Danish technical paper on the revision of the New Legislative Framework

Summary

For many years the New Legislative Framework (NLF) has served as the common regulatory framework of products, making compliance with rules for businesses easy and further enhancing the integrating of the Single Market. However, over the years ad hoc and sector-specific adaptations of legislation regarding products have become a common part of the legislative process in order to address new challenges like the digital and green transitions. This approach has challenged the purpose of NLF, led to fragmentation of the Single Market, and an ever-complex legal framework for businesses to navigate which in turn place unnecessary burdens on businesses, reducing their competitiveness.

The NLF must consequently be adapted with specific aims to meet new challenges to ensure that businesses can harvest the advantages the NLF provides. NLF should be adjusted to:

- *Fix the responsibility-gap in global e-commerce to ensure a level-playing field*
- *Establish a common model for using the Digital Product Passport*
- *Support innovative business models while continuously adapting to the green and digital transition*
- *Adapting the NLF to regulation of software and in particular open source software*
- *Mitigate unnecessary deviations from the NLF when making new product legislation*

Adapting the legislative framework for products to new challenges

Since 2008, the New Legislative Framework (NLF) has ensured technological neutrality, consistency, and clarity of product legislation, reduced administrative burdens and eased enforcement. Over the years, ad hoc and sector-specific adaptations of legislation regarding products have become a common part of the legislative process in order to address new challenges like the digital and green transitions. However, this approach has led to an ever-complex legal framework for businesses to navigate, which in turn reduces their competitiveness. The green and digital transitions span multiple sectors and should therefore be reflected in the NLF instead of only in ad-hoc sector legislation. Unnecessary deviations from the NLF in new product legislation should moreover be avoided through clear obligations to explain the reasons behind any deviations from the NLF.

The NLF remains the foundation of the Single Market and has served as a well-functioning and fit-for-purpose framework of harmonised product regulation. It must therefore be adapted and reinforced with specific aims to meet future challenges, ensuring the safety, security, and compliance of products throughout their lifecycle. In doing so, we avoid unnecessary administrative burdens and aid businesses in their green and digital transitions fostering their resilience. The need for a revision of the NLF is necessary as the current out-dated status and ever-complex regulatory environment decrease the competitiveness of businesses.

We acknowledge that a revision of the NLF would include an extensive mapping of ad hoc sector legislation that is based on the NLF principles. The suggestions below should therefore not be viewed as exhaustive.

However, the suggested areas are the ones we identify as the most urgent and necessary to be addressed through a revision.

Fix the responsibility-gap in global e-commerce

Since the adoption of the NLF in 2008, consumer habits in the Single Market have changed significantly and the current product legislation is no longer fit for its purpose of ensuring the competitiveness of responsible companies and keeping consumers safe. Today, many goods are shipped directly to consumers from outside the EU. With limited obligations to ensure compliance, online marketplaces act as a gateway for third country sellers to place their products on the EU-markets from a distance without a traditional importer acting as intermediary. The lack of a responsible importer in the EU results in a compliance deficit as there is no economic operator responsible for the compliance of the given product. Although initiatives to solve the challenges have been taken in the Digital Services Act and gradually in the General Product Safety Regulation and the Ecodesign Regulation, the compliance deficit remains.

What should be done?
➢ Define and update the specific roles and obligations for the current actors in global e-commerce and specifically ensure that online marketplaces are defined as an economic operator with obligations to ensure product compliance.
➢ In cases where legal action in the EU is not possible towards other economic operators, actors in e-commerce should be made responsible as default.

Establish a common model for using the Digital Product Passport

The NLF was not designed with digital sharing of product information in mind. This leaves much untapped potential to reduce administrative burdens, support more efficient, risk-based market surveillance, and promote sustainability through enhanced transparency and traceability. However, the benefits are greatly dependent on digital information becoming common practice and should act as an enabler for new digital services and market surveillance tools. Making digital information mandatory would also be a necessary step towards ensuring structured data in a common format. By establishing a default common model of use for the Digital Product Passport and adopting it across related NLF-legislation, the impact would be maximized and fragmentation between existing and forthcoming initiatives could be avoided. Furthermore, the NLF should include the digital product information by default mode making it easier to update product information and provide it in various languages. Moreover, products with digital labels can move more freely across border as digital labels are easier to adjust to meet different requirements. Enabling a common model for using the Digital Product Passport as default will effectively promote the transition towards a sustainable, more circular, and digital economy.

