FREE MOVEMENT OF GOODS

OUR PRIORITIES FOR 2024-2029

KEY MESSAGES

1. Focus on reinforcing the New Legislative Framework (NLF) with an 'NLF 2.0' that includes an omnibus to streamline existing interpretations in legislation as well as ensuring an NLF- check' on all future legislation that is relevant to the NLF.

2. In the context of the NLF 2.0, consider a targeted revision to the Standardisation Regulation to ensure the private-public partnership model is preserved.

3. Consider a revision of the Mutual Recognition Regulation to properly implement and enforce the principle.

4. Increase resourcing for Market Surveillance Authorities so they can meet the demands from new legislation.

INTRODUCTORY REMARKS

As outlined in BusinessEurope's paper on Priorities for the Single Market Beyond 2024, we see massive risks emerging as Single Market integration is stagnating and as a result, Europe's global attractiveness and competitiveness is falling[1]. This stark reality is emphasised by the findings of both the Letta[2] and Draghi Report[3] which call for immediate action to boost European competitiveness and to overcome fragmentation in the Single Market for goods and services.

In light of the political call to action from President von der Leyen for new momentum to complete the Single Market coupled with the findings of the Letta and Draghi Report, BusinessEurope believes it vital that the EU strengthens policies that support the Free Movement of Goods (FMG). Reaffirming and tackling the 'classic' Single Market issues such as FMG or addressing the Market for Services could generate up to EUR 644 billion per year by 2032.[4] While specifically addressing FMG issues could bring EUR 228- 372 billion annually.[5] Such policies would additionally help to address the criticism raised in the Draghi Report that the incomplete Single Market in goods and services prevents investment and expansion in the EU market, disincentivising firms from scaling-up in Europe.

FMG may be said to suffer from its success: intra-EU trade has grown from 14% in 1992 to 22% in 2021; has contributed to an increase in EU GDP between 3.1% and 6.2% depending on the Member State; and has addressed 80% of regulatory barriers since the inception of the Single Market.[6] Despite these statistics, the past years have seen high amounts of infringements with a record-high 837 cases in 2020 and 699 cases in 2023.[7]

Harmonised legislation is the backbone of the FMG. It is an absolutely vital part of how the Single Market has developed over the past decades and its importance cannot be understated. In part, the story of the Single Market is one of harmonisation, as the Commission found in 2007[8]: some 600 pieces of harmonised legislation for industrial products were adopted leading to 80% of industrial production[9] and approximately 74% of intra-EU manufacturing trade being covered by harmonised legislation.

The way that harmonised legislation is created, shaped, enacted and enforced has a massive impact on the way companies do business and how consumers access products. FMG has thus seen a natural evolution[10] of how legislation was drafted. First under the Old Approach, where very detailed requirements were laid out by legislation thereby necessitating hundreds of pieces of legislation.

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[1] Around 90% of national business federations consider that compared to our global competitors, the EU investment environment is less attractive than 3 years ago. See BusinessEurope's reform barometer

[2] Much More Than a market, 2024

[3] The Future of European Competitiveness, 2024

[4] Cost of Non Europe Study, European Parliament Research Service

[5] Ibid

[6] Completing the single market for goods, European Parliament Briefing, 2022

[7] Single Market Scoreboard, 2022-2023 reporting period

[8] Impact Assessment to the New legislative Framework, 2007.

[9] Of note this 80% seems relatively stable as accordingly the EPRS in the Cost of Non Europe study finds that non-harmonised sector is about 20% of businesses (pg 31)

[10] For more information on the history of FMG and the rationale behind the changes in Approach we recommend consulting the Introductory Chapter of the Blue Guide.

This in effect was a rigid and cumbersome process as it put the burden of finding the detailed technical solutions on the legislators and left no room for creativity from the market in finding better options.

The inflexible framework of the Old Approach has evolved from necessitating hundreds of detailed requirements to a more innovative format: the New Approach, where only essential requirements are defined. The adoption of the New Approach and its subsequent evolution into its modern-day format known as the New Legislative Framework (NLF) is an important history lesson for the Single Market, driving benefits to the single market in the tens of billions of euros.[11] With these billions of euros in play it is crucial that the right lessons are learned and applied to the future of the NLF. It is imperative that the new political mandate focuses on the implementation of recently adopted EU legislation so that new barriers are not formed in the tide of ongoing transposition.

With the Draghi and Letta reports outlining the current situation of the Single Market, we believe it is important to put our priorities for 2024-2029 in the context of what we called for in 2019-2024. In our past messages we made clear the following areas should be prioritised:

1. Maintaining a coherent legal framework by keeping the application of the New Legislative Framework for products consistent in new legislation.
2. Put the creation of harmonised European Standards back in the hands of stakeholders.
3. Improvement of the capacity of national market surveillance authorities so that they can fulfil their sovereign task and contribute to the functioning of the internal market.
4. Create more guidance on the application of the mutual recognition principle and enforcement.
5. Increase access to information and problem-solving tools.

As we will outline below, reflecting on our key messages for 2024-2029 and 2019-2024 indicates to us that the issues we have been raising for years have gone largely unaddressed or worse.

