

## Communication of the Commission to the European Parliament, the Council and the European Economic and Social Committee

### A Vision for the Internal Market for Industrial Products

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VDMA (Verband Deutscher Maschinen- und Anlagenbau – the German Engineering Association) is with more than 3,100 German and European mechanical engineering companies the leading association in the capital goods industry in Europe. With around 986,000 employees in Germany and a turnover of 206 billion euro in 2013, the sector is the biggest industrial employer. Around 87 per cent of companies in the German capital goods industry are small and medium-sized.

VDMA welcomes initiatives for strengthening, improving and further developing the internal market, which are geared to the needs of the market and, at the same time, lead to the achievement of societal objectives.

#### Core messages

VDMA contributes as an experienced stakeholder to the functioning of the internal market. **Integrating business better into political decision-making processes** is a core concern.

Standardisation serves as an important pillar of the internal market and is key to the establishment of a convergent international body of law. This **potential of standardisation should be used more effectively**.

The EU legal framework is accepted and well established. For companies, **a stable regulatory environment is crucial**. However, the legal framework requires effective implementation and enforcement, for which strong state-driven market surveillance is indispensable. Making use of the opportunities of the internal market is seen as a future challenge in the digital era.

#### On Chapter 5:

- 5.1. Rules on market surveillance require effective implementation
- 5.2. Using the “New Legislative Framework” as a basis for further development
- 5.3. Driving forward digital integration across the value chain with Industrie 4.0
- 5.4. No need for regulation in the area of services
- 5.5. Making EU legislation more comprehensible for companies
- 5.6. Companies need a stable regulatory environment
- 5.7. Use consensus-based standards to increase the international convergence of legislation

## **Introduction**

For the capital goods industry the European internal market is a success story as the sector is highly export oriented. Even though a considerable part of the exports are put on the market in third countries, the internal market is a solid economic base for many sub-sectors of the capital goods industry, not least because of the size of the European market and the full body of harmonisation legislation for the marketing of products. Nevertheless, there are areas which have unfortunately not yet been fully harmonised. For some time, VDMA has been calling for harmonised rules on street permits for non-road mobile machines.

VDMA welcomes the Commission's initiative to set out a comprehensive vision for the internal market for the next decade, which the EU Member States in the Council had also requested. After 22 years of experience with the unique European internal market, stakeholders can bring their knowledge and practical experience to bear in a targeted way to improve and to further develop the legal framework. The focus should be on consolidating rules for marketing products and not the multiplication of legal provisions. It is welcome to find the following content prominently placed (page 2) in the Communication:

"The European Commission therefore carried out an evaluation of EU law in the area of industrial products to assess the regulatory framework's overall coherence and 'fitness for purpose' and to develop an evidence base on the cumulative regulatory effects from an industry perspective."

VDMA vigorously supports this approach as experiences show that legal provisions need to be fit for purpose in order to produce the desired result and to achieve societal goals. The coherence of legislation is of crucial importance for companies in practice.

## **Integrating business better into decision-making processes**

VDMA's over 3,100 member companies can give important stimuli for the shaping of this vision, as they are fully committed to the societal goals of the internal market. Product safety and environmental requirements are not considered as burdensome obligations but as an opportunity to contribute with high value machines and plants to tackling future challenges, such as the ageing society, big cities or the responsible use of resources. That is why VDMA supports any policy improving the involvement of economic actors in the discussion, in particular to share companies' practical experience.

Companies are essential for the continuous economic success and for maintaining Europe as an attractive location for business. VDMA increasingly misses stakeholder participation, which in the past was often carried out by the Commission via advisory committees. An example of successful stakeholder involvement is the working group of the machinery committee (Directive 2006/42/EC). The committee itself is made up only of representatives of the Commission and Member States. Via the working group, industry representatives, standardisation representatives, representatives of notified bodies and representatives of trade unions could be involved and work towards making decisions that are fit for practical situations.

