation. Developing WEEE and RoHS directives in the EU, which cause us significant fragmentation problems on the internal market, is already problematic (for example different scope in each country!). Exporting this legislation to countries such as the US (30 different state projects) and China only makes matters more difficult. If those countries copy EU legislation without taking into account the problems created for business in the EU, this would negatively affect European exports to those countries. *(Please see answer to question Nr. 5)*

4) Internal market policy fosters economic reforms to which citizens and businesses then have to adjust. Do you think sufficient account is taken of the costs of making these adjustments? Why (not)? Do you think flanking measures are needed to accompany market opening? If so, what kind?

Flanking measures should mainly consist in better communication and information in general about the benefits of free movement within the Internal Market so that European citizens better understand the benefits and need for economic reforms and structural changes. It is particularly important to insure that the new member states should have enough time to familiarise themselves with the “acquis communautaire”.

5) In your experience, does the internal market offer sufficient opportunities for businesses? Why (not)? Where do you see barriers?

Yes, there is no doubt that the internal market has provided significant benefits to our industry. However, engineering industries are still facing difficulties in doing business in

the Internal Market, which is often due to diverging regulatory requirements in various EU Member States. Problems experienced by our companies concern product-related requirements as well as more general framework conditions.

We believe that the European Commission must quickly and efficiently tackle this problem in order to prevent detrimental effects for the competitiveness of the EU engineering industry (*See examples given in answer to question Nr. 1*). In the spirit of better regulation, **harmonization of product-related workers protection requirements on the basis of the New Approach** would be a possible way forward. EU legislation would then be limited to essential requirements whereas the details are being dealt with in standards developed by the parties concerned.

A further example for the impediment of the Internal Market in the field of environmental legislation are the **WEEE (waste electrical and electronic equipment) and RoHS (reduction of hazardous substances) directives**. Due to the legal base of article 175 of the EC Treaty, member states are given wide flexibility to transpose the directive. This also, or even particularly, applies to product related aspects involved in the directive. In areas where the directive is insufficiently harmonised and unclear, there are significant divergences in the transposition by individual member states and even within member states by regions. This is particularly evident in the following areas:

- The scope of the directive, with some products being subject to the legislation in one or more member states but not in the others
- The registration and reporting procedures of companies in each member state
- And even the marking requirements on products!

Even in the case of the RoHS directive, though it's under Article 95, member states transpositions differ in fundamental areas, such as the scope of the directive or the application of exemptions to the established substance bans that have been approved at EU level.

Administrative burden created by the companies' activities in various EU Member States must not be underestimated. The **substantial differences in the corporation tax systems** of the EU Member States but also **practical problems in the implementation and enforcement of the EU VAT system** continue to constitute a severe burden for companies and lead to disproportionately high costs. The implementation of a common consolidated tax base for cross-border activities in the EU as envisaged by the European Commission would help to reduce the bureaucratic burden.

Transport of goods is an other area, which should be given more attention in order to facilitate the free movement of goods. The full benefits of the Internal Market can only be derived if the products can be swiftly moved from one country to the other without delays and excessive costs. Many Member States as well as the EU as such hesitate to invest in enlarging and improving the transport infrastructure. The Internal Market needs Trans European Networks to invest in this area so as to insure a rapid and comprehensive integration of the new member states and enlarge Europe. Furthermore the "road pricing" policies of certain Member States are adding to the costs of moving products from one area to the other. They are thus creating barriers along the lines of customs tariffs.

Problems with similar effects exist in the area of company law. Due to the **differing requirements of the national systems of company law**, the founding of subsidiaries in the various EU Member States involve high start-up and consultation costs and a great deal of administrative work. A **European Company form** suited for the needs of SMEs could mitigate these difficulties.

A European Company Statute for SME should fulfil the following requirements:

- Establishment of European Company must be easy and quick
- Flexibility must be guaranteed through high degree of freedom of contract
- European Company may not be subject to additional national requirements
- Comprehensive harmonization of national tax law not necessarily required

6) Do you consider that the internal market is 'innovation-friendly'? Why (not)? Where, in your view, are the main barriers to innovation? Which steps should be taken in order to ensure that the internal market is more innovation-friendly?

