

## Bundesverband der Deutschen Industrie e.V. (BDI), 6 November 2018

### Steering brief

#### Scene setter

You will participate in a panel discussion in an event entitled "Save the Single Market" on 6 November 2018. The event takes place from 13:00 to 15:00 at Thon Hotel EU, room "France", rue de la Loi 75 (*the invitation is in your file*).

The event is organised by the Federation of German Industries (*Bundesverband der Deutschen Industrie/BDI*) together with two other German associations:

- the Mechanical Engineering Industry Association (*Verband Deutscher Maschinen- und Anlagenbau/VDMA*) and
- the Electrical and Electronic Manufacturers' Association (*Zentralverband Elektrotechnik- und Elektronikindustrie/ZVEI*) and

two Austrian associations:

- the Association of Metal Technology Industries (*Fachverband Metalltechnische Industrie/FMTI*) and
- the Association for the Electrical and Electronics Industries (*Fachverband der Elektro- und Elektronikindustrie/FEEI*).

The aim is to discuss with the European Commission and the European Parliament the application and further development of the New Legislative Framework (NLF).

The organisers expect 80 high-level experts from European industrial, policy-making and academic circles. The event will be held in English. Simultaneous translation from English into German will be offered. The seating arrangement of the panel foresees six armchairs in a semicircle.

#### *Programme*

12:00	<b>Reception with lunch buffet</b>
13:00	<b>Welcome address</b> Dr Ulrich Schuh, Austrian Federal Ministry for Digital and Economic Affairs
13:10	<b>Keynote "Better Regulation in the European Single Market"</b> Carsten Bermig, Member of the Cabinet of Commissioner Bieńkowska
13:30	<b>Keynote "The New Legislative Framework from the Industry Perspective: A European Model of Success"</b> [Redacted], Austrian Steel Construction Company
13:45	<b>Panel Discussion</b> Yourself Member of the European Parliament (name to be confirmed) [Redacted] WS Heat Treatment Technology [Redacted] Danfoss Silicon Power GmbH Moderator: [Redacted] Mechanical Engineering Industry Association

(The CVs of the other panellists and speakers are in your file.)

The event organisers have requested that the following three major topics be addressed during your intervention in the panel discussion:

- **New Legislative Framework (NLF)/James Elliott Judgment;**
- **Harmonised Standards (HAS) Consultants;**
- **New format of standardisation requests.**

Industry is concerned that the Commission has drifted away from the essence of the New Legislative Framework. In their view, the Commission's policies make the European standardisation system unnecessarily bureaucratic. The legal requirements would generate unacceptable delays in requesting, producing, assessing and publishing harmonised standards. These shortcomings would make the European standardisation system less attractive to industrial stakeholders. This corresponds with critical remarks from the industry on the functioning of the European standardisation system at the June 2018 inter-institutional dialogue on standardisation. In the invitation, the organisers mention in particular the approach of the Legal Service.

*(Details about the positions of the organisers are in the background notes and in their position papers in your file.)*

The **New Legislative Framework** consists of:

- Regulation (EC) 765/2008 setting out the requirements for accreditation and the market surveillance of products;
- Regulation (EC) 764/2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another EU country;
- Decision 768/2008 on a common framework for the marketing of products, which includes reference provisions to be incorporated whenever product legislation is revised. In effect, it is a template for future product harmonisation legislation.

The package reinforces the application and enforcement of Internal Market legislation, as it:

- improves market surveillance rules to better protect both consumers and professionals from unsafe products, including those imported from outside the EU. In particular, this applies to procedures for products which can pose danger to health or the environment;
- sets clear and transparent rules for the accreditation of conformity assessment bodies;
- boosts the quality of and confidence in the conformity assessment of products through stronger and clearer rules on the requirements for the notification of conformity assessment bodies;
- clarifies the meaning of CE marking ("*Conformité Européenne*") and enhances its credibility; and establishes a common legal framework for industrial products in the form of a toolbox of measures for use in future legislation. This includes definitions of terms commonly used in product legislation, and procedures to allow future sectorial legislation to become more consistent and easier to implement.

