

Position Paper

Comments on Commission proposal for a Regulation laying down rules and procedures for compliance with and enforcement of Union harmonization legislation on products COM (2017) 795

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Bitkom welcomes the Commission proposal for a Regulation laying down rules and procedures for compliance with and enforcement of Union harmonization legislation on products. In this regard, the proposal contains some good ideas such as extension of the Product Contact Points with respect to the Union harmonization legislation or to establish Union Product Compliance Network.

At the same time, Bitkom sees some need for improvement, especially regarding the following topics:

1. Reducing the number of market surveillance rules and maintenance of the coherence with sector-specific rules laid down in the relevant Union harmonization legislation

Based on the Commission's findings in COM(2013) 75 final, the current set of market surveillance rules is spread across the GPSD, Regulation 765/2008 and a range of sector-specific legislation (which is increasingly based on the reference provisions of Decision 768/2008).

This '3-tier' system causes problems for market surveillance authorities and economic operators alike and was expressly targeted for criticism by the European Parliament. Therefore, the earlier foreseen Regulation should produce a one tier system in which all of those rules are brought together in a single instrument, which may be complemented by sector-specific rules laid down in the relevant Union harmonization legislation. This goal should also be followed by the current proposal.

To reach this goal, Articles 15 – 29 of Regulation (EC) 765/2008 shall be deleted. Secondly, all the requirements and legal consequences already dealt with in sector-specific rules laid down in the relevant Union harmonization legislation (mostly based on Decision 768/2008) shall be deleted from this proposed legislation to avoid double regulation and incoherence. That applies in particular for the Declaration of conformity (Art. 5) and for activities of market surveillance authorities, if a product does not conform to

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applicable requirements under Union harmonization legislation (Art. 12 (3) (b)).

2. The current types of economic operators should be used to meet the current challenges and those in the future

Bitkom understands the need for a contact person established in the Union so that market surveillance authorities have someone to whom questions can be addressed (see recital 14). But what we do not understand, why the Commission wants to establish the new role of a person responsible for compliance information. In coherence with the current system, it would be more favorable to harmonize the sector-specific legislation by introducing the obligation of an authorized representative located within the Union in case the manufacturer is not established in the Union.

3. The extended powers of Market Surveillance Authorities should be carefully reviewed

Bitkom understands the need that Market Surveillance Authorities have effective powers to ensure compliance. However, some of the foreseen powers go far beyond the principle of proportionality stipulated in Article 14 paragraph 5. Furthermore, Article 14 paragraph 3 is not differentiating in which cases the described powers are applicable. It would be desirable if the legislator introduce different levels of enforcement powers in relation to the respective situations (e. g. limited to cases where the economic operators are notoriously unwilling to cooperate).

Moreover, the powers in Article 14 (3) (d), (e)(2), (e)(3) and (m) are a huge burden for manufacturer established in the EU and will not prevent the placing on the market of unsafe products on the EU market. Taking this into account and in the light of the principle of proportionality, Bitkom calls for deletion of measures according to Article 14 (3) (d), (e)(2), (e)(3) and (m).

4. The date of application [from 1 January 2020] is too ambiguous

The proposal will be adopted earliest in spring 2019 giving economic operators less than one year to implement the new obligations. To ensure a smooth transition Bitkom calls for a transition period of at least 2 years.

Attachment

- Further comments and proposals for amendments by Bitkom

Bitkom represents more than 2,500 companies of the digital economy, including 1,700 direct members. Through IT- and communication services only, our members generate a domestic turnover of 190 billion Euros per year, including 50 billion Euros in exports. Members of Bitkom employ more than 2 million people in Germany. Among the members are 1,000 small and medium-sized businesses, over 400 startups and nearly all global players. They offer a wide range of software technologies, IT-services, and telecommunications or internet services, produce hardware and consumer electronics, operate in the sectors of digital media or are in other ways affiliated to the digital economy. 80 percent of the companies' headquarters are located in Germany with an additional 8 percent each in the EU and the USA, as well as 4 percent in other regions. Bitkom supports the digital transformation of the German economy and advocates a broad participation in the digital progression of society. The aim is to establish Germany as globally leading location of the digital economy.