The life cycles of products in the Engineering Industries - whether capital or consumer goods - are getting shorter by the day. As a result companies have to focus even more today on producing innovative products to suit the fast changing needs of their clients in the market.

Innovation can only flourish with the right framework conditions. This includes a number of different areas where more focus is needed, whether at national or EU level:

- Innovation is a key to generate growth and prosperity. In order to foster the creation and application of new technologies in Europe, more must be done to develop lead application markets. There must be **more investment in large scale infrastructures or public projects** which drive research and innovation along the whole industrial chain. Such projects would be the modernisation of health infrastructures, of energy generation plants, of energy networks, of building road telematics, fostering rail automation and projects such as e-health, e-government or e-learning. For this purpose we need to make sure that all obstacles to applying information technology are removed.
- Our companies do invest a great deal in research and innovation but we have to ensure the right framework conditions for business to make these investments in Europe. The European Commission and Member States can improve business conditions by further **deepening** and **opening the European markets** for **financial services** and **infrastructure** and by **removing technical barriers** in the field of (national)standardisation, for example in the area of the Construction Products directive.
- The strengthening of entrepreneurship, including through better access to private equity and venture capital and a consistent and clear protection of innovation and intellectual property rights.
- Our companies need flexibility and mobility in the labour market. They have to make sure that we are able to redeploy our labour force from old technologies to new ones, since innovation means that old products and business will be phased out and new ones will be built. Orgalime believes that we have to review laws

and regulations that force companies to keep people in their old jobs and that hinder labour mobility within the Internal Market. Moreover, for a number of companies, it is essential to be able to have a sufficient degree of flexibility to adapt agreements negotiated between social partners to very specific local conditions: harmonisation at the EU level in this area would not be helpful.

7) Do you consider that the current IPR regimes foster growth and innovation? In your experience, where is more focus or action needed?

The protection of Intellectual Property Rights is a positive tool to protect innovation and to foster growth in Europe. European engineering companies, which are predominantly SMEs, depend on their capacity to develop and market innovative products and we therefore welcome the European Commission's initiative to reinforce industrial property rights (IPR) and to combat counterfeiting, as announced in its Communication on Industrial Policy.

Orgalime believes that further action is needed for the following issues:

- First a fundamental change in attitude by the Commission is needed: IPR is considered as a barrier to competition: the Commission has to recognise IPR as essential to the competitiveness of our industry. Measures like the market share approach in the Block Exemption Regulation for Technology Transfer Agreements (Regulation 772/2004 of 27 April 2004) are not helpful.
- IPR must be a no-compromise issue in the area of trade: it must be respected. EU and national embassies should ideally provide IPR information and help service in countries where IPR infringements are a major problem. They must coordinate among themselves and with Brussels.
- Orgalime feels that with eight DGs involved in the area of IPR, a separate body to fight for IPR at EU level is necessary.
- SMEs in the engineering sector often refrain from patenting their inventions because of costly translations and enforcement procedures. We believe that the **Community Patent** makes sense only if one single language is used.
- Equally a **Community Patent Court** should be set up in order to avoid patent disputes being resolved under the jurisdiction of different national courts as it is the case for the time being.
- The Commission proposal to modify Directive 98/71 aims at terminating the national **protection of spare parts as designs and models**, opening the path to slavish copies which will no longer be considered as counterfeiting products. We urge the EU decision makers to pay attention to the fact that this directive not only covers spare parts in the automotive industry but also other equipment such as agricultural machines, industrial trucks, earthmoving equipment, machine tools and cookware, which we support.
- In our experience confidentiality agreements have shown insufficient to **prevent the disclosure of industrial secrets** by commercial partners. We therefore ask the Commission to explore the opportunity of a Community tool enabling the identification and prosecution of the misuse of manufacturing plans or secrets, through a specific instrument that could be similar to a copyright. Furthermore Orgalime calls for the harmonisation of competition law-related performance protection. The concept of "**slavish imitation**" existing in some Member States enables parties to combat unauthorised reproductions as a form of unfair

competition. This important supplement to the protection of specific intellectual property rights **has no equivalent in the European legislation so far**, the Directive 2005/29/EC on Unfair Commercial Practices being limited to consumer protection. We support international proposals of AIPPI and WIPO that may be used as a Community role model to harmonise competition law-related performance protection.

