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DISCUSSION PAPER

THE FREE MOVEMENT OF GOODS - HOW FAR WE ARE FROM THE EUROPEAN UNION

By far the most important trade partner of the Republic of Serbia is the European Union (EU). At the same time, full membership in the EU as soon as possible is set as a strategic goal of the Republic of Serbia. As the free movement of goods is one of the basic principles on which the existence of the EU is based, the harmonisation of legal regulations and procedures covered by the negotiating Chapter 1 is a necessary step towards achieving this strategic goal. Although many EU regulations have been transposed into the Serbian legal system, a large number of European standards have been adopted, and a significant number of conformity assessment bodies have been accredited, the impression remains that more efforts are needed to complete harmonisation in this chapter and to better explain the matter in this area to the real sector of the economy, primarily to small and medium enterprises.

In this regard, this paper aims to present the complex matter covered by the negotiating Chapter 1 in a clear manner, to map the path that products in regulatory terms should pass from production to the placement on the market, and to present perspectives for further development of this area. Accordingly, after the introduction, Sections 2 and 3 describe the issues related to concepts in Chapter 1 in terms of legal regulations and institutional frameworks. Section 4 provides an overview of the practical application of technical regulations and analysis of the current situation, while the final Section 5 presents conclusions and recommendations for improving the current situation in this area.

INTRODUCTION: NEGOTIATING CHAPTER 1 – THE FREE MOVEMENT OF GOODS AND INTEGRATION WITH THE EU MARKET

The free movement of goods is one of the basic principles on which the legal and economic order of the European Union (EU) is based. In line with this principle, candidate countries during the EU accession process must therefore take measures to ensure the free movement of goods. In practical terms, this means providing conditions for **trade without unnecessary technical barriers while respecting prescribed requirements concerning the quality and safety of products placed on the market.** Presented in this way, the principle of the free movement of goods enables the functioning of the EU single market.

The EU is, indisputably, the most important trade partner of the Republic of Serbia. This is evidenced by data that show that in 2019, 67% of the total export of Serbian products was to the territory of the EU, while at the same time 58% of imports to Serbia came from countries of the EU.[1] Therefore, **the full integration of the Serbian economy into the EU single market is a legitimate strategic goal that benefits businesses, consumers, and public administration bodies.** Thus, companies in Serbia will be able to produce, export and import goods without technical obstacles and with a minimal administrative burden, while at the same time consumers will be provided with a greater choice of goods with guarantees of quality and safety. State bodies will also be able to better, and more efficiently, supervise the application of prescribed legal regulations.

The legal framework for the principle that goods must be traded freely and without restrictions throughout the EU is given in Articles 34 to 36 of the Treaty on the Functioning of the EU (TFEU). In this way, individual members are prevented from applying legislation that unjustifiably restricts trade within the EU single market. **The harmonisation of national regulations and technical standards in member states ensures equal treatment for all products on the market, which increases competition and enables the general functioning of the EU single market.**

THE HORIZONTAL DIMENSION OF THE PRINCIPLE OF FREE MOVEMENT OF GOODS

2.1. Quality infrastructure

One of the basic preconditions for unhindered trade in safe and quality products is the existence of an efficient quality infrastructure system. Basically**, the quality infrastructure system is a network of institutions and organisations specialised in the fields of standardisation, metrology, accreditation, and conformity assessment with given requirements.** In addition to public and private institutions in these areas, the quality infrastructure system includes the legislative framework within which these institutions operate.

In the EU, this system is set up so that the extant legislation: determines the public health and basic safety requirements for products concerned; determines the obligations and requirements that economic operators need to meet; sets - in cases where the involvement of a third party is necessary - the required level of competence for conformity assessment bodies, as well as the control mechanisms for these bodies; determines the appropriate conformity assessment procedures to be applied and establishes appropriate market surveillance mechanisms to ensure that the entire legislative instrument operates efficiently and smoothly.[2] As the Republic of Serbia is in the process of harmonising its regulations and processes with

[1] The database of the Republic of Serbia's Bureau of Statistics is available at the link: https://data.stat.gov.rs/Home/Result/170301?languageCode=sr-Cyrl

[2] European Commission - The "Blue Guide" on the implementation of EU product rules 2016.

those currently in force in the EU, the quality infrastructure system is set up in a similar manner to that of the EU. In this regard, the following is a description of the individual elements of this system in the Republic of Serbia with references to the EU legislative framework.

Standardisation is a set of activities on the development and adoption of standards that are technical specifications issued by a national standardization body and with which compliance of products, processes and services is not required. In the Republic of Serbia, the Law on Standardisation[3] determines the principles and goals of the standardisation process and regulates the organisation and activity of the national body for standardisation, as well as the adoption, publication, withdrawal, and application of Serbian standards and related documents. The adoption of this law created the basis for the transposition of EU Regulation 1025/2012 on standardisation into Serbian legislation. This regulation contains the legal basis for the use of European standards for products and services, as well as the obligations of national standardisation bodies regarding the transparency of standardisation processes and the participation of stakeholders in European and national standardisation activities. In this regard, **in terms of the legislative framework, laws in the field of standardisation, together with metrology, accreditation and compliance assessment, represent a horizontal legal framework for quality infrastructure.**

The main goals of standardisation are the better protection of life, health and safety of people, animals, and plants, as well as of the environment while improving the competitiveness of the domestic economy through harmonisation with international standards. In Serbia, tasks related to standards and standardisation are performed by the Institute for Standardization of Serbia (ISS), the only national body for standardisation. As standards are a significant component of EU technical legislation and directly affect the export of Serbian products to the EU single market, harmonising Serbian standards with those in force in the EU is a priority in this area. According to the latest data from the Ministry of Economy, the official body in charge of harmonising regulations in this area, the ISS had already adopted about 99% of European standards and harmonised documents in the form of Serbian standards by October 2018.

