

NLF 2.0

Position Paper on the Planned Revision of the
New Legislative Framework

In Brief

New Legislative Framework 2.0

Initial Situation

Since its introduction in 2008, the “New Legislative Framework” (NLF) has been established and proven as a significant milestone in EU product legislation. Currently, it is being discussed whether it should be revised.

Bitkom Assessment

Bitkom sees no urgent need for a revision of the NLF. In the event that the European Commission considers a revision to be absolutely necessary, we have identified three essential elements of the NLF.

The Most Important Aspects

■ Core Principles

- The current principle of “placing on the market” should be maintained at all costs.
- The core principle of legislating essential requirements and recognising harmonised standards as the primary technical means to meet them must be kept.
- In a possible revision of the NLF, the basic principles of conformity assessment as laid out in the modules should remain.

■ Definitions in Various Harmonisation Acts

- The integrity and effectiveness of the NLF could be further strengthened by defining and consistently using all legally relevant terms.

■ Digital Opportunities of the NLF

- Digitising instruction manuals is environmentally and practically beneficial as they are easily accessible, updatable, and searchable. This can reduce costs and environmental impact.
- The final decision on how instructions for use are provided should be left to the manufacturer.
- The Digital Product Passport (DPP), which brings together and digitises product information, has the potential to gradually replace all printed paper documents.

Introduction

The “New Legislative Framework” (NLF) has been established and proven as a significant milestone in EU product legislation since its introduction in 2008. Bitkom considers it a key instrument for functioning, coherent and effective market access of products that comply with the protection of public interests embedded in essential requirements in the EU. Bitkom has positioned¹ itself accordingly during the evaluation² of the NLF. Our core statements at the time were confirmed by the results of the evaluation, by the final report of the “Fit for Future” platform.³

In the application of the NLF, the following principles have proven their worth:

- **Coherence:** The NLF helps to reduce differences in EU product legislation.
- **Harmonised standards:** The NLF specifies that the essential product requirements defined in EU legislation are technically specified in market-oriented harmonised standards; written by technical experts who are competent and collectively balanced.
- **Conformity assessment:** The NLF specifies the rules for conformity assessment, which checks whether a product complies with NLF-relevant EU regulations and standards. Emphasis should be placed on the presumption of conformity when harmonised standards are applied.
- **Technology-neutral orientation:** The NLF is designed in such a way that it does not rely on specific technologies and thus remains flexible enough to adapt to the constantly evolving technology landscapes.
- **Accreditation:** The NLF provides a uniform framework for the accreditation system in Europe.
- **Market surveillance:** The NLF defines the tasks and powers of market surveillance authorities to identify and, if necessary, withdraw non-compliant products from the market. In this way, the NLF ensures a level playing field among economic operators.

A fundamental principle of the NLF is to require that oversight is proportional to risk, and that the degree of oversight should be limited accordingly. Manufacturing companies are obliged to ensure that their products comply with the essential requirements of the applicable directives and regulations. After successful conformity assessment, this is confirmed by issuing the EU declaration of conformity and affixing the CE marking to the product.

¹ <https://www.bitkom.org/Bitkom/Publikationen/Rueckmeldung-zum-Fahrplan-Evaluierung-des-neuen-Rechtsrahmens-NLF> (in German)

² https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12654-Industrial-products-evaluation-of-the-new-legislative-framework_en

³ https://commission.europa.eu/document/download/4cf961a5-9a86-4e40-9920-186d6f281871_en?filename=Final%20opinion%202021_SBGR1_01%20NLF_fup.pdf

Bitkom sees no urgent need for a revision of the NLF. In the event that the EU Commission considers a revision to be necessary, the aspects described below in this position paper should be taken into account. In particular, the focus must be on maintaining the fundamental principles of the NLF and only making selective adjustments. The proven separation between the definition of stable essential requirements in directives and regulations on the one hand, and the presumption of conformity in the voluntary application of harmonised standards dynamically adapted to the state-of-the-art on the other, should be maintained.

Conformity Assessment

The NLF provides the essential framework for conformity assessment and market surveillance of products within the EU internal market. During a possible revision of the NLF, it is of utmost importance to maintain the fundamental and proven principles, such as the presumption of conformity.

In a revision of the NLF, a differentiated consideration for different products is necessary. Current developments in the circular economy suggest that products should be designed to be reusable, repairable, and recyclable. It is therefore necessary to clarify how remanufactured products are generally brought to market. From Bitkom's point of view, the current principle of "placing on the market" should be retained, as it forms the basis for the market access of products, regardless of whether a product is new, used, repaired, or remanufactured. In the case of a revision of the NLF, only the existing roles and the accompanying requirements for different economic operators need to be clarified when products are modified by third parties. In this case, the party concerned should conduct an appropriate risk assessment. The aim must be that repaired or remanufactured products can continue to be made available on the market.