- Calling for better stakeholder involvement. The working group of the machinery committee could serve as a model for successful stakeholder involvement in terms of a workable internal market. The need for action lies particularly in the organisation of effective market surveillance.

## **Using the potential of standardisation and specifically harmonised standards**

The global market should be part of the deliberations about the further development of the framework conditions for the regulation of the internal market. The capital goods sector has

an export share of 75 per cent, of which 57 per cent goes outside Europe. Third states have their own legislation for the marketing of products, which is not always in line with European law.

The application of technical standards is of considerable importance in further developing the EU legal framework for the marketing of products, namely the New Approach and the New Legislative Framework (NLF). They relieve the legislator, who can limit himself to the definition of essential requirements when drawing up legislation. Standards specify legal requirements and present technological solutions for the fulfilment of such requirements. As standards can follow the state of technology more quickly, a win-win situation arises for legislators and economic actors.

European standards are increasingly developed further in the framework of international standardisation via the standardisation bodies ISO and IEC. In this way European requirements for health, safety and the environment are exported to the global market, especially the requirements for product safety in the area of mechanical engineering.

In VDMA's view, the use of standardisation must be given more attention than has been the case up until now. Via internationalisation in this area, technical requirements, which can be used to comply with EU law, become available and used across the world. EU legislation should not negatively influence or hinder this positive trend.

Standardisation is by and large business-driven. That is valid not only for its financing but also for the participation of experts in standardisation projects. Business representation covers all essential user groups, e.g. operators, producers or maintenance companies. The involvement of EU Member States in the standardisation projects, especially the authorities, which are responsible for market surveillance, is expressly welcome. However, standardisation, which is based on the voluntary principle, must not be hindered by a rigid political legal framework. Otherwise, standardisation cannot fulfil its function: the development of market-driven standards in the context of a consensus-based process in which all interested parties can be involved. It may not be misused for implementing political goals. Its purpose lies in the context of supporting legal provisions.

- Member States should be more involved in the standardisation process
- Common rules developed in the context of the transatlantic trade and investment agreement should be based on international standards
- Promote closer exchange at commercial and diplomatic levels to work towards a body of law on the basis of international standards

### **Further developing the legal framework before reinventing the wheel**

More attention should be paid to the New Legislative Framework (NLF), which is based on Regulation (EC) No. 765/2008 and Decision No. 768/2008/EC. On page six of the Communication under the heading "...but does not shy away from profound reforms where needed" the focus is directed to the coherence of EU Internal Market Law and a reform formulated as a solution. A reference to Decision No. 768/2008/EC is missing although a revision of existing Union harmonisation legislation according to the provisions of this Decision is on-going. Also, on page nine, a proposed horizontal regulation with common definitions and further common elements should be developed on the basis of the existing NLF. In Regulation (EC) No. 765/2008, these common definitions have already been implemented for a large part of the aspects which are necessary for regulating the marketing of products.

Currently EU legislation for market surveillance and safety of consumer products is being revised. In this revision, the existing legislation, especially Regulation (EC) No. 765/2008, should be further developed. The aim should be to consolidate the successes achieved instead of creating new approaches, which could jeopardise the stability of the legal framework for authorities and economic actors. The further development of both legislative acts should be considered and implemented under the measures of this vision in order to achieve the goals, which are set out on page two of the Communication and cited above.

- Calling for further development of the NLF instead of introducing new concepts
- Supporting a horizontal regulation for the NLF
- Conducting objective cost-benefit-analyses (Impact Assessment) before the revision of existing and introduction of new legislation
- Restricting the depth of regulation in the interests of feasible application by industry and effective market surveillance

## **Chapter 5 “A vision for the future”**

### **On 5.1: Rules on market surveillance require effective implementation**

Further strengthening market surveillance is a *sine qua non* for the success of the internal market. The EU does not have too little regulation for the marketing of products but a lack of market surveillance. The streamlining of sanctions for economic actors is welcome. It can be helpful in preventing economic actors from shifting violations of public law to where the sanctions are mild. But the proposed Europe-wide harmonisation of economic sanctions cannot compensate for the existing lack of market surveillance. Due to tight budgets, Member States frequently lack the resources to beef up the measures for market surveillance.