Metrology is a scientific field that deals with the study of measures and measuring systems. The metrological system in the Republic of Serbia was established in accordance with the provisions from the International Organization for Legal Metrology (OIML D1 and OIML D9) and EU regulations related to metrology (primarily EU Directive 2014/32 on measuring instruments). In this regard, the Serbian legal framework in this area is determined by the Law on Metrology,[4] the Law on the Control of Precious Metal Articles,[5] and the Law on Time Calculation,[6] with the Directorate for Measures and Precious Metals (DMPM) functioning as the administrative body within the Ministry of Economy in charge of strategy and legislation in the field of metrology. The Law on Metrology, as the most important legal act in this area, regulates the organisation of metrology, legal measuring units and etalons of the Republic of Serbia, placing products on the market, the use of measuring instruments and assessment of their compliance, pre-packaged products, the validity of foreign marks and documents, supervision, as well as other issues of importance for metrology.

The main task that metrology should fulfil is to ensure the accuracy of measurement results for all participants in the trade of goods and services. The use of accurate measures that meet internationally recognised requirements and enable the obtaining of results comparable at the level of international systems of units ensures the reliability of measurements. Ensuring that scales are set correctly, for instance, increases consumer confidence in measurement results. In addition to protecting the interests of participants in sales relations, activities in the field of metrology are of great importance in industrial processes, laboratory and other testing with impacts on human safety and health, and the living and working environment.

[3] Law on Standardization (Official Gazette of RS No. 36/09 and 46/15).
[4] Law on Metrology (Official Gazette of RS No. 15/16).
[5] Law on Control of Precious Metal Articles (Official Gazette of RS No. 36/11 and 15/16).
[6] Law on Time Calculation (Official Gazette of RS No. 20/06).

Accreditation is a procedure in which a national accreditation body confirms whether a conformity assessment body (COB) is competent to perform tasks within its scope of work to national, international, and European requirements. The accreditation process, the position and work of the national accreditation body in the Republic of Serbia, as well as other issues of importance for accreditation are regulated by the Law on Accreditation.[7] This law is partially harmonised with EU Regulation 765/2008, which sets conditions for accreditation and market surveillance, and accordingly the Ministry of Economy (Sector for Product Quality and Safety) proposed amendments to this law will ensure full harmonisation with EU regulations. The Draft Law on Amendments to the Law on Accreditation is currently in parliamentary procedure.

In Serbia, the Accreditation Body of Serbia (ABS) is a national accreditation body with the task of assessing the competence and equipment of COBs in performing testing, calibration, inspection, and certification of products, management systems, and persons. The ABS is a non-profit organisation and, in order to avoid conflicts of interest, the ABS does not own or have any other interest in conformity assessment bodies. Although accreditation in Serbia is voluntary (unless legal obligations for particular sectors are prescribed), this procedure establishes trust in the market as a result of third-party verification of performed tests, control, and certification.

Product conformity assessment is a set of activities that determines whether certain products, services and processes comply with the requirements of regulations, standards, or other technical specifications. The legal basis for regulating technical requirements for products and enacting technical regulations, assessing the conformity of products with prescribed technical requirements, and issuing necessary documents on conformity and marks of conformity in the Republic of Serbia is the Law on Technical Requirements for Products and Conformity Assessment.[8]

Serbian legislation is partially harmonised with EU legislation (European Commission Decision (EC) 768/2008) in terms of product conformity marking. Technical regulations based on the Law on Technical Requirements for Products and Conformity Assessment as a rule regulate the affixing of the Serbian conformity mark,[9] and have a transitional provision that stipulates that the "CE" mark will be affixed to products manufactured in Serbia from the date of its accession to the EU or after the signing of the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) with the EU. In order to harmonise this regulation with EU one, the Ministry of Economy has drafted a new law on technical requirements for products and conformity assessments, which is currently in parliamentary procedure.

If prescribed by a technical regulation, conformity assessment may be either mandatory or voluntary, if the conformity of the product is assessed according to a standard. The issuance of a certificate of conformity and the affixing of a prescribed conformity mark, if so stated in the technical regulation, is the final result of the conformity assessment procedure.

2.2. Market surveillance

Market surveillance is a set of activities and measures taken to ensure that products comply with prescribed requirements, **thus ensuring that they do not endanger health, safety, or other aspects of public interest.**[10] The Law on Market Surveillance[11] was adopted as a legal act regulating the field of market

[7] Law on Accreditation (Official Gazette of RS No. 73/10).

[8] Law on Technical Requirements for Products and Conformity Assessment (Official Gazette of RS No. 36/09).

[9] More details about the Serbian mark of conformity and the "CE" mark can be found in Section 3.4, "National conformity marks – the '3A' and 'CE' marks".

[10] Market surveillance consists of activities carried out and measures taken by market surveillance authorities to ensure compliance of products with the requirements regulated by technical regulations adopted on the basis of the law governing

surveillance in the Republic of Serbia, overseeing market surveillance performed by competent authorities within the prescribed scope of work, general rules for conducting activities and undertaking market surveillance measures, cooperation between market surveillance authorities and customs authorities, exchange of information and communication with stakeholders, general principles for the affixing of conformity marks, planning and monitoring market surveillance activities, and coordination in this area. National authorities are responsible for market surveillance, ensuring that products meet prescribed conditions when they are placed on the market. In this regard, supervision may consist of document inspection and/or the physical inspection of goods, depending on the nature of the products themselves.

In addition to market surveillance as an activity that takes place at the national level, the European Commission (EC) has developed the RAPEX platform, which serves for the rapid exchange of information on dangerous products located in the territory of one or more EU member states. This system is set up so that national competent authorities can promptly notify the EC of the possible existence of dangerous products on the markets for which they are responsible. The next step in this chain is for the EC to send an equally rapid notification to all national authorities of other EU (and European Economic Area) members detailed information on the potentially dangerous product. At the same time, the EC publishes this information on its website so that consumers and other producers are aware of the warning. This provides a high level of consumer health and safety.