[11] European Commission. (2022). Annex IV - Evaluation of the New Legislative Framework (SWD 2022 364 final/2).

HARMONISED RULES FOR MARKET ACCESS

Without a functioning NLF there is no seamless Free Movement of Goods and therefore no Single Market. The past years have seen the NLF come under increasing pressure and complexity raising an overall concern that new legislation is not as coherent with the NLF as it should be.

To solve this there should be a recommitment by policymakers to the principles of the NLF and its application to EU product harmonisation legislation. The aim of this should be to remove burdens that have emerged due to fragmented NLF application. **Therefore, we call for an update of the NLF framework to create an NLF 2.0**. The Commission's NLF evaluation and support studies already give a clear scope of where this update could take place mainly related to definitions and the challenges of the green and digital transitions.

ADDITIONAL STEPS TO REINFORCE THE NLF 2.0 SHOULD BE:

1. **The creation of an Omnibus** that would identify and implement changes to existing legislation. In doing so revision of Decision 768/2008 EC[12] and Regulation 765/2008/EC[13] should be considered with some general factors in mind.

    - **Focus on the alignment of definitions and the distribution of obligations.** Terms such as provider, deployer, manufacturer, substantial modification, refurbisher, fulfilment service provider, etc. have been used inconsistently across legislation.
    - **Allow for the digitalisation of information obligations.** The ability to present the declaration of conformity in a digital manner should be created and aligned with the Digital Product Passport. Digitalisation should be embraced in the NLF's information requirements allowing for labelling or instructions to be done digitally.
    - **Strengthen conformity assessment methods.** It is very important that the NLF 2.0 continues to allow legislators to choose which modules to use. Module A allowing for self-assessment by the manufacturer should be a priority. However, the increased digital legislation treating software as a product warrants a consideration for a new module dedicated to software and software as a product/service.

2. **Ensure an 'NLF check'** on all relevant future legislative proposals on products, meaning that the European Commission and the Regulatory Scrutiny Board should take NLF coherence into consideration when conducting impact assessments and their validation.

[12] 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

[13] 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 (Text with EEA relevance)

3 **Maintain the role of standards.** Currently, the European Standardisation System is at a crossroads. The role standards play in compliance, how we finance standards, how we pool expertise, the effects of standards on users, all of these require careful evaluation and consideration. In doing so we must avoid reverting to the 'Old Approach' style of legislation which directly undermines the European investment climate and hinders our ability to be competitive.

- **To ensure the NLF 2.0 is well-functioning, Regulation 1025/2012 'The Standardisation Regulation' must be considered integral to the overarching NLF framework.** The ongoing evaluation and any potential revision of the Standardisation Regulation must treat the two as inextricably linked and see them as a whole when discussing changes.
- **Standardisation priorities should focus on a targeted amendment to the Regulation 1025/2012**. This should enact a number of changes that would allow for faster citation time while reaffirming and reinforcing the link between the European standardisation system and the international standardisation system, via the so called 'international first principle.' Without the link to international standards, Europe risks decoupling from the global market and establishing a parallel system to the rest of the world.
- **Standardisation must protect the private-public partnership model.** Europe's standardisation system, fostered by Regulation 1025/2012, has been a success in the past due to the driving of investments by the private sector that cooperates with public authorities to create standards that can be used for demonstrating compliance with legislation. In conducting the evaluation of the Standardisation Regulation, a choice must be made on the wider relationship that Regulation 1025/2012 has with the NLF. Would a revision that promotes industry and Europe's interests be served by merely translating jurisprudence into a new framework? Or rather, more challengingly, do we need to rethink the legal basis of Regulation 1025/2012 so that it is best fit?

Further information on BusinessEurope's position on standardisation can be read in our response to the public consultation to Regulation 1025/2012.

MUTUAL RECOGNITION PRINCIPLE FOR MARKET ACCESS OF NON-HARMONISED PRODUCTS

The Mutual Recognition Principle for goods requires Member States to allow lawfully marketed products in another Member State to be marketed in their territory without applying additional restrictions or other methods having equivalent effect. Born in the Treaty of Rome, EU jurisprudence developed the principle now enshrined in the Treaty on the Functioning of the EU (Articles 34–36 TFEU). This principle is a cornerstone for FMG and further elaborated under the Mutual Recognition Regulation (Regulation 2019/515).

Without mutual recognition, businesses face additional costs to entering new markets or even lose entire opportunities[14]; patchwork rules from national authorities undermine the circulation of goods, and consumers are unable to benefit from a robust choice of goods and face higher prices.

Despite the attempts at Mutual Recognition reform with the creation of the Regulation in 2019, we see that Member States continue to differ in their interpretation of the Mutual Recognition Principle and in their application of national requirements and safety justifications to deny Mutual Recognition.

Furthermore, the 2017 Impact Assessment determined that some of the main drivers of the problem in Mutual Recognition are a lack of awareness, lack of legal certainty, and lack of trust in and cooperation with national authorities. Such issues can then crystalise into difficult situations in practice as demonstrated that 'up to 71% of SMEs[15] were faced with a market access denial decision'.