From Bitkom's point of view, it is important to ensure that regulations can be realistically implemented. Bitkom therefore advocates that only aspects should be regulated that can also be effectively checked by national market surveillance authorities. This helps to ensure that the NLF does not become an obstacle, but rather promotes innovation and sustainability. It is crucial to strike a balance between sustainability, user interests and practical feasibility to keep the NLF as an effective tool in an ever-changing market. Furthermore, it is important to keep Europe competitive as a business location.

Definitions in Various Harmonisation Acts

Thanks to the current NLF, coherence in EU product legislation has been achieved so far. In general, however, we are increasingly seeing that incoming legislation introduces a large number of new terms without providing clear definitions. This can lead to uncertainty and different interpretations by economic operators and market surveillance authorities. At best, this makes it necessary to consult guidance published by the Commission to fill the gaps in the legal text. While this may sometimes be addressed by commission guidance documents, if such guidance is missing or inadequate, the uncertainty will persist. It is better to have a central source of

definitions for commonly used terms to ensure consistency. An example of this can be found in Delegated Regulation (EU) 2022/30 on the application of essential requirements, which lacks a clear definition for terms such as “indirect connection to the Internet” or “Internet”. Another example in this context is different definitions of what is considered a substantial change or refurbishment of products, as described in the ESPR. Inconsistent and unclear terminology and definitions can lead to increased costs and uncertainty. Bitkom believes that the integrity and effectiveness of the NLF needs to be further strengthened by defining and consistently using all legally relevant terms.

Digital Opportunities of the NLF

A careful implementation of digitisation in the context of the NLF will undoubtedly lead to a number of benefits, including barrier-free access, simplification, cost reductions and a reduction of the environmental footprint for both product manufacturers and consumers. In practice, digital technical documentation is already widely used. Economic operators and market surveillance authorities have increasingly turned to electronic communication, especially for requested technical documentation.

The complete digitisation of instructions for use has the potential to save a significant number of printed instructions, which currently have to be produced and translated in various EU languages. 93%⁴ of consumers now have access to digital content, which is why Bitkom considers more flexibility regarding the obligation to provide printed instructions for use to be timely. An additional advantage is that through digitalisation, users can be offered a sustainable collection of all product-relevant documents in internet portals for an indefinite period of time and a retrieval of the required documents takes place when they are needed by the consumer. Even safety-relevant instructions for products could also be offered via QR codes, which can be read by the user at any time via mobile devices.

Digitising instruction manuals not only offers environmental benefits, but also brings practical advantages. Digital instructions are not lost, can be updated and are easily searchable. Users have the option of easily downloading this content from the internet to store locally when needed and have it conveniently at hand at any time. However, these advantages of digital user documentation have so far only been very cautiously perceived by the EU Commission. Paper documentation of instructions must in most cases still accompany the product, which is not in line with the EU's efforts to reduce the environmental and carbon footprint.

From Bitkom's point of view, it is important to ensure that economic operators have the choice to provide product information either electronically or on paper, depending on whether it makes sense to do so. In view of today's possibilities, customer wishes and user-friendliness as well as environmental requirements, digitalisation is a preferable solution in most cases. Therefore, an obligation to provide paper

⁴ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Digital_economy_and_society_statistics_-_households_and_individuals

documentation (such as instructions for use) in addition to the electronic format should be abolished.

The final decision on how to provide instructions for use should be left to the manufacturer. Here, the risk assessment carried out by the manufacturer, which includes the different user groups, should play a leading role. In view of the constantly changing society and the technologically possible solutions, holistic approaches are needed, even if this requires a departure from approaches that have been in place for decades, to meet the changing demands of today's society.

As a long-term goal, the EU Commission is already aiming to introduce the Digital Product Passport, which would bring together and digitise product information and thereby gradually replace all printed paper documents. This would significantly reduce the administrative burden and further promote sustainability in a meaningful way. However, the extent to which technical details/documentation of the products must be included in the digital product passport still needs to be clarified, as access to confidential information must be restricted to state market surveillance authorities. Bitkom has published a detailed position on the DPP.⁵

⁵ <https://www.bitkom.org/EN/List-and-detailpages/Publications/Digital-Product-Passport-Position>

Bitkom represents more than 2,200 companies from the digital economy. They generate an annual turnover of 200 billion euros in Germany and employ more than 2 million people. Among the members are 1,000 small and medium-sized businesses, over 500 start-ups and almost all global players. These companies provide services in software, IT, telecommunications or the internet, produce hardware and consumer electronics, work in digital media, create content, operate platforms or are in other ways affiliated with the digital economy. 82 percent of the members' headquarters are in Germany, 8 percent in the rest of the EU and 7 percent in the US. 3 percent are from other regions of the world. Bitkom promotes and drives the digital transformation of the German economy and advocates for citizens to participate in and benefit from digitalisation. At the heart of Bitkom's concerns are ensuring a strong European digital policy and a fully integrated digital single market, as well as making Germany a key driver of digital change in Europe and the world. At the heart of Bitkom's concerns are ensuring a strong European digital policy and a fully integrated digital single market, as well as making Germany a key driver of digital change in Europe and the world.

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