As a counterpart to the RAPEX system the NEPRO Plus system for fast exchange of information on unsafe products is active in the Republic of Serbia.[12] This platform is a database that contains information on unsafe products in the territory of the Republic of Serbia, as well as weekly reports on dangerous products in the EU through links to the RAPEX database. Although the NEPRO system was originally established more than 10 years ago, it seems that it is not well known among the general public, and it is necessary to further promote the existence and functioning of this tool among consumers and producers.

2.3. Notification

The adoption of new national technical regulations can be a potential barrier to trade. Therefore, reporting such activities (notifications) to the appropriate bodies is extremely important. By incorporating Directive EC 2015/1535 into the legal system of Serbia, it was established that each ministry, before the adoption of technical regulation, submits a draft of that regulation to the Ministry of Economy, which conducts the notification procedure. As a legal basis for the implementation of this notification procedure, the regulation on notification procedures and the manner of providing information on technical regulations, conformity assessments, and standards was adopted.[13]

The procedure for notifying new, or changing existing, technical regulations is the most important in the part of legal regulations that are not harmonised at the EU level. However, this procedure can be also important for products for which technical regulations are harmonised at the level of the entire EU, but only if they contain some amendment that is specific to a particular country. This reduces the possibility of unnecessary technical barriers and facilitates trade in goods.

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technical requirements for products and conformity assessments, harmonised with EU regulations and special laws. and regulations adopted on the basis of those laws, which regulate product requirements and conformity assessment, and which are harmonised with relevant regulations of the European Union and other regulations governing technical and other requirements for products, manners of handling, and use of products according to their purpose and manners of maintenance, to ensure that products do not endanger health, safety and other aspects of protection of the public interest; Art. Law on Market Surveillance ("Official Gazette of RS" No. 92/11).

[11] Law on Market Surveillance (Official Gazette of RS, No. 92/11).

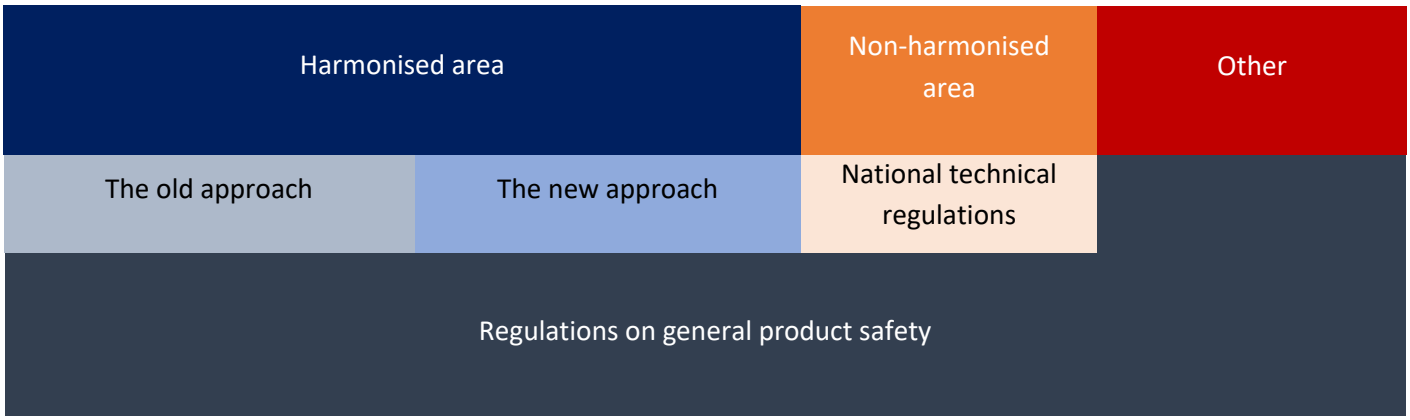
[12] At the time of the accession of the Republic of Serbia to the EU, the NEPRO system will become part of the RAPEX system.

[13] Decree on the application procedure and the manner of informing related to technical regulations, conformity assessment and standards (Official Gazette of RS No. 45/10 and 114/15).

TECHNICAL REGULATIONS – THE VERTICAL COMPONENT

In addition to the quality infrastructure as a system that serves to provide an adequate environment for the production and sale of goods on the national and EU markets, **technical regulations determine the specific path that products, in regulatory terms, should follow before being placed on the market.** In this regard, EU technical regulations can be vertically divided into two major groups: those that are harmonised and those that are not. This division is shown graphically in Figure 1, in which the harmonised regulations are shown approximately in proportion to the volume of the production of goods covered by technical regulations in a particular area.

Figure 1: Vertical division of technical regulations



Many products produced in the EU are subject to harmonised rules governing consumer protection, public health, and the environment. At the same time, **harmonised rules prevent the adoption of national regulatory acts potentially in conflict with harmonised regulations**, thus ensuring the free movement of goods throughout the EU without unnecessary technical barriers to trade. **Some products, however, are still produced in accordance with national regulations of member states - non-harmonised area.** The application of the principle of free movement of goods as defined in Articles 34-36 of the TFEU ensures that trade in goods within the EU is free from unjustified obstacles even when it is produced in accordance with national regulations instead of EU-wide regulations.

3.1. Harmonised area

Since the founding of the EU, the idea of harmonising technical regulations between its members has been a priority with a goal to remove barriers to trade and prevent the emergence of new ones in the future. In other words, the idea of harmonisation was to produce a situation in which the same regulations apply throughout the EU. Initially, directives passed by the EC were detailed and sector-specific, consequently their change and development over time became an extremely complicated process - the Old Approach. Therefore, the New Approach was introduced in 1985 to guide the formulation of directives and regulations, yet for certain product groups the Old Approach remains in force due to the sensitivity of the products it covers (such as motor vehicles, chemicals, detergents, and fertilizers, among others). Thus, today the harmonized area

consists of the technical regulations of the Old and New Approaches that are applied in parallel, all depending on the group of products being observed.