8) In your experience, do Member State authorities apply procurement rules in a way that gives businesses sufficient opportunity for market entry?

In our experience procurement rules are not applied to an extent that gives companies, and especially SMEs, real market opportunities. Thus in many cases the principles embedded in the Treaty such as quality of treatment, mutual recognition, proportionality and transparency are not applied to its full extent. This leads to market access barriers for private suppliers. Public procurement authorities in many Member States for example design invitations to tender in such a way as to favour a specific bidder or make direct awards of contracts without a prior announcement. Furthermore, public procurement authorities often have a very narrow understanding and use of the in-house concept. Consequently, such services are not procured openly. In order to give better access for SMEs, ordering authorities should refrain from excessive turnover requirements or financial guarantees. Other measures could be to split the contract into lots, and to ensure payment on time.

9) Do you think that public authorities are sufficiently aware of the opportunities the EU public procurement framework offers for fostering innovation? If not, how could they be made better aware of it?

Orgalime welcomes the Commission promise to publish a manual to set out the options offered under the 2004 legislative package on public procurement for innovative solutions. This would allow better information about the new possibilities to allow procurement requirements to be specified in terms of function or performance or the possibility to introduce “competitive dialogue” as a new procedure. Likewise it is important to inform about the transposition of the new directives in the 25 EU member states.

The use of private suppliers should in itself be considered a means of introducing more innovation into public procurement. Ordering authorities should be made better aware of opportunities for innovation through training and exchange of best practice.

10) In your experience, are there any significant problems with the internal market preventing the development of the private equity and venture capital market on a cross-border basis? If so, what are they?

There is a gap between funding for research, on the one hand, and venture capital and normal commercial lending to companies, which drive innovation on the other hand. Orgalime believes that strong and lively financial markets are useful drivers of innovation and we welcome Commission efforts in this direction.

However, it is clear that given the size of the EU's capital markets compared to those of for example the USA, which are stimulated by the availability of significant funding from

pension funds, it will be difficult to achieve the same level of funding in most countries in the EU.

11) Do you think that voluntary standards for services would be beneficial? If so, in which sectors should they be introduced?

As mentioned in the consultation paper voluntary standards may offer a benchmark and serve as guidelines which foster innovation. Thus, development of European and international standards should be encouraged. However, we believe that one of the strong points of the engineering industry is the fact that we can offer highly customised products and services. Therefore standards for services, if any, should be market driven and not imposed by political objectives. Certification schemes should not be encouraged as it adds to the costs without any proof of an added value. Furthermore, certification schemes have a tendency of becoming de facto mandatory. Existing national schemes should be changed into European - or at best - international schemes and mutual recognition of the certificates should be ensured.

12) What are your views on how we carry out consultations on internal market policy? For instance, what are your views on the consultation process, and on the relevance and presentation of issues in our consultation documents?

Orgalime appreciates being consulted by the European Commission, but we would welcome clear policy statements prior to launching a consultation.

13a) What are your views on the way we carry out impact assessments on internal market policies?

We have experience of impact assessments for the EUP and the EMC directives. These were early attempts in introducing the new impact assessment systems and we hope that there will be a continuous quality improvement as the European Commission gain more experience. Most impact assessments have in the past focused on the cost of new regulation to administrations, both at EU and at national level. Focusing more in such impact assessments on the administrative and compliance costs as they affect other stakeholders, such as industry and the consumer, is essential: the "small business test" should be a must if one is to achieve better regulation.

Orgalime strongly believes that a **method for systematic evaluation of the administrative burdens and costs that new legislation imposes on the industry** needs to be developed. *(Please see Alliance for a Competitive European Industry comments on the Commission's Impact Assessment Guidelines, June 2005)*

13b) In your experience, are we using the right policy instruments to achieve the objectives?