In the "**James Elliott**" judgment of the Court of Justice of 27 October 2017, the Court upheld that the Commission, when it comes to the publication of voluntary harmonised standards in the Official Journal, is bound by an obligation to:

- supervise thoroughly the development process of such standards

- ensure their compliance with the requirements set out in the respective legislation/ mandates
- ensure their publication in the Official Journal.

The industry is concerned that the new approach will add unnecessary bureaucratic requirements, generate unacceptable delays in the development of harmonised standards, thus making the European standardisation system less attractive.

The **Federation of German Industries (BDI)** conveys the interests of German industry to the political decision-makers and provides support for businesses engaged in global competition. The federation is financed by the contributions from its member associations. It has 35 member associations and represents the interests of 100 000 businesses

The federation overall advocates for a **deepening of the Single Market and a strengthening of industry**. They estimate that fragmentation reduces the potential of the Single Market by EUR 651 billion to EUR 1.1 trillion. They argue that the EU needs to develop an industrial strategy and review all political measures to assess their impact on trade and industry.

The **Mechanical Engineering Industry Association (VDMA)** represents over 3 200 German and European mechanical engineering companies.

its social media campaign #europeworks to explain the benefits of the European Union and the Single Market to the general public. **The positions of the Association are in line with those of the Federation of German Industries. Both advocate also for open borders inside the Schengen area.** The Association also deplores that the revision of the Posted Workers Directive did not address sufficiently the bureaucratic burden of reporting obligations.

The **Electrical and Electronic Manufacturers' Association (ZVEI)** represents the economic, technological and environmental interests of medium-sized German electrical industry. Internal market legislation is essential to its members. **It supports further harmonisation.**

The **Association of Metal Technology Industries (FMTI)** represents all Austrian industrial enterprises active in mechanical and plant engineering, steel construction and metal ware production.

It is the backbone of Austrian industrial employment.

The **Association for the Electrical and Electronics Industries (FEEI)** represents in Austria's electrical and electronics industry.

Both Austrian associations argue that consumer protection prevails largely on the concerns of the industries. In the area of electronic components, investment in factories

and in starting the business constitutes a major cost driver. Restrictions on State subsidies make Europe less competitive as location for investment, especially compared to North America and Asia. They see the event "Save the Single Market" as a starting point for a still to be defined sequence of discussions on the New Legislative Framework.

### **Objectives**

- Underline the importance of the Single Market as one of the major achievements of European integration, but important legislative files are still to be concluded and a European perspective to enforcement is needed.
- Stress that the Commission highly values the New Legislative Framework and is committed to safeguarding it.
- Acknowledge that European standardisation faces a number of important challenges today, and underline that the Commission will continue the dialogue with industry and support the competitiveness of EU industries.

## **Line to take**

### **The Single Market and its challenges**

- This year, we have celebrated 25 years since the creation of the Single Market, which lifted numerous barriers and created new opportunities for citizens and businesses alike.
- The Single Market has become one of the major achievements of European integration, supporting EU industry's innovation and competitiveness.
- EU product rules cover a large share of manufactured products in the EU. These have a value of EUR 2 400 billion and are produced or distributed by some 5 million businesses.
- EU rules allow products to circulate freely across the Union while ensuring a high level of environmental and health protection and consumer safety.
- Overall, the general principles of the "New Approach" and the "New Legislative Framework" still stand.
- However, the Single Market also faces several challenges.
- We are living in a world increasingly affected by societal changes such as globalisation and digitalisation.
- For the past 3 years, the EU has been implementing a Digital Single Market Strategy to allow Europe to maximise the benefits while mitigating the challenges of the digital revolution.
- With more than 60 initiatives launched by the European Commission, a lot has been achieved in close cooperation with Member States and private stakeholders from industry, academia and civil society.
- We need this cooperation to continue as there are still important legislative files to conclude and further down at the level of implementation of the measures.
- Products and distribution chains across the EU are increasingly interlinked. Yet, national market surveillance authorities lack resources and are confined to their national territory. We need a European perspective to enforcement.
- Too often, investigations launched in one Member State end at the national border. To overcome this challenge, market surveillance must be consistent no matter whether the product is made outside or inside the EU, or whether it is bought online or offline.