3.1.а) A new and global approach

In New Approach regulations, EU legislation is limited to defining essential requirements for health, safety, and environmental protection. At the same time, the technical specifications that a product needs to possess in order to meet the essential requirements of the initial technical regulation are set out in harmonised standards. To demonstrate compliance with these essential requirements, manufacturers may use standards or other technical specifications. In this way, the use of the standard remains voluntary.

However, products manufactured in accordance with harmonised standards have the advantage that **manufacturers can demonstrate compliance with the relevant essential requirements of applicable law through the principle of presumption of conformity, without additional procedures.** Also, in some cases, manufacturers may benefit from simplified conformity assessment procedures. In many cases, for example, the Declaration (document) of conformity drawn up by the manufacturer are easier to accept by public authorities (but also distributors in general) if based on existing legislation on product liability in terms of meeting technical requirements i.e. standards. As already mentioned, however, manufacturers can always choose to prove that they meet the requirements of initial technical regulations also through the application of some other technical specification. If this option is chosen, manufacturers should keep in mind that they will have to prove that the attached technical specification meets all the essential requirements that usually require verification by a third party - the conformity assessment body.

As a complementary part of the New Approach, Resolution on Global Approach 90/C10/01 was adopted in 1989 refers to conformity assessment and regulates this area in more detail. This resolution has, in the meantime, been replaced and supplemented by EC Decision 768/2008. Despite this change, the shared goal of these instruments is to develop common practices for conformity assessment across EU member states.

Although the New Approach has developed procedures that facilitate the entire process of proving conformity, it is only applicable to product groups for which the essential requirements can be clearly separated from the technical specifications due to the above-mentioned fact that the former are mandatory and the latter voluntary. Furthermore, another risk that this type of legislation entails is that the wide range of products covered by this approach must be sufficiently homogeneous as to be subject to common basic requirements. These are, among others, some reasons why it is impossible to adequately cover all technical regulations with the New Approach, even if it simplifies and facilitates the placement of goods on the market and their free trade.

3.1.б) The Old Approach

The Old Approach reflects the traditional manner in which EU member states have prescribed technical regulations, with a multitude of details aimed at ensuring public health and safety. This principle is conditioned, to a large extent, by the risk that this process carries and the importance of the details assessed, leaving little space for manufacturers to independently assess the fulfilment of requirements. This manner of defining regulations was transferred from national legislation to the EU level at the moment when the mutual harmonisation of technical regulations of member states began. Thus, today in some sectors, state administration bodies are still required to issue certificates/documents of conformity, with an ongoing need to involve public authorities in the process of approving products for use, sale, and trade in general. However, despite the fact that the adoption, amendment and modification of technical regulations written in

the spirit of the Old Approach is largely impractical, the use of such regulations in some areas remains in force due to the importance of the products concerned and the risks associated with them.

3.2. Non-harmonised areas

If it is the case that goods from a certain group of industrial products are not covered by regulations harmonised at the EU level, manufacturers apply national technical legislation and standards during their production and placing on the market. As not every product can be defined by a separate legal act, there are also products for which sectoral national regulations do not exist, in which case the General Product Safety Directive 2001/95 / EC (Other) applies.

In order to ensure that trade in the non-harmonised area runs smoothly, the principle of mutual recognition has been introduced in the national regulations of EU member states in accordance with EU Regulation 764/2008. This principle essentially guarantees that any product that is lawfully placed on the market of one EU member state can be sold in any other member state as well. This also applies if the product does not fully comply with the technical rules of that other member state.

Although the system described above is valid only for the territory of the EU, by accepting the acquis communautaire during the accession negotiation process, technical regulations in place in the Republic of Serbia as well should reflect the current system in the EU. In this regard, the competent ministry, the Ministry of Economy, as the coordinator of the harmonisation process in cooperation with other line ministries, is responsible for implementing all actions necessary for full harmonisation with the EU acquis.

3.3. Direct application of general product safety rules

If there are no harmonised technical regulations at the EU level or national regulations, the umbrella regulation governing product safety applies. On the territory of the Republic of Serbia, this regulation is the Law on General Product Safety,[14] while for the EU, it is the EC Directive on General Product Safety 2001/95/EC. Based on the provisions in these legal acts, the procedural course of placing a specific product on the market is provided, or references are made to relevant regulations that provide more information on this procedure.

3.4. National conformity marks – the “3A” and “CE” mark

For certain product groups, national technical regulations provide requirement for the affixing of a conformity mark on product, which is a confirmation that the product that has been put into use or placed on the market complies with the requirements of technical regulations.[15] The Decree on the manner of conducting conformity assessments, the content of the certificate of conformity, as well as the form, appearance and content of the mark of conformity[16] is currently in force in the Republic of Serbia and defines all the essential elements of the Serbian mark of conformity (the “3A” mark). On the other hand, in the EU, Regulation EC 765/2008 sets out the general principles for the conformity mark valid in the territory of the EU – the “CE” mark – and, together with Decision EC 768/2008, regulates its affixing.

The presence of a conformity mark on a product sold on the market indicates that the product meets health and safety requirements. By affixing this mark to the product, the manufacturer guarantees that all the

[14] Law on General Product Safety (Official Gazette of RS No. 41/09 and 77/19).

[15] Some of the products for which technical regulations provide requirement for the affixing of the conformity mark include low-voltage electrical equipment, machinery, elevators, personal protective equipment, gas appliances, pressure equipment, construction materials, and more.

[16] Decree on the manner of conducting conformity assessments, content of the certificate of conformity, as well as the form, appearance and content of the mark of conformity ("Official Gazette of RS", No. 98/09 and 23/17).

conditions prescribed by relevant technical regulations have been met. At the same time, it should be borne in mind that these **marks of conformity do not indicate the country of origin of the product or the quality mark**. If, for instance, a product is marked with the "CE" mark, it does not automatically mean that the product is manufactured in the EU but rather that the manufacturer of the product guarantees its compliance with the EU's technical requirements.

