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Orgalime comments on the Commission's proposal for Regulatory Cooperation in the framework of the Transatlantic Trade and Investment Partnership¹

1. INTRODUCTION

Orgalime welcomes the European Commission's textual proposal on Regulatory Cooperation that was tabled during the 8th round of negotiations and made publicly available shortly after.

We consider that this draft proposal sets ambitious yet pragmatic targets. The negotiations on the Transatlantic Trade and Investment Partnership (TTIP) should not be expected to instantly establish a "transatlantic internal market". While the free circulation of goods among the two trade partners can be beneficial under the necessary conditions, it can prove detrimental if established without prudent assessment and longstanding cooperation.

In this framework, we express hereof some suggestions on improving the Commission's textual proposal on Regulatory Cooperation in a way that would facilitate reducing non-tariff barriers – such as differences in technical regulations, standards and conformity assessment procedures. These are often costly and time consuming for companies who want to sell their products on both markets.

We would like to reiterate our overall vision and position that any regulatory cooperation in TTIP should be accompanied by efforts to achieve the goal of "one standard, one test accepted everywhere", including cooperation in the framework of ISO and IEC in order to achieve the harmonisation of standards both at transatlantic level and globally. In this context, Orgalime also urges government representatives of the EU, U.S. and the European Free Trade Agreement (EFTA) member countries to stay in close contact during the negotiations. The EU, the U.S. and EFTA have close economic relations and are economically interlinked through industrial supply chains.

¹ This position paper refers to the EU's textual proposal on regulatory cooperation

http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153120.pdf as published on 10 February 2015

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.

2. OBJECTIVES AND PRINCIPLES OF THE REGULATORY COOPERATION

Orgalime fully supports the goal that regulatory cooperation should be reinforced with the aim of facilitating trade and investment (article 1.1a). We appreciate the Commission's ambition to set up a framework that will commit regulators from both sides to enhance their cooperation on a continuous basis to achieve concrete results.

We also believe that reducing any unnecessary, duplicative or divergent regulatory requirements (article 1.1.b) would be the best way to support businesses of all sizes and increase transatlantic trade flows. In this framework, we consider that the best way to achieve such a goal would be by strengthening the two partners' cooperation in international instruments, including not only regulatory fora but also international standardisation organisations, such as ISO and IEC (article 1.1.d).

Moreover, it is important that regulators prioritise the idea of "*one standard, one test, accepted everywhere*" to ensure that EU and U.S. engineering industries make full use of the potential of global markets. Therefore, we suggest adding a fifth objective in article 1. This would be to promote cooperation within ISO and IEC in order to achieve harmonisation of standards both at transatlantic and global level.

3. DEFINITIONS

Orgalime appreciates the establishment of definitions in the Commission's textual proposal. It is important that our regulators and industry partners understand each other's systems and talk about the same issues in the same terms in order to build a successful and longstanding collaboration.

Nevertheless, we wonder why U.S. Congress bills and amendments are not covered by the definition of "regulatory acts at central level". The legislative branch in the U.S. can propose legislation without consulting with the executive branch. According to the current definition (article 2a), proposals directly tabled by the U.S. Congress would not be covered by regulatory cooperation. This risks creating an uneven playing field in which the U.S. influence on EU regulation would be greater than the other way around.

Moreover, we look forward to reading the Commission's proposal on the definition of regulatory acts, regulators and competent authorities at non-central level. We consider that this should include regulatory acts at both EU Member state level and U.S. state level.

Non-central level is very important for Orgalime as U.S. states' rules diverge from each other thereby often creating unnecessary or duplicating requirements for the engineering industries and in particular for electrical products, pressure equipment and materials and articles intended to come into contact with food (you can find an extensive though not comprehensive list of examples in Orgalime's detailed position paper on TTIP http://www.orgalime.org/sites/default/files/position-papers/PP_TTIP_May14.pdf).

Sometimes, non-central level regulation even if it is actually harmonised over the U.S. states, like the National Electric Code for electric products, may constitute technical barriers to trade.

Therefore, Orgalime calls for non-central legislation to be part of the TTIP negotiations and further regulatory cooperation, in spite of their non-federal nature.

4. SCOPE OF THE REGULATORY COOPERATION

The Commission's textual proposal on regulatory cooperation, is divided into two main areas "Good Regulatory Practices" and "Regulatory Cooperation". Only the section of "Good Regulatory Practices" will apply to all regulatory acts at central level. The section on "Regulatory Cooperation" will only apply to acts that the issuing authority will consider as "*likely to have a significant impact on trade or investment*" at transatlantic level.