VDMA is in favour of the efficient and target-oriented use of existing resources. Thus, legal provisions generating bureaucratic burdens for the authorities are to be avoided in future legislation addressed to market surveillance authorities. Attention must be paid in particular to efficient implementation in reporting systems. More attention is also to be devoted to information exchange to avoid duplication, especially with controls and checks. For the checks on products by authorities, technical support is important so that non-compliant products can be detected in a targeted and secure way. The main task of market surveillance should, in VDMA's view, be to find unsafe and non-compliant products on the market and to take effective measures.

The existing information system for the exchange of information, ICSMS, should be used more intensively. The exchange of information should take clear precedence over the fulfilment of reporting duties, as carried out via the RAPEX system for example. ICSMS and RAPEX could be merged, as two separate systems of information exchange between the authorities are counterproductive, limits efficiency and rather hinders enforcement.

- Supporting the idea of a Europe-wide streamlining of economic sanctions in order to prevent dishonest economic actors from sidestepping them
- Calling for an efficient use of existing resources and a target-oriented extension of activities in order to increase the uptake of market surveillance measures imposed on economic actors through more frequent checks
- Strengthening transnational cooperation of authorities and improving cooperation with customs authorities
- Making use of “eCompliance” in market surveillance provided that data security is ensured and confidentiality is preserved. No obligation to upload data.

### **On 5.2: Using the “New Legislative Framework” as a basis for further development**

The idea of a horizontal regulation, which includes provisions that are common for all areas of industrial products, is welcomed and supported. In Germany, a product safety law that pulls together all provisions that are identical for industrial products has been in force since 1 December 2011. Decision No. 768/2008/EC served as a basis for the German legislation.

Whether maintenance and customer service issues should be included as industrial services in European regulations must be critically assessed. Services are often provided in close relation to the individual product in the area of capital goods so normative provisions should be developed together with the product and in the same committees.

Standardisation is a success story under the New Approach and provides a considerable contribution to the completion of the internal market. The Commission should refrain from creating new legislation for this area. The bureaucratic burden is already high today.

VDMA stresses the importance of a stable European regulatory framework. That also concerns deliberations on the revision of standardisation regulation (EU) No. 1025/2012, for which VDMA currently sees no need. This Regulation has been in force since 1 January 2013. A review should be considered only once experiences on the application of the provisions are available and could be subjected to a resilient assessment. Major standardisation actors also come to this conclusion as the “Progress Report with regard to the Standardization Package” of the DIN shows. The report describes what the Regulation and prior discussions during the legislative process have achieved. Nevertheless, further assessments are necessary in order to find practice-relevant starting points for the revision of the existing Standardisation Regulation. VDMA has been engaged since the start of the New Approach in European standardisation and can therefore deliver a well-founded evaluation on the possible need for action.

- Common definitions and common elements should be regulated in a horizontal “umbrella” regulation in order to improve application of Union harmonisation legislation in practice
- The NLF should serve as a basis for this horizontal regulation.
- Calling for a stable regulatory framework in the area of standardisation and a suspension of the review of the only recently enacted Standardisation Regulation

### **On 5.3: Driving forward digital integration across the value chain with Industrie 4.0**

VDMA is in favour of the use of innovative technologies for achieving societal objectives. That also includes the use of electronic documents as proof of the implementation of the conformity assessment procedure by the manufacturer. If, as part of market surveillance, authorities would like to check the technical documents of the manufacturers, these documents could be made available in electronic form. Consideration needs to be given as to whether these documents can be made available in databases, to which only responsible authorities have access and which guarantee data protection. If data protection cannot be guaranteed, there cannot be any obligation to upload documents.