After conformity with relevant regulations is assessed, a conformity mark is placed on products. Such marks must be visibly, legibly, and indelibly affixed to products or to their information plate by embossing or imprinting. In cases where due to the nature of products it is not possible to affix marks in one of the two ways mentioned, conformity marks are to be affixed to products' packaging, if any, and/or to accompanying documents. In any case, if required by the technical regulation, conformity marks must be found on products or their packaging/documentation before they are put into use and/or on the market. Also, it is forbidden to put conformity marks on products for which technical regulations do not require them, as well as to include symbols that look like conformity marks in order to deceive customers.

PRACTICAL ASPECTS OF THE APPLICATION OF TECHNICAL REGULATIONS

4.1. How to get to the market?

The existence of a shaped legal system and an institutional framework is one side of the coin of free trade in goods nationally and internationally. The other side is how the whole process works in practice. Therefore, the typical path that products in terms of technical regulations need to follow in order to be placed on the market in the Republic of Serbia and/or the EU will be described below. A graphic presentation of this path is given in Annex 1 of this document.

Step 1. Defining the product

- The first important step that a manufacturer needs to take is to precisely define and describe its product well. Based on this, the manufacturer can determine which product group their specific product belongs to.

Step 2. Identification of the relevant legal act

- Based on the group of products to which its product belongs, the manufacturer should identify which legal act applies to the product, i.e. which technical regulation is applicable in a particular case. In some cases, depending on the industry, it is possible that several technical regulations are relevant for a certain product, so it is necessary that manufacturer pay attention to this fact when determining which regulations apply to its product.

When the relevant regulation that regulates a specific group of products is identified, the manufacturer starts a prescribed procedure in accordance with whether it the regulation is in a harmonised or non-harmonised area. As the procedure differs depending on the area in question, from the next step (Step 3), the differing cases in harmonised and non-harmonised areas will be presented.

Step 3. The case in harmonised areas

As mentioned above, in harmonised areas there are currently regulations which fall into two legal philosophies, the Old and the New Approach, depending on how the requirements that the product needs to

meet are defined. It is therefore important at this step that when a manufacturer determine that harmonised regulations apply to their product, they see which of the two mentioned legal philosophies includes the regulations relevant to their product. Accordingly, further steps include an “a” for product groups regulated by New Approach regulations, and a “b” for steps envisaged for product groups regulated by Old Approach regulations.

Step 4.a. *Requirements prescribed indirectly by technical regulations (New Approach)*

- In the case of technical regulations done in the New Approach style, only mandatory essential product safety requirements are defined, while a detailed description of technical requirements is provided in harmonised standards[17]. In addition to compliance with standards, manufacturers are given the opportunity to prove in some other way that their product meets the essential requirements of technical regulations. In this way, the voluntary use of the standard is not violated. Therefore, it is important for the manufacturer to be familiar with the legal philosophy behind a product’s technical regulations and to decide how to implement the next step, the conformity assessment.

Step 5.a. The conformity assessment procedure

- If the manufacturer decides to prove through harmonised standards that their product meets the requirements of technical regulations, they have the possibility of doing so based on the “presumption of conformity” instrument. In essence, this means that fulfilling the established standards confirms that the manufacturer meets all the essential requirements contained in initial technical regulations (including various directives, regulations, laws, and others).
- The procedure for conformity assessment and the manner of its implementation are defined in technical regulations. Specifically, this means that depending on the envisaged module,[18] conformity assessment bodies (COB) and/or manufacturers themselves conduct conformity assessment procedures. The procedures that are applied and how they are implemented are also defined by a specific module.
- If the module envisages the engagement of an appropriate COB, manufacturers should get in touch with laboratories that can perform product testing in the manner defined by the module. After finding the appropriate COB and submitting product samples, the manufacturer receives documents (such as certificates, test reports, and others) which are enclosed with a certificate of conformity, filled in based on test process documentation.

Step 6.a. Issuance of the certificate of conformity

- The result of a successfully conducted conformity assessment process is the issuance of a certificate of conformity. Again, depending on the intended module, either only the manufacturer is required to fill in this document or the COB is included as well. This document usually takes the form of a declaration of conformity, but specific technical regulations provide more detailed information on what it should look like and what elements it should contain.
- Regardless of whether the COB or only the manufacturer is required to fill in the certificate of conformity, it is up to the manufacturer to confirm the conformity of their product with relevant technical requirements and to take full responsibility for the correctness of the product. In this way, if by any chance an unsafe product is found on the market, the manufacturer is solely responsible for this situation. In this case, the manufacturer may initiate litigation against the COB that issued the documents on the basis of which the

[17] At the EU level, these are harmonised European standards, while at the level of the Republic of Serbia, they are harmonised Serbian standards.

[18] Specific conformity assessment procedures are divided into modules depending on the complexity and natures of products concerned.

manufacturer has drawn up the certificate of conformity and request compensation, if it is determined that there was a failure in the work of the COB.

Step 7.a. Affixing the conformity mark

- If provided by the relevant technical regulation, the manufacturer is obliged to affix an appropriate conformity mark confirming the safety of their product. If the product is placed on the Serbian market, then the Serbian conformity mark is affixed, and if the goal of the manufacturer is to enter the market of EU member states, it is obliged to affix the "CE" mark. There is a wide range of products for which there is an obligation to affix appropriate conformity marks.[19] Manufacturers should therefore be careful to perform proper analysis of relevant technical regulations for their product in order to meet this technical requirement before placing the product on the market.

