

VdTÜV-position

on the Communication from the Commission "A vision for the internal market for industrial products" COM(2014) 25 final, 22.1.2014

In the context of the communication "A Stronger European Industry for Growth and Economic Recovery – Industrial Policy Communication Update" the European Commission in 2012 identified as a priority "the Strengthening of the effectiveness of the internal market for industrial products". According to the European Commission a strong European industry is necessary for fostering growth and competitiveness to sustain the current incipient economic recovery.

As a consequence in February 2014 the European Commission adopted the communication "A vision for the internal market for industrial products" which is accompanied by the communication "For a European Industrial Renaissance" (COM(2014) 14 final and several staff working documents summarizing the commissions impact assessment¹.

The objective of this communication is "to formulate a number of recommendations for the legislation on the internal market for industrial products and to set out a broader vision for the next decade". Industrial products as referred to in the communication are all non-food products manufactured through an industrial process. As the definition of "industrial products" is based on the production process, many industrial products are also consumer products. As a result of the Communication it is finally pointed out that "the commission will work on a proposal consisting of a harmonized approach to [...] a common framework for the marketing of industrial products based on Decision 768/2008" in form of an "horizontal regulation"².

VdTÜV in general welcomes the Commissions overall objective of continuously strengthening the effectiveness of the internal market and periodically assessing the "fitness for purpose" and overall coherence of the European regulatory framework for the marketing of products.

Moreover VdTÜV underlines and strongly supports the Commission's analyses that the "The so-called 'new approach' to product regulation has considerably reduced divergence in national technical regulations on products and has brought about a single, borderless market for harmonised industrial products. [...] As such, it is widely recognised as one of the EU's major success stories."³

In order to improve and reinforce the effectiveness and transparency of the regulatory framework under the New Approach Directives this regulatory mechanism was reviewed intensively since 2006 and the modernized legislation was adopted in 2008 as the so called "goods package"⁴ or 'New legislative framework' for marketing of products" (NLF), comprising two EU regulations and a decision designated to the European Legislator when drafting new harmonized product legislation:

¹ http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/index_en.htm

² Compare nr. 4.1 (3) and 6. of the communication

³ as stated under Nr. 3.1. of the communication - COM(2014) 25 final

⁴ http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/new-legislative-framework/index_en.htm

1. [Regulation \(EC\) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation \(EEC\) No 339/93](#)
2. [Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC](#)
3. [Regulation \(EC\) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC](#)

In the context of this broader consolidation of the regulatory framework for products further legislation is reviewed and in the "pipeline":

- Nine sectorial directives with the aim to align them with the new common rules and approaches outlined in the decision No 768/2008/EC⁵
- Directive on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment with the aim to align it with the new provision laid down in the decision No 768/2008/EC
- Consolidation of provisions for Market Surveillance, at the moment laid down in (a) the actual General Product Safety Directive, (b) Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance and (c) in sectorial legislation, in the recent proposal on market surveillance (COM(2013) 75 final), part of the so-called "Product Safety and Market Surveillance Package, proposed on 13 February 2013.

General Comment on procedure and timeframe

Taking into account on the one hand the existing and successfully finished review and modernization of European Legislation (NLF) and on the other hand the legislative projects already adopted by the European Commission but still under negotiation between Parliament and Council⁶, VdTÜV considers it for seriously questionable that the European Commission is obviously strongly reflecting on an overall review of European legislation for Industrial Products at this very early stage.

It is beyond all questions that after new legislative provisions have entered into force, the market and the relevant stakeholders need some years to handle the new legislative background and to scoop out the full potential of the new legislative framework. Obviously it would therefore not be very serious and stands in contrary to the principles of "Better Regulation" to ask the relevant market players about their experiences with the new legislative framework until they have got any chance to gain any experience with the new rules for temporal reasons.

With other words: a profound and reliable Ex-post-evaluation of the functioning of the implemented legal provisions, as foreseen in the initiative for "Better Regulation" of the European Commission, is not possible, until the NLF has been

⁵ http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/new-legislative-framework/index_en.htm

⁶ http://ec.europa.eu/enterprise/policies/single-market-goods/files/new-legislative-framework/nlf_implementation_reports/nlf_implementation_report_en.pdf - „State of the implementation of the New Legislative Framework (NLF) - Brussels, 14 September 2010

completely transposed in the relevant regulations and directives and subsequently been transposed, where necessary, in national law. Consequently market players should only be asked about their experiences when the NLF is entirely in place and they have been given the chance to gain any experience with it.

The answers given by stakeholders and taken into account when drafting the communication by the commission reflect an old situation and come to a conclusion which must be the same as in 2006/2008. It is not surprising that the outcome of the consultation is unrelated to the effectiveness and benefits of the above mentioned legislative reviews and consolidations, and therefore is not an appropriate basis for a new legislative initiative.