### **The New Legislative Framework as an important Single Market tool and the role of the European standardisation system**

- The public-private partnership of the European standardisation system played an important role by becoming an essential trade facilitator and enabler for creation of jobs and growth in Europe.
- A central element in this success has been the development of the so-called New Legislative Framework in the field of the free movement of goods.
- The Commission highly values the New Legislative Framework as an important Single Market tool and is fully resolved to safeguard it and continue building on its achievements in a close cooperation with the industry.
- At the same time, we realise that European standardisation faces a number of important challenges today, one of them being to ensure appropriate implementation of relevant EU legislation as well as a smooth day-to-day functioning of the New Legislative Framework in a rapidly evolving global context.

- The Commission is aware of the concerns raised by the industry representatives in this respect.
- We are committed to continuing the dialogue with the industry in order to find a common understanding on the critical issues and to identify the best ways of addressing them.
- In this spirit, the Commission has already last year joined forces with the European Standardisation Organisations to agree on an **Action Plan** to tackle existing problems in the process of production of harmonised standards and their assessment and citation in the Official Journal by the Commission.
- This joint effort has already brought positive results with two thirds of the initially delayed standards already published and further work is under way.
- The Action Plan also provides for a new system of consultants who assist the Commission in the assessment of standards. This system started on 1 April 2018. These consultants are an important communication bridge between Standardisation Organisations and the Commission.
- The Commission will strive to ensure that any changes which might be necessary to ensure a robust and correct implementation of EU legislation will not adversely affect the functioning of the European standardisation system, but rather support and develop the competitiveness of EU industries.

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## Panel Questions

***1. The New Legislative Framework has been a successful model since the mid-80s. The EU has enacted about 30 directives and regulations under NLF principles. Does the NLF strengthen the competitiveness of European industry and, if so, what are the reasons for that?***

- First of all, we should recall that the Single market for goods is a success.
  - ⇒ In the last three decades, regulatory obstacles have been removed for around 80 % of industrial products through the adoption of common rules.
  - ⇒ We are talking about a value of €2,400 billion and 5 million businesses involved.
- Standardisation and the New Legislative Framework (NLF) have played a major role in this success, thanks to the partnership built with the European Standardisation bodies.
- European Standards create a level playing field. They stimulate innovation and decrease compliance costs. They have a positive influence on our economies.
  - ⇒ This is reflected in studies commissioned in Member States such as Germany, France and the UK, estimating that standards contribute between 0,3% and 0,9% to their Gross Domestic Product growth rate<sup>1</sup>.
  - ⇒ As one-third of European standards are developed at international level, they are an opportunity for European industry to gain leadership positions on innovative technologies.

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<sup>1</sup> E.g. DIN German Institute for Standardization (2011) "The Economic Benefits of standardisation"

- The New Legislative Framework makes the standardisation process swifter, more efficient and more flexible. Its contribution to the competitiveness of the European industry is evident.



**2. The NLF determines that the application of harmonized standards is voluntary. This principle has been deviated, for example, from the EU Construction Products Regulation. From the point of view of some stakeholders in standardization, this leads to distortions in the standardization system. Do you share this view?**

- The Commission shares the view of many stakeholders that the main strength of European standards lies in their voluntary nature.
- Nevertheless, we have to respect the fact that the legislator decided to make certain standards mandatory in the case of the Construction Products Regulation.
- This should be seen as an exception to the rule and the context is rather specific. [*The Construction Products Regulation does not harmonise construction **products** themselves, for instance their insulation performance, it harmonises the way their performance is to be assessed to ensure the **security of construction works** in general. This ensures a common technical language which has to be replicated in national construction legislation and public tenders, promoting ultimately an equal level playing field*].
- The New Legislative Framework in general is based on the voluntary use of European standards. This corresponds with a long term policy of the European Commission.