Step 8.a. The certificate of conformity valid in another country

- Although perhaps too formal a criterion, certificates of conformity issued in Serbia as such cannot be used when placing products on the market in EU member states and vice versa. There is, nevertheless, a solution here: if a manufacturer has a valid certificate of conformity issued in Serbia, they can request recognition of their certificate, with the help of a COB accredited by the accreditation body of the specific EU member state in which they want to export the product. When the Serbian-made declaration is confirmed as valid in the territory of the EU member state, this document is submitted together with other documentation necessary for placing a specific product on the market.
- It is up to the manufacturer also possibility to choose an option to find COB in a particular EU member state that will provide them with product testing and the preparation of the documentation necessary to produce a declaration of conformity valid in the territory of that particular EU member state.[20] This procedure of recognition of a certificate of conformity goes together with the placing of the related conformity marks, and this procedure is valid in the opposite direction as well (when products from the EU are placed on the market in the Republic of Serbia).

Step 9.a. Placing products on the market

- With a valid declaration of conformity, the manufacturer can legally place the product on the market, where further market surveillance authorities conduct inspections to maintain fair conditions for all participants and ensure a high level of safety along with protection of human life and health, consumers, property, the environment, and other aspects of the public interest.

Step 4.b. Requirements prescribed directly by technical regulations (Old Approach)

In the case of technical regulations written according to the Old Approach, requirements to be met by the product are specified in detail in technical regulations itself. Therefore, the regulation itself defines which technical requirements must be met, as well as which procedures need to be carried out in order for the product to legally be placed on the market. Unlike in regulations written in the spirit of the New Approach, the emphasis here is on greater state control, as these regulations apply to sectors that include products that are

[19] The list of product groups for which it is necessary to affix a "CE" mark can be found at the following EC link https://ec.europa.eu/growth/single-market/ce-marking/manufacturers_en

[20] As trade in goods is free throughout the EU, the fulfilment of the conditions prescribed in one member state allows the possibility of placing products on the EU single market, ensuring the free flow of goods throughout the Union.

sensitive by nature, potentially causing serious negative impacts in cases of non-compliance with technical requirements.[21]

Step 5.b. Conformity assessment/compliance testing procedure

- As the technical regulations covering products from these categories define in detail the procedure for meeting the technical requirements in the regulation itself, as well as due to the differences caused by the specifics of each category, it is important to point out that manufacturer should be especially careful in studying regulations which concerns their product and carry out all procedures provided by this regulations. This is important because each of these regulations indicates how the proof of compliance with the technical requirements will be performed, and the conformity/compliance check procedure itself is specific to each of the product groups.
- In these cases, the state administration body often appears as the COB, which is an authorized body that performs the appropriate product testing on behalf of the ministry (or some other competent body). Without the appropriate documentation issued by this body, the conformity assessment procedure cannot be successfully completed, i.e. claim the results of the conformity of the tested product with the prescribed conditions and international standards.

Step 6.b. Issuance of the certificate of conformity/compliance

- Although assessment procedures differ somewhat from those described for products regulated by regulations in the spirit of the New Approach (primarily in terms of COB selection), the result of a successful conformity assessment/compliance test is confirmed also by appropriate document (certificate). The form and content of this document is defined in initial technical regulations as well as the period and manner in which this documentation should be submitted to the competent authority (usually the competent ministry). Due to the specificity of the products covered, it is possible that technical regulations may require the submission of other documents as well (such as safety data sheets or permits) before products can be placed on the market.

Step 7.b. Placing products on the market

- When a manufacturer has all the valid documentation, they can legally place the product on the market. Nevertheless, they are usually obliged to perform periodic internal controls of the products produced. For some groups of products, such as chemicals or fertilizers, registration in appropriate registers is obligatory before products are placed on the market.[22]

Step 3. – The case in non-harmonised areas

In cases where there are no harmonised regulations at the EU level, national technical regulations apply. In the EU, in order to ensure that there are no barriers to trade despite a lack of harmonised regulations, the **principle of mutual recognition** has been introduced. This concept enables a product not covered by harmonised technical regulations, but that has met all the requirements of national regulations of an EU member state, to be placed on the market of that member state as well as the territory of the entire EU without additional requirements. This principle also applies in the event that the product does not fully comply with the technical regulations in force in EU member states. Another instrument which aims to remove

[21] As already mentioned, these are, for example, products in the categories of motor vehicles, chemicals, detergents, fertilizers, and others.

[22] Registers include, for instance, the Register of Chemicals for chemicals, and the Register of Plant Nutrients and Soil Enhancers for fertilizers.

barriers to trade in non-harmonised area of regulation is the procedure for notifying technical processes described in the previous section.

Step 4. Requirements prescribed directly by technical regulations

- In the case of product groups in non-harmonised areas of technical legislation in the Republic of Serbia, technical requirements are usually defined by regulations issued by competent ministries. The umbrella law which provides the framework for these ordinances is the Law on Technical Requirements for Products and Conformity Assessment.[23]

Step 5. Conformity assessment/compliance testing/compliance assessment procedures

- Technical regulations (ordinances) themselves describe manners of determining the fulfilment of requirements, including procedures of conformity assessment. Depending on the product group concerned, technical requirements may be described in regulations themselves or may refer to standards that provide detailed technical specifications that products must meet. Therefore, in the case of products for which there are no harmonised regulations at the EU level, national technical legislation is relevant for the national market. When the Republic of Serbia becomes a member of the EU, through the principle of mutual recognition a product produced according to Serbian technical regulations will be able to be marketed throughout the EU without additional requirements. Until then, however, manufacturers from the Republic of Serbia will have to respect national technical legislation in the EU member states in which they want to export their products, and thus carry out procedures provided by the laws of those member states.

Step 6. Issuance of the certificate of conformity/compliance

- As the process of harmonisation of the regulations of the Republic of Serbia with those of the EU is currently underway, in rulebooks, primarily for those adopted after the introduction of the Law on Technical Requirements for Products and Conformity Assessment in 2009, a rule has been introduced that in regulation itself it is described the manner for conformity assessments and elements to be contained in certificates of conformity. For regulations adopted before 2009 that are still in force, as well as for regulations that are not covered under EU legislation, the situation is more complicated, requiring manufacturers to find relevant laws referred to in the rulebook in order to find the rules and necessary documentation/procedures required to place goods on the market.

