ORGALIME

Position Paper

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Orgalime's comments on the new USA OSHA draft version of the NRTL Program Directive

1. INTRODUCTION

Orgalime welcomes the opportunity given by the Occupational Safety and Health Administration (OSHA) of the United States of America (USA) to send further comments on the new draft version of the Nationally Recognised Technical Laboratories (NRTL) Program Directive.

The USA are one of the largest markets for European mechanical, electrical and electronics engineering exports. In 2015, the export volume of Orgalime products to the United States accounted for one-third of total EU exports to the USA. Trade in the other direction is also very significant. Total trade amounts to some 200 billion Euro.

We have the following remarks to make on the new draft NRTL Program Directive:

2. MUTUAL RECOGNITION OF PRODUCT TESTS, CERTIFICATIONS AND APPROVALS

Further to our previous comments (18 November 2014), we firmly believe that the use of international standards for the review and application process of NRTLs should lead to an obligatory mutual recognition among NRTLs of the product test reports, certifications, and approvals delivered by another NRTL. We consider that this would have a number of positive effects. Namely:

- Avoid the potential for monopolistic behaviour. Competition among NRTLs would be set in equal terms, as manufacturers would have the possibility to choose from several NRTLs for the full certification of their final products or their components only. Thereby, each NRTL would have incentives to develop and tailor its offer for services according to manufacturers' needs.
- Achieve a simpler certification process for manufacturers, whether based in the USA or the EU, with reduced costs.
- It would facilitate future steps towards mutual recognition of NRTL's test reports with those of EU accredited conformity assessment bodies.

Overall, further use of an accreditation system supervised by OSHA might also help increase confidence between NRTLs and thereby, we would hope, lead to mutual recognition of test results.

Moreover, we would like to reiterate that OSHA could join the International Laboratory Accreditation Cooperation (ILAC) as an accreditation body and sign the ILAC Mutual Recognition Arrangement (MRA).

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This MRA provides acceptance of accredited laboratory data and inspection results. The long-term aim is the fully accepted use and recognition of accredited laboratories (NRTLs) by the signatories of the ILAC MRA, including results from accredited laboratories in other countries.

Test standards, which are appropriate for use under OSHA's NRTL Programme, are mainly ISA, CSA, FM, IEEE and UL standards. These standards are often modified adoptions of IEC standards. Therefore, we call on OSHA to include directly in its official listing of test standards the relevant international ISO/IEC/ITU standards.

We welcome the reviewed procedures for certification to the System of Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE-CB scheme) and to Standards relating to Equipment for use in Explosive Atmospheres (IECEx System) by the International Electrotechnical Commission (IEC). We understand that NRTLs are now required to have procedures addressing how (or if) they will accept this type of data and services. Including the obligation to indicate to OSHA in their procedures if such externalised data and services are not accepted by the NRTL.

Nevertheless, we believe the proposed changes on the acceptability of IECEE-CB and IECEx testing and inspection reports fall short of our expectations. The NTRLs may still reject if they wish, data and services from the IECEE-CB or IECEx. In addition, we believe that extra physical inspections (Sections 7.4G ii and 7.4F ii) are unnecessary and would entail burdens such as double testing fees, extra costs, and the provision of additional product samples.

Therefore, we reaffirm our belief that Sections 7.4.F and 7.4.G should be modified accordingly, Section 7.4.H should be deleted and OSHA should provide further clarification on the additional physical inspections.

3. A SINGLE NRTL MARKING

We reaffirm that we believe it is necessary to reinforce the trust and recognition among NRTLs and economic operators, users, and inspectors, by improving the visibility of the OSHA NRTL programme.

We call on OSHA to further investigate the feasibility of a single “NRTL-marking”. Likewise, it would signify that the body that had certified the product bearing such a marking had acted under the NRTL programme. This marking would be placed in combination with the individual mark of each certification body. We believe such a symbol would foster competition and allow smaller test laboratories to compete with larger ones.

Moreover, a single “NTRL-marking” would also introduce greater transparency in the American certification system, as it would be much easier for regulators and customers to identify whether the certification body is recognised by OSHA or not.

4. ALIGNING LABORATORY AND CERTIFICATION BODY REQUIREMENTS WITH INTERNATIONAL STANDARDS

We welcome OSHA’s alignment and approximation of laboratory and certification body requirements with ISO/IEC standard 17025:2005 “*General requirements for the competence of testing and calibration laboratories*” and ISO/IEC standard 17065:2012 “*Conformity assessment -- Requirements for bodies certifying products, processes and services*” for the review and application process of NRTLs.

However, OSHA still suggests management and general policies that go beyond the ones described in ISO/IEC standard 17025:2005 and ISO/IEC standard 17065:2012. Such additional requirements would undermine a possible harmonisation of the accreditation procedures and/or future mutual recognition of test results from accredited bodies in the USA and the EU. Yet such a move towards harmonisation would be a practical step in the context of ongoing trade negotiations.

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We welcome the description of the procedure for applicants located outside the United States (chapter 2D 7A). However, we believe that ISO/IEC standards should be the basis for accreditation. The conditions for recognition as a NRTL should solely, in our view, depend on fulfilling the conditions set in the general procedures regardless of its location, such as technical aspects, impartiality, and language. Therefore, we call on OSHA to provide further clarification on the concept of reciprocity between the USA and foreign countries.

Moreover, we firmly believe that the obligation of a minimum number of two factory visits in chapter 7.9 should be revised. We consider that each NRTL should be allowed to:

- Determine the frequency with which it performs factory inspections. Thereby solid quality management systems set in place by manufacturers would be rewarded by fewer inspections.
- Evaluate the need for factory inspections according to a market-risk based approach and not on a product-risk based approach. Thereby, the fact that products are intended for use in hazardous locations should not constitute a reason, in this framework, to have a minimum of factory visits per year (7.9, C.i).

5. CONCLUSION

Orgalime considers the present US OSHA draft version of the NRTL Program Directive clearer compared to the previous NRTL Draft Program Directive Extract from 22 August 2014. We welcome the comprehensive draft legislation, but we reaffirm the need for further progress in view of a future transatlantic mutual recognition of product test reports, certification, and approvals. We also invite OSHA to further analyse the idea of a single NRTL marking.

We believe that the planned NRTL Program Directive has the potential to facilitate US trade with the EU, especially in areas where the European Accreditation system has already been producing satisfactory results since 2010 (date of entry into force of Regulation EU 765/2008). With the above-mentioned amendments duly taken into consideration, such legislation would represent a real and pragmatic step towards further developing the transatlantic market in the engineering sectors in the framework of the ongoing TTIP discussions.

The present paper builds upon past Orgalime positions, which can be accessed via www.orgalime.org[1]

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[1] - 18 November 2014 Orgalime's comments on the OSHA's draft version of the technical areas of the NRTL Program Directive
- 24 October 2011EU manufacturers suffer from malfunctioning of the US certification market: potential abuse of dominant position