By ensuring that horizontal provisions on digital product passports are coherently applied across legislations, and that the underlying digital infrastructure for sharing of product data is in place, Digital Product Passports can be used as an effective tool contributing to the reduction of burdens from reporting requirements for companies by 25 % without compromising business-sensitive information or the EU's green ambitions.

What should be done?
➢ Introducing the Digital Product Passport as the main tool to share and disclose product information across all new and revised product legislations.
➢ Introducing 'DPP-by-default' as part of the New Legislative Framework.

Support innovative business models while continuously adapting to the green and digital transition

Circular business models and economic operators are promoting the green transition through 'remanufacturing', 'refurbishment', 'upcycling', 'recycling', and 'repairs' of products. Digital business models are promoting digital transition through software updates and upgrades. Companies with these business models face regulatory barriers stemming from the NLF's traditional and outdated focus on 'making available on the market'. This approach makes more sustainable and digital practices unnecessarily difficult and does not foster innovation and circularity.

The NLF should moreover aid in the promotion of a market where products are kept safe, sustainable, and (cyber-)secure. Therefore, it should make a distinction between 'substantial modifications' and 'other modifications' that do not significantly impact the level of compliance or intended use of the product. Reassessing the entire product with every minor change is impractical. The NLF should develop a more dynamic, modular approach to conformity assessments, including reassessments, throughout the lifetime of a product. This would include new modules for simplified conformity assessment of substantial modifications, whether green or digital.

The revision of the NLF should take into account the pace of the digital transition by introducing mechanisms to continuously adapt the NLF. For example, regular revision cycles to incorporate new concepts introduced in new legislation. Thereby efficiently transposing these to other NLF-based legislation where appropriate. Such mechanisms will ensure faster roll out of new regulatory developments such as obligations for online marketplaces or the integration of the Digital Product Passport in the NLF.

What should be done?
  ➢ Investigate whether different lifecycle stages of products could be reflected in the NLF inspired by recent adopted sector legislation, such as the Ecodesign for Sustainable Products Regulation and AI Act.
  ➢ Distinction between 'substantial modifications' and 'other modifications' that do not significantly impact the level of compliance.
  ➢ Developing a more dynamic approach to conformity (re-)assessment throughout the lifetime of a product, including new module(s) for simplified conformity assessment of substantial modifications whether green or digital.
  ➢ Regular revision-cycles to incorporate new concepts introduced in new legislation and efficiently transposing these to other NLF-based legislation where appropriate.

Adapting the NLF to regulation of software and in particular open source software
During the recent legislative cycle, the Commission has taken steps to extend product regulations to software. This is evident in legislation such as the AI Act, the Product Liability Directive and the Cyber Resilience Act, which have introduced various solutions and requirements for software, including open source software. As software becomes an increasingly integral part of digital products and services in the European economy, it is essential to avoid fragmented regulatory approaches. Therefore, we believe it is necessary to include software provisions in the revision of the NLF to ensure its futureproofing. However, regulating software is a complex task, particularly for the open source community. Open source software (OSS) is a key building block of the digital economy, widely used by software developers in everything from phones and cars to refrigerators and cutting-edge AI. The current obligations of economic operators under the NLF do not fully account for the complexities of modern supply chains and the need for continuous compliance.

What should be done?

> ➢ Include new economic operators in the NLF by clearly defining the roles and responsibilities of open source actors, adapted to their nature and structure.

What to keep and reinforce

It is important not to change or try to fix what is not broken, as this could result in unnecessary administrative burdens and regulatory uncertainty for businesses. We should safeguard NLF as the common framework for product regulation.

Mitigate unnecessary deviations from the NLF when making new product legislation

The 'New Approach' introduced with NLF in 2008 is in essence to regulate only with technologically neutral essential requirements and rely on harmonized standards to set the level of compliance for presumption of conformity. This makes compliance easier and supports innovation.

To reduce potential further fragmentation of the Single Market, it is important that the co-legislators do not deviate from the approach of the NLF. In order to do so, clear obligations to explain the reasons behind any deviations from the NLF approach should be introduced. This should especially be the case for the Commission as the drafters of new legislation, but this approach should also be endorsed by the Council and the European Parliament. Mechanisms like these will ensure that regulation is only done in relation to technologically neutral essential requirements and rely on harmonized standards to set the level of compliance for presumption of conformity.

What should be done?

> ➢ We therefore encourage the Commission to promote an 'apply or explain' model for NLF-based product regulation for example by introducing clear obligations to explain the reasons behind any deviations from the NLF approach and reference provisions clearly in the recitals.