

The Necessary Legal Approach to COTS Safety and COTS Liability in European Single Market

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Abstract. Nowadays, we can take the European single market for granted. With old barriers gone, people, goods, services and money move around Europe as freely as within one country. However, single market is not possible just sweeping away the technical, regulatory, legal, bureaucratic, idiomatic, cultural and protectionist barriers, but it has been essential to work hard to defend fair competition as a simple and efficient means of guaranteeing consumers a level of excellence in terms of the quality and price of products and services, and to grant consumer protection to improve the quality of life of all European citizens. In this paper, we analyse the impact of these areas EU legislation on the COTS industry, how the COTS single market is forming and what *safe COTS* and *COTS defective* mean and imply.

1 Introduction

1.1 Single Market in Europe

The European internal market is one of the essential cornerstones of the European Union. It makes a significant contribution to European prosperity by stimulating intra-Community trade, reducing its costs (elimination of customs formalities, fall in prices as a result of greater competition, etc.), increasing productivity and reinforcing requirements to market safe products. Harmonized national laws prevent competition distortion, facilitate the free movement of goods and allow the internal market to operate smoothly. As result, we have a coherent, high level of protection for the health and safety of persons in the EU against damage caused to health or property by a defective product.

Some Figures. At the moment, European Market is formed by 25 states and firms selling in the single market know they have unrestricted access to more than 450 million consumers. EU Gross National Product means 30% world and Per Capita Income raises 30,000 \$. There are 45,000 companies developing software and European software market is 124 billion \$ approximately.

Outline. The four freedoms of movement—for goods, services, people and capital—are underpinned by a range of supporting policies. Relating to freedom movement for goods, we can find:

- remove technical barriers to trade
- ensure that healthy competition is not hindered by anticompetitive practices on the part of companies or national authorities
- adopt policies designed to protect the specific interests of consumers
- reinforce the general requirement to market safe products and improve product safety measures
- ensure a high level of consumer protection against damage caused to health or property by a defective product
- eliminate unfair terms from contracts drawn up between a professional and a consumer
- strengthen consumer confidence in cross-border shopping by laying down a common set of minimum rules valid no matter where the goods are purchased

1.2 COTS as a Product

There is a legal definition to “product”. In European Single Market, product means all movables, with the exception of primary agricultural products and game, even though incorporated into another movable or into an immovable, including gas and electricity. So, COTS are considered products from European Law point of view. Certainly, there are some products that enjoy of specific regulation, but it’s not the case: Software products, developers and sellers have to observe product general regulation.

1.3 Securing Consumers' Safety

The advantages of the Single market in facilitating the availability in all member States of a wide range of products from all corners of the Union must be made available within a framework which assures citizens of the safety of those products and the possibility to claim compensation in case of damages caused by defective products. Consumer policy is a core component of the European Commission strategy objective of improving the quality of life of all EU citizens, who play a key economic and political role in society.

Investing consumers with a certain number of fundamental rights, the Member States have put in place policies designed to reduce inequalities, abolish unfair practices, promote safety and health and improve living standards in general. For the market to work effectively it should be competitive and deliver a fair deal for consumers, whose rights established at Europe level derive more benefit from the internal market.

2 COTS Safety

COTS software products are most often “black boxes” to the end users, who can only surmise the safety or security of the software by examining the system behavior.

The UK Health and Safety Executive (HSE) commissioned research from Adelard into how pre-existing software components may be safely used in safety-related programmable electronic systems in a way that complies with the IEC 61508 standard. Two reports resulted from this work: the first report summaries the evidence that is