Orgalime understands the need to focus on regulatory acts that are relevant to trade. It would be practically impossible for the trade partners to monitor and evaluate each and every regulatory act.

However, we are concerned by the Commission's idea to leave the interpretation of the "*significant impact*" on trade to the issuing authority. We consider that the foreseen Regulatory Cooperation Body (see below) should take up this evaluation. Moreover, we would suggest that a common and publicly available methodology should be established for assessing an act's impact on transatlantic trade.

Finally, this issue is much interrelated with regulation at "non-central" level. The latter may also have significant impact on trade and investment as U.S. states' requirements often establish non-tariff barriers to trade not only with the EU, but also between U.S. states themselves.

5. GOOD REGULATORY PRACTICES (SECTION II)

Orgalime supports the Commission's suggestions on achieving early information on planned acts (article 5). We appreciate the Commission's transparency in providing information on planned regulatory acts and roadmaps annually. We consider that similar information from the U.S. authorities would certainly increase legal predictability for exporting companies and in particular SMEs.

We also appreciate the opportunity for substantial stakeholder consultations for acts that must undertake an impact assessment (article 6). Orgalime has already seen the beneficial aspects of opening up the consultation at transatlantic level through our participation to OSHA's consultation on improving the NRTL programme. We consider that the proposed text should foresee the basic principles for conducting such consultations including timeframes, access information and the possibility to request feedback and suggestions on issues that were not addressed by legislators.

Article 7 of the proposed text determines the need to conduct an impact assessment for planned regulatory acts. Orgalime calls for impact assessments to take place also during the regulatory preparatory phase, which is the earliest stage possible, but also after these have been significantly amended by the relevant law-makers, such as the European Parliament or the U.S. Congress.

6. REGULATORY COOPERATION (SECTION III)

Orgalime supports this section's ambition to establish a bilateral mechanism to support regulatory cooperation between regulators and competent authorities at central level, which would foster information exchange and seek increased compatibility between the respective regulatory frameworks. In this framework we would like to reiterate the need to assess in an objective manner which central-level regulatory acts should be subject to this section's provisions and the need to include also non-central level acts.

Orgalime considers that the foreseen “focal points” (article 8.3) for exchanging information would be very useful for cooperation among regulators. We consider that these points should also provide a gateway of information to the public and facilitate access to information for companies and in particular SMEs.

We also particularly appreciate the ambitious suggestions in promoting regulatory compatibility both in terms of achieving harmonisation or equivalence (article 11). We consider that the only viable way for allowing the free circulation of goods in the transatlantic market is to:

- either harmonise the relevant regulation on future regulatory acts and on acts that the partner has already decided to revise,
- or to assess whether the existing legislation achieves equivalent protection of the foreseen public interests according to a sound, objective and commonly agreed methodology.

This also includes efforts to eradicate any unnecessary, duplicative and diverging certification requirements.

Nevertheless, the principal rule should remain that no mutual recognition of products should be allowed before harmonisation of the relevant legal requirements has been achieved.

We consider that the application of acts issued by international instruments to which both partners abide, such as the United Nations’ Economic Commission for Europe (UNECE) could be an optimal way to harmonise and assess legislation. These would allow both trade partners to agree on Common Regulatory Objectives at international level and promote the idea of a single set of implementing rules and procedures at EU state or U.S. state levels.

The work on regulatory compatibility should be accompanied by efforts to achieve the goal of “*one standard, one test accepted everywhere*” (article 11), including cooperation in the framework of ISO and IEC in order to achieve the harmonisation of standards both at transatlantic level and globally.

Orgalime welcomes the establishment of the Regulatory Cooperation Body, this will entail creating a ‘living agreement’ so as to achieve regulatory coherence. The agreement should further define an institutional process and procedural requirements for regulator to regulator cooperation after the negotiations have been concluded, so as to enable regulatory cooperation to continue after the expected conclusion of the TTIP Agreement.

We also embrace the Promotion of International Regulatory Cooperation (article 13) with a view to strengthening, developing and promoting the implementation of international instruments inter alia by presenting joint initiatives, proposals and approaches in international bodies or fora. International Regulatory Cooperation is vital for aligning with key trading partners, allowing for better market access and exchanging of best regulatory practices internationally.

Finally, Orgalime strongly supports the participation of stakeholders as provided by Article 15. We consider that the regular participation of industry could be particularly useful to bridge the gaps in understanding, enable the sharing of best practices and avoid the duplication of work among authorities for a cost-efficient enforcement of various policy objectives that all apply to the same product categories. Moreover, we suggest that this Regulatory Cooperation Body may provide the possibility for economic operators to appeal against cases where non-tariff barriers persist, even after they would have been addressed by regulators.

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