That is why VdTÜV disagrees with the chosen rushing ahead procedure by the European Commission and advocates rather for waiting until the reviews and alignments on the basis of NLF will be completed and wherever needed entirely transposed into the national law.

A fundamental profound evaluation of the overall effects, benefits and may be even weaknesses of the NLF would be reasonable and target-aimed once the newly adopted and modernized product legislation is into force for at least several, preferably ten years at the minimum. In this respect VdTÜV refers to the outcome of the Commission Staff Working Document⁷ where it is explicitly stated that "Internal Market legislation should be reviewed once every ten years as a minimum to ensure that legislation remains up to date and reflects industry developments and product innovations". Likewise VdTÜV, in line with the requests of other industrial stakeholders, lays emphasis to the urgent need of appropriate periods of regulatory stability without major overhaul of the existing rules in the Internal Market⁸.

Comments on selected measures

VdTÜV questions the utility and benefits of several measures envisaged by the European Commission under paragraph 4.1. "Improving the architecture of Union harmonisation legislation" of the communication and in particular:

1. A horizontal regulation based on Decision 768/2008/EC

The European Commission justifies the proposal, to work on a horizontal regulation based on Decision 768/2008/EC, with the argument that "such a regulation would bring additional coherence to Union harmonisation legislation" (page 8). This is based on the estimation of stakeholders that "transforming Decision 768/2008/EC into a Regulation would reduce the volume of the current legislation, which is often considered to be duplicative..." (page 12).

VdTÜV contradicts this estimation. Sectorial product legislation (directives or regulations) would even furthermore and in this case even on top be necessary for the definition of product specific requirements. An "umbrella" regulation comprising all products covered by harmonised legislation such as toys, machines, medical devices or lifts is completely unrealistic and not target-aimed as the appropriate measures of conformity assessment and the legal requirements for products must always stand in close relation to the relevant product categories and the indispensable actual level of consumer protection. In addition to that, a regulation would be less flexible to take sectorial specifications

⁷ Commission Staff Working Document SWD(2014)23 - final, Part 1/2, page 164, nr. 7.2.1 (3.)

⁸ Compare nr. 6. of the communication

into account than the smooth "lex sui generis" decision 768/2008/EC where the European Legislator is able to amend horizontal aspects such as conformity assessment procedures to the needs of specific product categories.

The commission wrongly quotes the adoption of German horizontal national regulation the Product Safety Act (Produktsicherheitsgesetz - ProdSG)⁹ based on the Decision 768/2008/EC as an example to avoid sectoral legislation. The Produktsicherheitsgesetz - ProdSG does not implement the Decision 768/2008/EC itself but takes into account and aggregates key elements of different product-related European directives / regulations. Nevertheless under the roof of the ProdSG also in Germany different regulations for the various product categories exist and are necessary¹⁰.

Last but not least in the Commission Staff Working Document it is pointed out that a horizontal regulation based on Decision 768/2008 should only be considered "in the medium term" although "not feasible in the near term, since a different approach has been adopted through the Alignment Package"¹¹.

2. Inclusion of the use phase (e.g. installations, maintenance) in the scope of Union harmonisation legislation for industrial products

It has been a very successful handling to regulate the marketing of products or services. Uniform requirements are necessary and helpful to avoid market fragmentation and obstacles to the free movement of products and services.

But the European Union should fully respect the fundamental principle of subsidiarity and for that reason refrain from creating new legislation in areas where there exists no evidence that European rules are more effective than those on a national or regional level. Uniform European Regulation is not at all necessary for the well-functioning of the Internal Markets when the product has already successfully been placed on the market and is in the "use phase". With view to the "use phase" of products national legislation is much better able to reflect regional or national specifications such as differences in climate or specific needs due to cultural habits or population density when using the product.

There is no sweeping transnational point of reference for such an extensive European Legislation. In the course of Evaluation of Internal Market Legislation for industrial products¹² no sufficient indication or even evidence has been brought by the conducted case studies that there are any serious barriers for trade within the European Union resulting from different rules for the "use-phase" of products on national levels.

With view to the proportionally principle VdTÜV considers it would anyhow be preferable to encourage a gradual, voluntary convergence in the relevant requirements of national legislation rather than to establish a new radical EU-intervention in national legislative powers. Taking this all into account VdTÜV recommends refraining from regulating the use phase of products.

Berlin, 22.4.2014

⁹ http://www.gesetze-im-internet.de/bundesrecht/prodsg_2011/gesamt.pdf

¹⁰ Compare the list of specific German Product safety regulations under <http://www.bmas.de/DE/Service/Gesetze/prodsg.html>

¹¹ Commission Staff Working Document SWD(2014)23 - final, Part 1/2, page 164, nr. 7.2.1 and (4.)

¹² Commission Staff Working Document SWD(2014)23 - final - Part 2/2