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***3. Harmonized standards must specify the essential requirements of the relevant EU directives or regulations. Standardization experts are often technical experts. In this respect, it makes sense to have an expert for verifying compliance with legal requirements in the standardization process (keyword: HAS Consultants). In the past, these two perspectives were sufficient to list a standard in the Official Journal. Why is that no longer the case in your view today?***

- It is crucial to remember that a standard adopted and referenced in the Official Journal gives a presumption of conformity for products and services with the requirements of Union harmonisation legislation.
- It is thus the responsibility of the Commission to carry out an ex-ante assessment of the draft harmonised standards. The aim is to check whether they meet the essential requirements set out in the legislation and to avoid a situation where the Parliament or the Council would object to them.
- To perform this task swiftly and efficiently, the Commission needs experts to assist it.
- As of April 2018, the Commission has been supported by the harmonised standards (HAS) consultants who will eventually perform the majority of the assessments.
- They follow the technical requirements set out in the legislation and the procedures agreed with the standardisation community.
- The Commission is convinced this makes the assessment process more predictable and will reduce delays.

**4. The EU Commission awards standardization mandates to the European standardization organizations. According to the wording of the European standardization regulation, a relatively open formulation of these orders is sufficient. In the area of machine safety, for example, there is only one such mandate, the elaboration of more than 750 harmonized standards is based on it. Serious problems have not yet emerged. Never change a running system. Why has the EU Commission changed the interpretation of the Standardization Regulation?**

[NB: According to Art. 10(1) of Standardisation Regulation "the Commission shall determine the requirements as to the content to be met by the requested document and a deadline for its adoption".]

- The reason of the new format of standardisation requests is the James Elliott ruling, which the Commission is under an obligation to implement.
- The aim of the new format is to simplify and accelerate the drafting process through, inter alia, increasing legal clarity.
- This should make such process more transparent and more predictable.
- The new format has not yet been finalised – the Commission is still trying to reach the highest possible level of consensus within the Committee on Standards.
- The priority of the Commission is to ensure that the new format of standardisation requests does not negatively impact their execution and preserves sufficient flexibility.

## Defensive points

### 1. NLF/JAMES ELLIOTT

***The Commission is trying to 'kill' the New Legislative Framework (NLF) through an intrusive and bureaucratic management of the development of standards in support of EU legislation and policies. Examples are frequent rejections to cite delivered harmonised standards in the Official Journal of the EU or plans to introduce a formal Commission decision that precedes the citation of harmonised standards in the Official Journal.***

- The Commission is fully committed to building on the success of the New Legislative Framework as an Internal Market tool. Nevertheless, the Commission must also adapt to changes introduced by the EU legislators in recent years, in particular the adoption of the Standardisation Regulation in 2012.
- The Commission also has to respect the case-law of the Court of Justice of the EU. The ruling in the "James Elliott" case opened up discussions on the exact scope of responsibilities of the Commission in developing and adopting harmonised standards. The Commission reviewed the whole process of producing harmonised standards from the adoption of a request to the final decision on publishing a reference to the standard in the Official Journal of the European Union.

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- The Commission is engaged in a regular dialogue with the industry to discuss all the steps planned by the Commission, consult all relevant stakeholders in the relevant fora, and reach the highest possible level of consensus.
- Moreover, if this dialogue identifies specific problems, the Commission addresses them in cooperation with the standardisers, like for example through the Action Plan on citation of harmonised standards.

***The James Elliott Judgment is limited to construction products and should not be applied to other areas of the New Legislative Framework.***

- The facts of the James Elliott case are specific to the sector of construction products. However, the Court does not make any reference to the fact that the construction sector is a specific case.
- On the contrary, the Court of Justice concluded that harmonised standards are part of EU law. Therefore, the ruling applies also to other areas of Union legislation with harmonised standards.

