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Technology industries on both sides of the Atlantic call for an EU-US agreement on conformity assessment

ITI and Orgalim represent technology companies and industries operating on both sides of the Atlantic. Looking at the upcoming Trade and Technology Council (TTC) meeting on 4-5 April 2024, we call on both sides to conclude an agreement on conformity assessment as soon as possible.

When trading across the Atlantic, technology companies may need to obtain certifications from an independent conformity assessment body (CAB) to ensure that their exported products comply with technical and safety standards. Currently, exporters are often forced to rely on CABs or certification bodies based in the destination market, which in many cases are different from the ones they rely upon to certify products for sale in their home market.

In the absence of harmonisation of standards based on globally relevant international standards, which remains our preferred scenario, establishing an agreement on conformity assessment would bring several benefits to transatlantic trade. It would enable more CABs located in the EU to certify products as compliant with US standards, while enabling CABs located in the US to certify products as compliant with EU standards. The agreement would fully maintain the separate regulatory regimes and standards currently in place, where harmonisation of standards is not foreseeable.

The agreement would, therefore, deliver significant advantages to EU and US exporters, such as:

- **Reduced waiting times** for product certification due to the increased number of CABs that can provide certification for both markets.
- **Reduced costs** associated with conformity assessment, resulting from:
 - **Increased competition** among CABs in different markets that would drive certification prices down in the long term.
 - **Elimination of the need to ship products to the target destination market** before they are certified by a CAB.
 - The possibility for companies to liaise with **one single CAB based in their home or primary market** rather than having similar products shipped to separate CABs depending on the target market.

As an increasing number of products are required to be certified by an independent CAB due to recently enacted legislation, the value of such an agreement on conformity assessment for EU and US exporters will increase over time. For example, the upcoming EU Cyber Resilience Act¹ requires third party conformity assessment for products such as certain types of hypervisors, firewalls, tamper-resistant microprocessors, tamper-resistant microcontrollers, smart meter gateways and smartcards.

The EU Artificial Intelligence (AI) Act also requires third party conformity assessment for certain high-risk AI systems, and includes the possibility for an extension of third party conformity assessment to other high-risk AI systems in scope. Article 39 of the proposal allows for CABs based in third countries to carry out the activities of a notified body in cases in which there is an "agreement" in place between the EU and the third country, and the recitals further specify that the European Commission should "actively explore" international instruments to facilitate mutual recognition of conformity assessment results. Given the global nature of AI value chains, it would be appropriate to enable CABs located in the US to certify AI systems as conforming to EU standards and vice versa, to positively impact AI adoption on both sides of the Atlantic.

Since 1998, the EU and the US have had a Mutual Recognition Agreement (MRA) on Conformity Assessment

¹The Cyber Resilience Act (2022/0272 (COD)) still needs to officially enter into force, pending publication in the EU Official Journal.

covering various sectors such as telecommunication equipment, electromagnetic compatibility and recreational craft. The MRA enables certification and testing bodies located in the US to perform testing and certification of covered products according to EU standards and vice versa. Notably, the 1998 MRA only concerns conformity assessment – it does not in any way provide for mutual recognition of technical and safety standards. Products sold in the EU must still fully comply with EU standards, which are different from US standards, and vice versa. The only difference is that, as a result of the MRA, certification for EU standards can also be completed in the US. Similarly, certification for US standards can also be completed in the EU.

ITI and Orgalim believe that the most efficient way to implement an agreement on conformity assessment would be to expand the 1998 EU-US MRA to additional sectors, including among others machinery, electrical equipment, AI and cybersecurity, to ensure balanced benefits on both sides. We support as many product categories and sectors as possible to be covered by a prospective agreement in order to reduce administrative burdens for companies, reduce costs, facilitate trade and improve competitiveness. Also, the involvement of the EFTA countries (Iceland, Liechtenstein, Norway and Switzerland) in the discussion on the extension of the 1998 EU-US MRA to additional sectors is crucial.

Such an agreement should include specific provisions in relevant sectors to ensure a level of acceptance of certificates issued by recognised CABs which is fully equivalent between the US (at all levels of public authority) and the EU single market.

It is essential that the TTC focuses on delivering commercially meaningful outcomes for companies operating in the EU and the US. An agreement on conformity assessment would promote the competitiveness of technology companies, contribute to economic security and bring net benefits to thousands of exporters on both sides of the Atlantic. We therefore call on the EU and the US to reach an agreement on conformity assessment as a matter of priority.

While an agreement on conformity assessment would bring significant immediate benefits to companies on both sides, ITI and Orgalim acknowledge that it would only represent a small step in addressing the numerous trade barriers companies face. Because of diverging technical and product safety requirements, companies often have to manufacture different products for the EU and the US markets. Furthermore, even if an agreement on conformity assessment is concluded, manufacturers will still need to seek two different certifications from certification bodies (one for the EU and one for the US market). Fully eliminating these long-standing trade barriers together with the promotion of harmonisation of standards, especially in the realm of emerging technologies, would bring immense benefits to technology companies on both sides and facilitate transatlantic cooperation. For these reasons, ITI and Orgalim will continue advocating in favour of the harmonisation of standards between the EU and the US, based on international standards. Where harmonisation of standards is not foreseen or foreseeable, an agreement on conformity assessment can make the process less burdensome for manufacturers.

In this respect, ITI and Orgalim welcome the recently signed Administrative Agreement on a joint Cybersafe Products Action Plan, aimed at achieving mutual recognition of cybersecurity requirements for IoT, hardware and software products. This could serve as an example of successful transatlantic cooperation on mutual recognition that should be continued and undertaken in other areas such as AI. Furthermore, ITI and Orgalim urge the EU and the US to work on harmonising technical requirements for products such as machinery and electrical equipment based on international standards (e.g. ISO, IEC, ITU).



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