Step 7. Affixing the conformity mark

- If the rulebook prescribes that a conformity mark be affixed for the national market, then the manufacturer must comply with this action in order for their product to be placed on the market of the Republic of Serbia. If the manufacturer decides to export to one of the EU member states, affixing the “CE” mark is not necessary because this mark applies only to products covered by regulations harmonised in the EU.

Step 8. Placing products on the market

- When the Republic of Serbia becomes a full member of the EU, there will be no need to duplicate the conformity assessment and verification procedure, but with the help of the principle of mutual recognition, manufacturers will be able to place their products on the market in Serbia as well as other member states. If, therefore, a product has documentation that is valid in the territory of the Republic of

[23] Law on Technical Requirements for Products and Conformity Assessment (Official Gazette of RS No. 36/09).

Serbia as an EU member, the product can be placed on the market in the territory of the entire EU without additional barriers.

4.2. The current state of affairs

The economy of the Republic of Serbia is deeply connected with the economy of the EU. Considering that data show that about two-thirds of the trade of the Republic of Serbia is performed with the EU, there is already a significant level of integration of the Serbian economy into that of the EU. In order to benefit as much as possible from this integration however, adequate legal regulations are also required. In other words, in order for producers to be able to take full advantage of the benefits that come from the connection between the two economies, it is necessary, first of all, for technical regulations to be harmonised with those currently valid in the EU. In this way, the procedure of placing products from the Republic of Serbia on the market in the territory of the EU is facilitated, improving access to a market of 450 million consumers and positively affecting Serbian exports. Therefore, even closer integration with the EU single market and greater utilisation of already existing potential are strategic goals that should be pursued in order to support primarily businesses with production located in the Republic of Serbia.

As stated, an integral part of this whole process is the harmonisation of regulations that determine technical requirements for products sold on the EU market. In order for products produced in the Republic of Serbia to be treated like those produced in the EU, it is necessary that the technical regulations in force in the Republic of Serbia are fully harmonised with those valid of the EU. The harmonisation of legislation covered by Chapter 1 has begun, but there are still inconsistencies that create problems for the real sector of the economy, i.e. manufacturers who want to export their products to the EU market with as few administrative procedures as possible. The biggest problems that arise during the transposition of technical regulations into Serbian legislation are the relevant ministry's lack of administrative staff as well as the setting of realistic deadlines for the implementation of the mentioned regulations.[24] Although these are real problems faced by state authorities that require serious reform and improvements that cannot be implemented in the short term, it is necessary to make legal harmonisation a priority in order to improve the competitiveness of Serbian products in the EU single market.

CONCLUSION: THE PERSPECTIVE OF FULL MARKET INTEGRATION

Chapter 1 in the negotiation process is extremely complex due to the large number of sectoral and technical regulations that need to be transposed and implemented in the legal system of the Republic of Serbia. At the same time, the free movement of goods as envisaged by this chapter is at the very core of EU integration through the existence and functioning of the single market. The bodies of the Republic of Serbia in charge of harmonising legal regulations with those of the EU in the field of the free trade in goods have achieved notable results: a number of regulations have been harmonised with the EU acquis, the ISS has adopted almost all European standards, and the ABS has registered nearly 700 conformity assessment bodies (COB). However, detailed action plans for remaining issues in this process have not yet been agreed upon with the EC. Also, monitoring the implementation of these action plans remains an open issue. **It is therefore necessary for the Ministry of Economy of the Republic of Serbia and EC representatives to make further efforts in mapping a clear plan, setting specific deadlines, and developing a system for monitoring progress.**

[24] These insights were obtained at the Sessions of the Working Group of the National Convention on the EU for Chapter 1 and in conversation with representatives of the Ministry of Economy.

What makes the process of the harmonisation of regulations in Chapter 1 even more complex is the fact that this subject is extremely dynamic in nature. In other words, we are witness to the fact that, in the field of technical regulations at the EU level, regulations are constantly being changed and improved, caused primarily by constant technical and technological progress. Related to this is the recent example of the adoption of a set of new legal acts at the EU level regarding motor vehicles, which should, as a rule, be transposed into the Serbian legal system. The problem that arises in this particular example is the paradoxical situation that the Republic of Serbia is still waiting for the adoption of the past EU regulations, which are currently outdated. More specifically, while preparatory actions for the transposition of EU regulations in this area into Serbian legislation have begun, at the EU level these regulations have already been changed. Such situations go to show that the EU is a moving target that needs to be constantly monitored, with adaption to changes often required. A major problem facing the Republic of Serbia is the lack of human capacity in the form of experts who can effectively improve the process of transposing current EU regulations into Serbian legislation, as well as keep abreast of current changes in the EU and react promptly to them. Therefore**, improving human capacities in state bodies directly working on harmonisation with the EU acquis should become a priority in the coming period.**

In addition to improving the internal capacities of the competent ministry and institutions dealing with this issue, it is necessary to improve communication with the competent Directorate of the EC - DG GROW. Namely, as a result of interviews with direct participants in the negotiation process for Chapter 1, they noted that communication with EC representatives is often insufficiently clear, and emphasised the often long periods between sending questions/proposals and receiving specific answers from the other side. As already mentioned, the subjects covered by Chapter 1 are dynamic, so it is **necessary, to ensure, through joint efforts of the two institutions, to ensure clearer and faster communication between DG GROW and the Ministry of Economy, which means shorter deadlines for responses from the administration in Brussels.**