## 2. CONSULTANTS ON HARMONISED STANDARDS

***The newly introduced system of assessing draft standards by the Commission's consultants on harmonised standards (HAS Consultants) will delay the citation of standards in the Official Journal of the EU.***

- The new system of Harmonised Standards (HAS) Consultants aims at avoiding delays in the citation of the final standards in the Official Journal.
- In fact, the Commission's proposal of introducing a system of technical experts that support it in assessing draft standards is the result of an opinion of Member States in the Committee on Standards.
- Conducting the assessment throughout the drafting process of standards allows for identifying and solving issues at an early stage. These issues could otherwise prevent citation in the Official Journal at the stage of the final Commission assessment.
- It is still too early to know how successful the new system will be in facilitating timely citation of standards in the Official Journal. Preliminary data on the performance of the system are very promising. The Commission is constantly monitoring and will regularly evaluate the functioning of the HAS Consultants system.

***Will the system of Consultants on Harmonised Standards be fully compatible with the standardisation system, as requested by the industry?***

- The system of Consultants on Harmonised Standards (HAS Consultants) will be compatible with and integrated in the European standardisation system.
- Consultants on Harmonised Standards can participate in the meetings of the technical bodies in charge of drafting the standards.
- The Consultants are requested to be in continuous dialogue with these technical bodies. The assessment conducted by the Consultants is aligned to the internal processes and working deadlines of the European Standardisation Organisations to avoid any negative impact in the process of developing standards.

***How will the current backlog of non-cited standards (currently 200) be solved?***

- Thanks to the very good cooperation with the European Standardisation Organisations and the Action Plan, there has been very good progress already and the initial backlog has been reduced by two thirds.
- This being said, the Commission is of course doing all it can to avoid any backlog at all. But this has to be a joint effort: The better the Standardisation Organisations and the Commission work together, the faster there will be standards that are ready for citation. A very important element in this collaboration is the new consultants system that will serve as a bridge between the Standardisation Organisations and the Commission.

### 3. NEW FORMAT OF STANDARDISATION REQUESTS

***The new format of standardisation requests is prescriptive and procedurally burdensome. It is incompatible with the system of the New Legislative Framework, which requires that standardisation organisations should be flexible enough to react to latest market and scientific developments.***

- The Commission is finalising the wording of the proposed new format of standardisation requests. It is trying to reach the highest possible level of consensus by involving the stakeholders in the Committee on Standards.
- The Commission will ensure that the new format of standardisation requests does not negatively impact the execution of the standardisation requests and maintains the necessary degree of flexibility.
- Once agreed, the new format of standardisation requests will significantly simplify and speed-up the drafting process. In addition, it should increase the predictability and transparency of the drafting process and the legal clarity of the standardisation requests.



***The voice of the industry has not been sufficiently heard during the drafting process.***

- The final wording of the standardisation requests will be the result of an inclusive and transparent consultation process. The Commission seeks to reach a consensus with the relevant stakeholders. It has consulted the Member States, the European standardisation organisations, as well as industry representatives. Their views will be duly taken into account.
- The industry is consulted on all draft standardisation requests in the Standards Market Relevance Roundtable (SMARRT). The Commission set up this forum in 2016 within the framework of the Joint Initiative on Standardisation. The aim of SMARRT is to improve the exchange of information and dialogue with the industry.

#### 4. CYBERSECURITY

##### ***How is Cybersecurity taken into account in the context of the New Legislative Framework?***

- Trust and cybersecurity are key elements of a thriving Digital Single Market. To this end, the Cybersecurity Regulation proposes the introduction of a European Cybersecurity Certification Framework for products and services in the area of Information and Communication Technology.
- The proposed Cybersecurity Act follows the New Legislative Framework (NLF).
- On the cybersecurity of vehicles (in particular autonomous cars), the Commission proposed on 17 May 2018 in the new Vehicle Safety Regulation that protection against cyberattacks becomes part of the vehicle approval legislation. The proposal is being discussed between the Parliament and the Council. The legislative bodies intend to reach an agreement early next year.