Another aspect is to connect everyone in the manufacturing process with one another. Standardisation can make a major contribution in this process. It can react quickly to technological developments and take account of market needs. All societal groups can be included through the choice of standardisation as a consensus-based instrument. VDMA does not consider additional legislation for the area of standardisation to be necessary. It is deemed adequate if the existing framework conditions for standardisation set the legal requirements in this field.

VDMA is committed to the Industrie 4.0 initiative as it aims to achieve a comprehensive and universal integration of all the actors involved in the production process and across the value chain and will thereby support the competitiveness of the capital goods industry. This integration covers the individual machines, which are involved in the process, the product itself but also personnel and customers. The aim is to move from a centralised system control to decentralised self-organisation based on the product. Production becomes more individual, quicker and more flexible. A large number of interfaces will arise for the required communication between the participants and the production facilities, which must be soundly and clearly described, preferably through standards.

The success of this initiative depends on a consistent set of standards. Only with a coherent set of standards can the conditions be created so that components, modules and systems are developed that can communicate reliably.

➤ Industrie 4.0 calls for full digital integration across the entire value chain

#### **On 5.4: No need for regulation in the area of services**

As mentioned in no. 5.2, a number of services provided in the capital goods industry are highly product related and product-specific, especially when offered by the manufacturer of the product. This can cover the maintenance and servicing of a machine, the training of customer personnel in using the machine, the conversion or the upgrade of machines or the optimisation of the production process.

Many services in this area are not of a crosscutting nature but are very specific and can be considered for a particular part even as unique. Industrial enterprises are focusing strongly on the interfaces of industrial products and services with regard to the development of the service business and new business models. There is therefore no need for comprehensive regulation in the area of services in the capital goods sector.

#### **On 5.5: Making EU legislation more comprehensible for companies**

The proposed switch from Directives to Regulations avoids problems, which can arise in national implementation. It contributes considerably to legal certainty and clarity if the same legal act is applied uniformly in all EU Member States.

The greater use of delegated legal acts, which do not contribute to the comprehensibility of legislation for entrepreneurs, is no solution in VDMA's view. This instrument of secondary legislation should only be made use of in exceptional cases. Instead, general requirements can be laid down in a Regulation and specified on the individual product level through standards.

The existing Directives for the CE marking have no legal "umbrella" in the form of a horizontal regulation, which for example contains provisions that are identical for all products. However, some Member States developed such a horizontal legal act through national legislation. In Germany this has been perceived as adding to legal clarity. That is why VDMA would welcome a legal act, which can develop these provisions, is coherent and leads to uniform application.

Information on statutory provisions is of major significance. If economic actors are not informed about the legislation that concerns their products, they will not apply these rules. The societal objectives at the origin of these "unknown" legal requirements will therefore not be achieved.

Trade associations play a key role in informing market actors. The Commission can also make a key contribution in informing economic actors. The information on the legal requirements regarding the CE marking on the Europa website under the responsibility of Directorate-General Enterprise is a good example of a well-structured and comprehensive piece of information. The short descriptions made available on the individual legal acts also make a considerable contribution to better understanding. Official guidelines for individual legal acts and the guidelines on legal frameworks, such as the Blue Guide, play just as important a role.

A good example of a practice-oriented guide is the official guideline for the Machinery Directive 2006/42/EC. For that, the Commission had set up a working group in which the Commission, Member States and industry deliberated drafts. The drafts were put before the standing committee for machines for annotation and approval. Unfortunately, this successful procedure was not used for the revision of the Blue Guide. VDMA calls for the development and prompt revision of official guidelines on the individual pieces of EU legislation for industrial products and better involvement of industry in the production of these guidelines.

- Supporting increased use of Regulations as legal acts if they contribute to a more coherent legal framework
- For the consistent use of NLF, especially Decision 768/2008, in the development of EU Regulations
- For the development of practice-oriented guidelines, such as the Blue Guide, and improved information campaigns, in which industry associations are involved

#### **On 5.6: Companies need a stable regulatory environment**

The capital goods sector welcomes the fact that the revision of legislation is to be carried out in longer intervals in the future in order to safeguard the stability of the regulatory framework. In cases where it makes sense to merge individual legal acts, the capital goods sector supports these initiatives. However, it should be checked that the legal acts in question, follow an identical or at least a comparable legal structure. If the structures are different, important structural issues must be clarified before a possible merger.