We recommend the following be considered when addressing Mutual Recognition:

- **The Commission must enforce and protect the Mutual Recognition Principle.** As the Commission is conducting its evaluation of the current regulation, the level of knowledge and use of the principle by business and how Member State authorities interpret the principal needs to be considered. There also needs to be consideration for more resources and enforcement by the Commission.
- **Consider a revision of the Mutual Recognition Regulation.** It may also be necessary to assess the effectiveness of the TRIS Directive[16] since TRIS can dictate the number of potential cases of denied Mutual Recognition.

[14] The 2017 Impact Assessment estimates that the costs incurred from delays in entering the market or from losing the market are between 10 000 and 500 000 Euro per product and per market.

[15] European Commission. (2020). Identifying and addressing barriers to the Single Market. COM(2020) 93 final.

[16] TRIS- or Technical Regulation Information System, is a procedure established under Directive 2015/1535 that allows for the reporting of potential barriers to the internal market before they manifest. Member States under this procedure notify the Commission of upcoming legislative acts where other Member States and other stakeholders can give opinions if they see potential issues arise from the adoption of these national measures. In which case the Commission can then issue corrective actions to prevent the creation of these barriers. Mutual Recognition and TRIS reporting are therefore related as national legislation/transposition is often what prevents mutual recognition from applying. TRIS notifications therefore serve as an early indicator of instances where mutual recognition may be denied.

IMPLEMENTATION & ENFORCEMENT

1. SOLVIT

The SOLVIT system was established as an informal problem-solving network that allows citizens and businesses to bring forward their concerns if they believe their internal-market rights have been violated. SOLVIT in theory plays an important role in solving obstacles that companies are facing between Member States due to different interpretations of Single Market rules and thus is meant to assist in Mutual Recognition.

Under our previous priorities, we expressed hope that SOLVIT usage would be embraced by companies, and this would serve as a good point for EU-wide data collection on how the Mutual Recognition Principle is functioning. Unfortunately, it seems to be the case that business uptake of SOLVIT is woefully underutilised. The SOLVIT scorecard indicates that SOLVIT is overwhelmingly used for citizen cases; in 2022 and 2023 it seems approximately only 117 business cases were submitted to SOLVIT according to data. In 2023, 9% of these cases were related to FMG. Despite this low case number, it is positive that 74% of the business cases were solved.

We recommend the following points be considered in relation to SOLVIT:

- **Increasing business awareness of SOLVIT is not enough.** While increasing awareness of the system is important, ultimately SOLVIT decisions are not legally binding, at a minimum SOLVIT should allow for litigation proceedings to be brought in parallel. Awareness-raising needs to continue and an expanded focus on the challenges being solved for business under SOLVIT is needed.
- **Improve resolution time.** While SOLVIT does have a maximum timeframe for solutions, this can still take too long in the case of certain products such as perishable goods. A fast-track procedure could be envisioned for specific categories to encourage more use of SOLVIT.
- **Better use of infringements.** Currently we see an under-enforcement of SOLVIT solutions. Member States who do not follow the decision/opinion of the cases should be referred to the Commission for pre-infringement consideration.
- **Ensure adequate staffing.** SOLVIT staffing both from the Commission and Member State side is lacking. To address this, the Commission should consider using money from the Single Market Programme to finance positions in the Member States to aid in SOLVIT staffing.

2. MARKET SURVEILLANCE

For the upcoming mandate, we reiterate that resourcing of Market Surveillance Authorities is key. Without sufficient expertise, personnel and funding, no legislation approved under the 2019-2024 mandate will be effectively enforced, especially those relating to the twin green and digital transition. Policymakers in the 2024-2029 mandate must enact legislation with careful consideration of what is feasible, practicable and pragmatic. The enforceability of new regulations must be scrutinised.

We recommend the following be considered in relation to Market Surveillance:

- **A greater focus on enforcement is needed.** The Commission and Member States must focus on enforcement and the simplification of existing rules so that compliance is easier.
- **Promote more collaboration between stakeholders.** Article 9 of the Market Surveillance Regulation outlines how cooperative actions can be undertaken and should be utilised more often. Market Surveillance Authorities should also focus on fulfilling an explanatory/advisory role in assisting companies with compliance. We believe a culture change is warranted so that authorities can serve not only as a disciplinary actor but can guide and advise.
- **Avoid forcing private stakeholders to perform public functions.** We see a political tendency of legislators believing that private stakeholders should perform the duties of Market Surveillance Authorities. While cooperation and joint actions around surveillance are a positive development it is crucial that the policing expectations are not on the company.
- **Reinforce the relationship between conformity assessment infrastructure, standardisation, and market surveillance.** Successful market surveillance depends on having a robust ex-ante set of controls. Conformity assessments and standards are key in establishing a frame of reference for what the authorities need to be looking at. A recent analysis of the RAPEX system indicated that 86%[17] of all dangerous consumer products reported to the system were linked to standards. New legislation must keep in mind the relationship these three factors have in facilitating compliance and timely access to market for products.

[17] European Commission. (2021). Study on the functions and effects of European standards and standardisation in the EU and EFTA Member States (p. 86).

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