WORKING DOCUMENT

on the proposal for a Decision of the European Parliament and of the Council on a common framework for the marketing of products

Committee on the Internal Market and Consumer Protection


Rapporteur: Christel Schaldemose
Introduction

- Free movement of goods within the Single Market has been a major driver for competitiveness and economic growth in the EU. Community technical legislation ensuring the free circulation of products has provided not only for a more equal playing field for economic operators but also for high levels of product safety and consumer protection.

- However, the implementation of this technical legislation has experienced some dysfunctions. In particular, risks of distortion to competition due to differing practices by Member States in the designation of conformity assessment bodies and differing market surveillance infrastructures, and a lack of trust in - and understanding of - the CE conformity marking.

- The legislative measures included in the Internal Market package for Goods proposed by the Commission have therefore the objective to provide a common framework for improving the existing surveillance infrastructures and set out harmonised references for the development of future product related legislation.

- Of the three legislative measures proposed in the Goods package, two proposals\(^1\) are concerned with the harmonised area of goods ensuring the same minimum requirements to products in all the Member States and covering almost 75% of the intra-EU trade. One proposal\(^2\) concerns the non-harmonised area of goods, covering roughly 25% of intra-EU trade.

- Referring to the 'harmonised area', the Commission has taken the option of splitting its proposal in two separate legal texts:
  1. A Regulation setting out the overall framework that completes the existing legislation in relation to accreditation and market surveillance
  2. A Decision setting out the common elements for future legislations in the harmonised goods area, accompanied by guidelines for their implementation.

- Subject of this Working Document is the proposal for a Decision on a common framework for the marketing of products, bringing together harmonised legal instruments that could apply regardless of the legislative technique used (so called 'old' and 'new' approach legislation).

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\(^1\) COM (2007) 53 final: Proposal for a decision on a common framework for the marketing of products and COM (2007) 37 final: Proposal for a regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products.

\(^2\) COM (2007) 36 final: Proposal for a regulation laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC.
'Old' vs. 'New' Approach: In the harmonised area, two different legislative techniques can be used: 1) the 'new' approach where Community legislation limit itself to defining the essential requirements in relation to issues such as health, safety, consumer protection and the protection of the environment. The technical specifications, in the form of standards, allow products to meet the essential requirements needed, and 2) the 'old' approach where Community legislation sets out all the detailed technical requirements.

The new approach is widely recognised as a good example of a lighter and more flexible legislative technique and has through the adoption of only 25 directives succeeded in freeing the circulation of roughly 60% of products in the EU. Compared to this figure the old approach consists of around 600 directives and covers around 10% of products circulating in the EU.

Issues for discussion

Your Rapporteur would like to raise a number of preliminary issues which require close consideration:

Choice of legislative instrument

One key question is whether the proposal for a Decision is indeed the appropriate legislative instrument to ensure coherence in future sectoral legislation in the harmonised area. The Rapporteur would like to consider whether as many provisions as possible should be included in the Regulation instead to ensure their implementation and enforcement at the earliest possible stage.

Coherence with the Regulation proposal

In any case, the draft report on the proposed Decision needs to be closely coordinated with the draft report on the Regulation proposal setting out the requirements for accreditation and market surveillance relating to the marketing of products (COM(2007)0037). Your Rapporteur will need to assess whether there are overlaps or inconsistencies in terminology and definitions used in both texts.

Level of protection of public interests (Art. 2)

The proposed Decision suggests that future sectoral legislation in the harmonised area should be based on the 'new' approach method, and only if this approach (setting out only the essential requirements in the legislation) is not possible or 'not appropriate', the 'old' legislative approach (setting out detailed specifications in the legislation) may be used.

Your Rapporteur considers that the consequences for the democratic control needs to be further examined. The pre-conditions guiding the choice between 'new' or the 'old' approach therefore needs further examination, in particular what is meant in practice by 'not possible' or

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3 Council resolution of 7 May 1985 relating the new approach to technical harmonisation and standardisation. 25 new approach directives have been adopted so far.
'not appropriate'.

**Obligations of Economic Operators (Chapter 2)**

One of the key issues in this Decision proposal are the legal obligations and responsibilities for economic operators - be they manufacturers, authorised representatives, importers or distributors - when placing their products on the market, as well as their right to access the market. In this context, the key Internal Market principle of non-discrimination between economic operators has to be respected by legislation and fully implemented by Member States.

Furthermore, legislation imposing legal obligations on economic operators needs to ensure consistency with proportionality rules, i.e. it has to be ensured that administrative burdens on economic operators are proportionate to the goals to be reached.

**The role of the CE-marking (Art 17)**

By affixing the CE-marking to a product, the manufacturer declares that the product is in conformity with the essential requirements in the applicable 'new' approach Directives. A product bearing a CE marking benefits from free circulation within the Single Market. Recent studies have demonstrated that a large proportion of consumers, and less educated consumers in particular - have a poor understanding of the role and significance of the CE marking on the products they purchase: it may often be perceived as an indication of origin or as a proof that the product has been tested and approved by some kind of national supervising authority. Furthermore the CE mark has been criticised for lack of credibility, as products bearing the CE marking sometimes are not in compliance with the legislation.

Your Rapporteur will need to consider whether this Decision proposal is the most appropriate legislative instrument to ensure awareness raising about the CE mark. Furthermore it should be considered whether there is a need to reinforce the confidence and credibility of the CE mark.

**Notification of conformity assessment bodies (Chapter 4)**

The definition and role of the conformity assessment bodies needs to be scrutinized in detail and assessed in the context of the proposed Regulation.

**Notifying authorities (Art.19)**

It needs to be clarified whether the notifying authority, as defined in Art.19, should be an independent administrative body, or indeed part of the responsible Ministry, as there is a danger of multiplication of administrative layers to the detriment of the parties involved in the notification procedure, in particular SMEs.

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4 CE - A study of consumers and retailers knowledge of the CE mark, the Swedish Research Institute of Trade, 2004.
Requirements for notified bodies (Art.22)

The requirements applicable to the conformity assessment body have been set out in great detail in art.22, paragraphs 2-11. The consistency of this large amount of detailed requirements needs to be scrutinized, as well as the application of the principle of transparency.

Community safeguard procedures (Art.36-37)

This section deals with risk assessment and possible actions in the case of legally marketed products which might present a risk, in particular risks for the health and safety of persons or for issues of public interest protection. It will be imperative that both national and Community safeguard procedures are in place to guarantee consumers and citizens with uppermost protection levels. Member States should not be permitted to misuse these procedures to build up unnecessary market barriers in contrast with Internal Market principles.