Standards play a significant role in the CE marking of industrial products. They complement legislation in that they specify legal requirements or include technical solutions for meeting legal requirements. VDMA welcomes the active involvement of national authorities in standardisation projects but also the involvement of the Commission. Contesting a standard should be the *ultima ratio* when all other possibilities have been exhausted. Unfortunately, VDMA observes in the body of harmonised standards for the Machinery Directive use is made of this instrument too quickly. The currently limited resources of EU Member States may possibly play a role in this. In some cases this instrument is used to push through specific requirements, for which there was no majority in the standardisation committee.

VDMA advocates involving EU Member States in standardisation projects earlier. Thus, Member States can signal early on concerns about the compatibility of a standard with national circumstances. Unnecessary delays in the standardisation process can thus be avoided.

Standards contribute to the opening-up of markets. The internal market is fully harmonised and thus standards play a key role. How standards can lead to fragmentation of the internal market is not apparent to the reader from the short reference on page 17 of the Communication. VDMA does not believe that standards have contributed to the fragmentation of the market.

- Keeping up regulatory stability in order to maintain competitiveness
- Assessing on a case-by-case basis when integrating separate legal acts
- Involving EU Member States early and more intensively in the standardisation processes

### **On 5.7: Use consensus-based standards to increase the international convergence of product legislation**

For some time VDMA has been monitoring legislative developments in the area of mechanical engineering in emerging countries. Currently these regions are interested in importing top-quality industrial products in order to achieve technological alignment. The legal framework conditions are organised correspondingly. If the domestic areas of the economy were to grow, then protective interests concerning the domestic market might stand in the foreground. For that purpose, technical requirements different to the requirements of other regions are frequently used.

As experience shows, such protective measures are not successful for a market in the long term as they do not further the competitiveness of companies but freeze it in the current state. The opportunities to avoid such protectionist measures can be seized via intensive discussions and sound contact at the company and diplomatic levels in these economic regions. In these discussions, the sustainable promotion of the competitiveness of companies can certainly be demonstrated with best practice examples from the EU's internal market.

Standardisation plays a key role in the efforts at convergence. Harmonised standards are increasingly being revised in the international environment and fed back into European standards according to the Vienna and Dresden agreements<sup>1</sup>. These standards support EU rules, which are restricted to essential requirements for industrial products. Recourse to standards which can entail a presumption of conformity has only become possible through the NLF. That is why VDMA calls for greater use of standardisation for future EU legal acts or for their revision in order to promote the international convergence of legislation, too. A regular exchange at a higher level with lawmakers from important non-European economic regions can support these activities.

The on-going negotiation for a Transatlantic Trade and Investment Partnership (TTIP) are certainly an important initiative as the US market is the second most important sales market for the European capital goods sector. Differences between US and EU legislation are significant but are not insurmountable. A reciprocal recognition of regulations can be discarded because of these existing differences. Many EU standards are developed at the ISO level in the mechanical engineering sector for them then to be taken over by European standardisation bodies and national standardisation bodies in Europe. The adoption of these standards in the US should be encouraged and it has been possible to make good progress in this already.

- Supporting measures to improve the international convergence of legal requirements for the marketing of products
- Calling for use of international standardisation for the alignment of product requirements
- Adopting international standards nationally without deviations or inclusion of additional requirements
- Making the most of opportunities which current negotiations such as the Transatlantic Trade and Investment Partnership (TTIP) provide

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<sup>1</sup> The Vienna (1991) and Dresden (1996) agreements have been signed between the European standardisation CENELEC and IEC and international standardisation bodies CEN and ISO in order to increase the efficiency of standardisation at the European and international levels.

- Promote closer exchange at commercial and diplomatic levels to work towards a body of law on the basis of international standards

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