We welcome the efforts of the Commission to introduce better regulation and its determination to embark on a programme of simplification.

Our fundamental view is that, when policymakers, after a proper impact assessment decide that regulation is necessary (and this should be the exception rather than the norm) then we believe that the Commission should:

- always use Article 95 for all product related regulation
- ensure a harmonised transposition in the member states (e.g. ROHS directive: different interpretation of certain terms by MS) – the greater use of Regulations rather than Directives would probably help in this.
- ensure that member states enact effective market surveillance programmes (*Please see answer to question Nr. 2*)
- ensure regulatory stability by not amending directives which are working well

The European Commission should ensure **greater use of Article 95** rather than introducing minimum standards to which Member States add further requirements in particular in the field of environment and worker safety legislation. Furthermore we support **greater use of New Approach** and harmonisation of terminology and procedures. The Low Voltage and the existing Machinery directive are successful examples for the New Approach.

Orgalime also believes that European legislators should **maximise the possibilities for self-regulation** and the development of self-commitments by the industry while ensuring that the policy aims are attained. These policy instruments often provide a more efficient way of arriving at efficient solutions, which do not hamper the innovation capacities of the individual manufacturers. Successful examples in our industry can be found in areas such as consumer electronics, household equipment, drive systems as well as lightning and central heating circulators. EUP should be promoted as an area for industry self-regulation.

Last but not least our **companies need stable regulation**. We therefore call on the Commission to refrain from unjustified “simplification” for essentially administrative reasons (e.g. the proposed merger of PED/Pressure equipment directive and SPVD/Simple pressure equipment directive) and from insufficiently justified revision of existing directives.

14) What are your views on evaluations conducted for internal market policies and the follow-up given to them?

It is clear that it is necessary to regularly evaluate the results of policies/legislation which will have been adopted, if only to ensure that where necessary some fine tuning is carried out. The difficulty is to ensure that such evaluations are as thorough and critical as they should be. This means that there should be an independent department carrying out such evaluations, which was not involved in developing the policy/regulation.

15) Do you think that Member States should be encouraged to carry out national screening exercises (of existing and new rules and administrative procedures) and if so how?

Yes, Member States should carry out national screening exercises in order to ensure that national legislation respects the free movement of goods and services. Furthermore, for all new technical regulation there should be an obligation to carry out a "compatibility test" so that new regulation respects the principles of the Internal Market. Full transparency should be ensured. The obligation for legislators in the **Netherlands** to apply a standard “administrative cost model” to estimate cost incurred by new legislative proposals could be used as a **good practice example** to avoid excessive “gold plating”

by Member States. The Dutch “**administrative cost model**” also estimates costs for companies and other parties of the society.

We stress the need to insure as far as possible that the administration arising from the EU should:

- aim to keep administration burden to a minimum both for national administrations and for companies
- aim to insure as harmonised as possible administration to EU legislation so as to simplify the task of businesses operating in the Internal Market.

16) In which fields do you see the greatest need to step up cooperation between Member State authorities in order to make the internal market work?

In the areas of:

- market surveillance of compliance to EU regulation
- in the areas where there have been complaints of differing application of the same legislation
- best practices when implementing new legislation
- for trust building in non-harmonised areas in order to ensure better functioning of the mutual recognition principle

17) What is your assessment of the role and work of supervisory or regulatory authorities in Member States? Should similar systems of supervision be extended to other internal market fields?

The role of member states is essential in this area: the Commission is often limited from working in certain areas by the Treaty.

Nevertheless the Commission can play an essential role in ensuring that legislation is properly applied, including by benchmarking the actions of different member states and analysing these critically. In certain areas, it is essential that the Commission should act vigorously. Where it does, this is often followed by success: for example in the area of in service testing of pressure equipment, the Commission successfully highlighted differences imposed by national regulators in Germany which had an impact on the internal market. These discriminatory practices have now been discontinued. In other areas, however, such as those of national marks under the CPD (Construction products directive) even when CE marking is used, there seems to be a lesser degree of success.

18) What is your view on current mechanisms for enforcing internal market rules at the national level? What should be improved?