When we take into account that the institutions that make up the quality infrastructure system in the Republic of Serbia are among themselves at a very different level of development and equipment, it can be concluded that the current situation is not satisfactory. Namely, the capacities that exist, for example, in the Directorate for Measures and Precious Metals are more limited than those in the Accreditation Body of Serbia, which themselves are not even close to those of the Institute for Standardisation, which is considered a good example from practice. In order for the quality infrastructure system to function well and to provide adequate support for trade in safe and quality products in the Republic of Serbia, **targeted investment in the human and technical capacities of institutions within this system is necessary, requiring the depoliticization of management positions in relevant institutions and the implementation of reforms for those which have functioned poorly.**

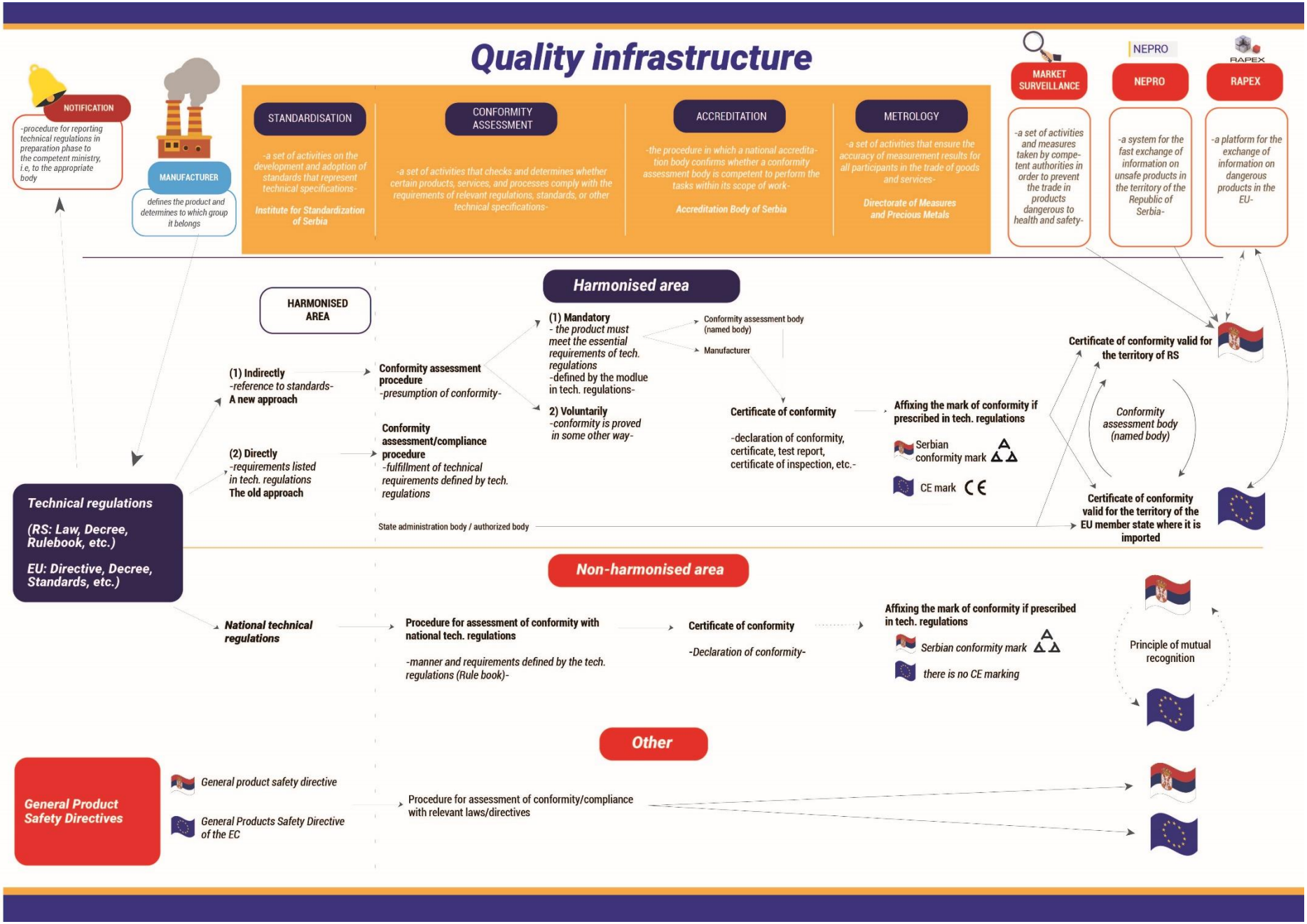
In addition to these institutional changes, it is useful to review, in this part of the paper, the practical side of the matter covered by Chapter 1. A portal called Tehnis is a service that is available to producers and acts as an aid in legal-procedural matter.[25] This portal aims to notify businesses about new information in this area, but also to provide information about the quality infrastructure system as well as technical regulations that products must meet before they are placed on the market in the Republic of Serbia. In this regard, Tehnis is a useful tool that provides assistance to businesses (but also other interested individuals) in informing about administrative procedures and processes related to product safety.

The main objections to the work of this portal include its passivity and its use of technical language that is not understood by businesspeople. **The Tehnis portal should therefore work towards an active component, involving a certain number of specialists who could focus on actively providing assistance to entrepreneurs.** This primarily applies to small and medium-sized enterprises, which are often unable to hire

[25] https://tehnis.privreda.gov.rs/sr/o-tehnisu.html

external consulting firms in order to successfully complete administrative procedures, especially in cases where such enterprises have an aspiration to export to the EU market. The adding of such a dimension to the Tehnis system would enable a wider circle of businesspeople to navigate complex technical regulations and thus reduce costs, as well as induce the easier and faster placement of products on the market in the territory of the Republic of Serbia and the EU. In this regard, the opportunity provided by the introduction of structural reform Product Info in the of Economic Reforms Program for the period from 2020 to 2022 should be used to reform and adapt the Tehnis portal to the real needs of the economy, especially for the SME sector.

Annex 1: A graphic presentation of the path that products in terms of technical regulations need to follow in order to be placed on the market in the Republic of Serbia and/or the EU



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