

Brussels, 23 April 2010

## Traceability and registers in the context of harmonised product legislation

### **ORGALIME comments on the alignment of various New Approach-type legislation with the New Legislative Framework (Regulation 765/2008/EC and Decision 768/2008/EC)**

Better and simpler regulation is a real issue, if our European regulatory system, both EU and national, is to stop undermining Europe's international competitiveness and our continued potential as a manufacturing base in the face of ever stronger global competition. This should be even more the case in the midst of our industry's difficult climb out of the economic crisis. However, the stability of our legal framework is put under strain: several core-business product directives are under revision, such as the CPD, the Gas Appliances Directive, the WEEE and RoHS Directives, the R&TTE Directive and 10 more Directives are in the pipeline for a recast alignment with the "New Legislative Framework" (NLF)<sup>1</sup>. This is why both stand-alone revisions and omnibus recasts of product directives require a careful understanding of what is necessary to preserve the competitiveness of our companies, most of which are SMEs: the focus must include harmonised and reduced administrative and regulatory burdens.

### **Traceability for an enhanced operation of the Internal Market**

Orgalime supports enhanced traceability of products placed on the market, provided that this does not add administrative burden to lawful economic operators and that there is a corresponding assurance of an effective enforcement by authorities: otherwise this only becomes a new hurdle for the competitiveness of lawful manufacturers in the face of unfair trade practices. This is why Orgalime supports the "New Legislative Framework", which constitutes a step forward simplifying the increasingly complex legal environment of European engineering manufacturers.

Decision 768/2008/EC already requires both a clear identification of products made available on the market with "type, batch or serial number or other element"<sup>2</sup>, and a clear identification of economic operators with "their name, registered trade name or registered trade mark and the address"<sup>3</sup>. These requirements aim at ensuring traceability and at facilitating "market surveillance authorities' task of tracing economic operators who made non-compliant products available on the market"<sup>4</sup>.

---

<sup>1</sup> NLF = Regulation 765/2008/EC and Decision 768/2008/EC

<sup>2</sup> Decision 768-2008-EC - Article R3 alinea 5

<sup>3</sup> Decision 768-2008-EC - Article R3 alinea 6 and R7

<sup>4</sup> Decision 768-2008-EC - Whereas (28)

*Orgalime, the European Engineering Industries Association, speaks for 33 trade federations representing some 130,000 companies - the overwhelming majority are SMEs - in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 11.1 million people in the EU and in 2008 accounted for some €1,885 billion 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 E.U.*

## Traceability without enforcement is pointless

Traceability is therefore not an end, but a means to ensure a proper functioning of the Internal Market: definitions of the obligations of each economic operator, requirements of market surveillance and external border controls are equally important means in order to effectively prevent non-compliant products from being placed on the internal market. Therefore the balance of costs and benefits of traceability requirements should in our view always be made proportionate to the other enforcement means. With a view to ensuring a better compliance rate with internal market legislation, enhanced traceability is hopeless without effective enforcement: evidenced and unjustified non-compliance cases must be sanctioned, at the least by the withdrawal of the product from the market.

## Traceability needs flexibility and the least administrative cost

On the contrary, it is our experience (with e.g. the Outdoor noise Directive or the Directive on Waste from Electrical and Electronic Equipment) that registers:

- do not add value as regards compliance of products placed on the market, because unlawful market operators will ignore them or forge any reference to them;
- subsequently fail to protect consumers or workers from risks arising from the placing on the market of unfairly marketed products which are not in conformity with EU regulation(s);
- further place a disproportionate administrative burden on businesses, especially on SMEs, that bother to comply with such legislation, and even contribute to widen the pricing gap between lawfully and unfairly marketed products.
- Induce management and maintenance costs which also affect the budget of concerned administrations, which are already under strain in most EU Member states.

Therefore Orgalime is clearly against any new EU-wide registration system, if it cannot be demonstrated that enforcement means would compensate fair market operators to invest in such a costly traceability system.

## Is the New Legislative Framework implementation on its way to smarter regulation? The case study of the planned review of the R&TTE Directive<sup>5</sup>:

However, to our great surprise, in the context of the revision of the R&TTE Directive, the flexible traceability approach of the NLF is questioned to the greatest extent by the proposal to introduce a mandatory manufacturer and/or product registration system. While Orgalime supports the planned revision of the R&TTE Directive, we believe that the prospect of such a register is not appropriate for the following additional reasons:

- Registration does not stimulate compliance: The results of market surveillance actions, which detected a high number of non-conformities, are the background to this proposal. We acknowledge the problems and want to stress the urgency to improve the situation. Nonetheless, we would like to draw the attention to the fact that, during these actions, products were not randomly picked and that most of the cases of non-conformity were of formal nature.
  - A product registration is not an appropriate means to solve these problems as it is not directed towards better information and awareness-raising about the directive's requirements. Compliance is likely to improve significantly with the New Legislative Framework should the new obligations for importers and distributors related to the products they trade be adequately promoted and enforced;

<sup>5</sup> Directive 1999/5/EC on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity.

- Another goal of the proposal is to improve the traceability of products once a non-conformity is detected. This is a key objective of the New Legislative Framework which is featured with the introduction of traceability obligations for importers and distributors and cooperation requirements between market surveillance authorities. These means are not yet implemented and thus have not yet been able to demonstrate their effectiveness in practice.
- Back to the old-time costly bureaucracy: Introducing a mandatory registration system in fact means to return to the regulation system in place before the New Approach, whereas the features of the New Legislative Framework have even not yet been implemented and tested in practice. Additionally, given the speed of innovation and the growing number of radio and telecommunications devices and applications that spread into other product groups (smart grids, smart houses, smart vehicles, etc...), the R&TTE directive is becoming in practice a horizontal directive for the electrical sector. Consequently, the manageability of the database and its security and, hence, its effectiveness is very questionable.
- It is out of proportion with the goal of the Directive: registers are not deemed necessary for enforcing safety related directives, where there is a consensus among authorities as well as industry that the existing system works well and provides for a sufficiently high level safety for consumers and workers. Why should a register be necessary for the less sensitive policy objective of the R&TTE Directive?
- It would contradict European Union's efforts to promote the "supplier's declaration of conformity" on the international scene. For example, the European Commission asked the United States to accept a self-declaration of performance for electrical products instead of third-party certification in the context of the Transatlantic Economic Council. By introducing a system that deviates from the New Legislative Framework, the EU would contradict its own position.

In conclusion, Orgalime highly appreciates the efforts the Commission has mobilised to develop a potentially effective legal framework to harmonise the conditions for placing products on the Community market. Therefore, we enjoin all its services concerned to promote a consistent alignment of product sector directives with the New Legislative Framework and to refrain from formulating proposals that could counteract a system that has not had the chance to prove its efficiency yet. We particularly invite the Commission to reconsider its plan for introducing an unnecessary register of products/manufacturers under the planned revision of the R&TTE Directive.

~ ~ ~ ~ ~

*Adviser in charge: Philippe Portalier (firstname.lastname@orgalime.org)*




---

*The European Engineering Industries Association*

ORGALIME aisbl | Diamant Building | Boulevard A Reyers 80 | B1030 | Brussels | Belgium  
 Tel: +32 2 706 82 35 | Fax: +32 2 706 82 50 | e-mail: secretariat@orgalime.org  
 Ass. Intern. A.R. 12.7.74 | VAT BE 414341438