With the substantial increase in regulation, EU manufacturers are more and more faced with unfair competition due to products on the market, which are not in compliance with our regulations. We therefore believe that inadequate market surveillance, especially in the area of environmental and energy regulation should be improved. *(Please see answer to question Nr. 2)*

19) What is your experience (if any) of the Commission's infringement policy in the field of the internal market? Which type of infringement cases should we handle as a priority?

Orgalime believes that when infringements of EU legislation cause unfair competition within the internal market, then the Commission should take action. High priority should be given to areas where infringements create barriers to the free movement. There should be full transparency in infringement cases. In this context, the Internal Market Scoreboard plays an important role.

20) Do you agree with the need to step up coordination and responsibility in Member States for managing the internal market? What (further) assistance could the Commission give in this respect?

Yes. Member States have to commit themselves and take responsibility of the well-functioning of the Internal Market in order to ensure equal and comprehensive implementation, interpretation, application, monitoring and enforcement of the common legal framework throughout the Internal Market area. In practice, this means a higher degree of cross-border cooperation, which - as an additional benefit - would increase the trust and confidence building between Member States that is necessary to make the mutual recognition principle function. The Commission should act as a facilitator by establishing the right tools, including efficient problem-solving. The existing SOLVIT functions well, however, more resources and more information on this possibility of solving problems in a less bureaucratic way are needed. Furthermore the Commission should clearly reinforce its supervision of how member states enforce market surveillance in the internal market and at the borders of the EU. This includes the proper enforcement of Council Regulation N° 339/93.

21) In your experience, does internal market regulation take sufficient account of the bigger picture of international competitiveness? If not, in which areas do you see problems and what could be done?

We feel that the international regulatory environment should be taken much more into account. The bigger picture is of prime importance for the competitiveness of the European engineering industries in areas such as the functioning of electricity markets, environmental legislation, for example REACH, WEEE & RoHS as well as engine emissions and its technical compatibility with the noise directive for equipment used outdoors, where differing requirements between EU and US legislation cause unnecessary problems to manufactures of certain equipment using in particular diesel engines. *(Please see answer to question Nr. 3)*

22) On which regulatory issues and with which countries and regions should the EU strive for more international regulatory convergence or equivalence? How should this be achieved? By contrast, where do you think differing rules and standards should coexist?

It is clear that with increasing globalisation, it would be of benefit to manufacturers, their customers and regulators alike if there were regulatory convergence or equivalence in a number of areas. This means that to achieve better and more consistent regulation at international level (at least in the main trading blocks) it would be helpful if EU regulators were to work with their counterparts **before** introducing new regulation. This would lead

to a much lesser impact on the competitiveness of our companies manufacturing in the EU than is achieved at present by the EU's actual tendency to so-called "lead by example" which often damages our competitiveness.

Especially in the area of conformity assessment and mutual recognition of testing and certificates more efforts would be useful for business. An example is to make foreign authorities understand the European accreditation system, in order to gain confidence for example in in-house inspection services. Lack of trust in each others' systems due to lack of information of the requirements is one of the most important reasons for barriers in global trade.

23) Where should the EU engage more strongly in either intergovernmental or nongovernmental standard-setting organisations?

Regulatory dialogues should be developed and strengthened with our major trading partners (US, China, India, Russia, Brazil and South Korea). Orgalime favours the model of New Approach supported by standardisation, even if standards may at times vary for objective reasons (e.g. different voltage and frequency used in the US and Europe). In this context we would like to mention that the UNECE WG 6 has developed a tool for setting common regulatory objectives, either at a regional or a sectoral basis. EU decision makers should participate actively in this work.

24) In your experience, do Member States and the EU institutions do enough to promote the opportunities presented by the internal market? Which concrete actions would you suggest for improving the situation?

Member States and EU institutions should do more to promote the opportunities presented by the Internal Market, not only for companies but also for citizens. It is essential for the further development of the EU that there is a high level of understanding and information of the results achieved by creating the Internal Market, not only to ensure support for further initiatives, but also to ensure that business and citizens are aware of their rights and benefit to the maximum of the opportunities created.