

Mutual recognition and transport

The role of SMR in a global energy transition policy

Denis PHILIPPE

Lawyer at Brussels and Luxembourg Bar
Professor at the UCLouvain and ICHEC
Invited professor at the University of Paris
WEST

Violette HOSTENS

Lawyer at Brussels Bar



Introduction



I

Mutual Recognition



EU law : TFEU, case law & Regulation 2019/515
Technical barriers to trade under the WTO rules

II

Transport



Separated fuel
Factory fuel

Conclusion



The legal framework of SMRs

European preliminary study:



Conventions
on nuclear
safety

Conventions
on nuclear
liability

Conventions
on nuclear
safeguards
and non-
proliferation

Conventions
on nuclear
security

Mutual recognition

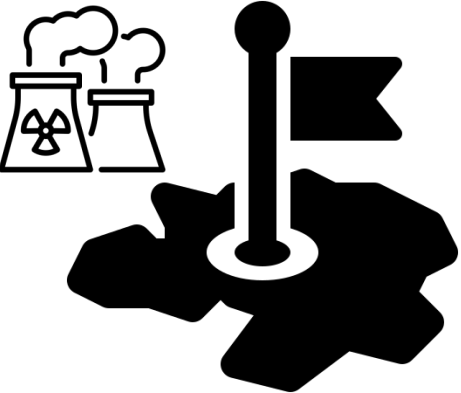
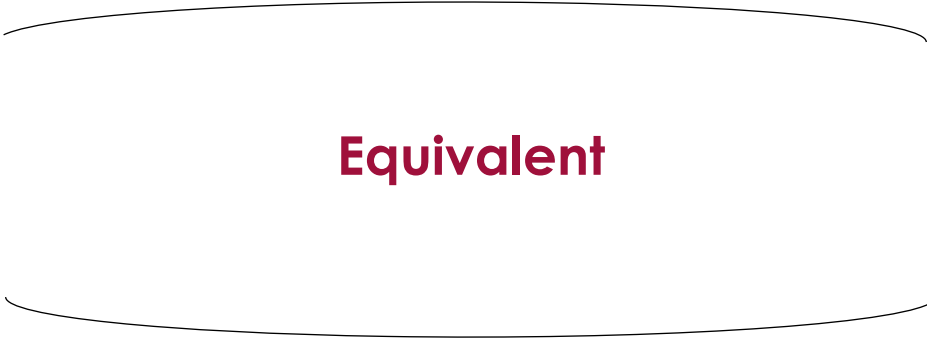
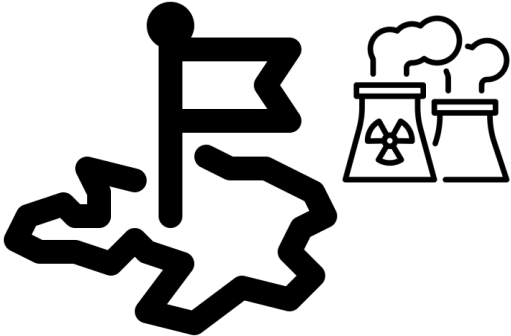
Advantage of SMRs
(standard)



divergences

Currently design and technical characteristics vary substantially from one country to another

Mutual recognition



I. EU LAW

Article 34 TFEU: « *Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States*”.

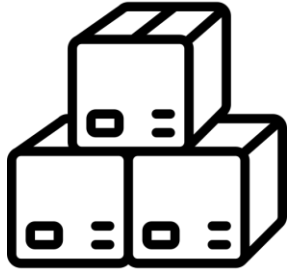
Article 36 TFEU: « *The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States*”.

Cassis de Dijon case



“In the absence of common rules on the production and marketing of alcohol, it is for the Member States to regulate, each within its own territory, all matters relating to the production and marketing of alcohol and spirit drinks [...] There are no valid grounds for preventing alcoholic beverages, provided they are lawfully produced and marketed in one of the Member States, from being introduced into any other Member State”.

Regulation (EU) 2019/515 on mutual recognition



Goods of any type that are lawfully marketed in another Member State

Administrative decisions that have been taken or are to be taken by a competent authority of a Member State of destination in relation to any such goods



“Goods of any type that are lawfully marketed in another Member State”

Products that can be valued in money and capable of forming the subject of commercial transactions, ...

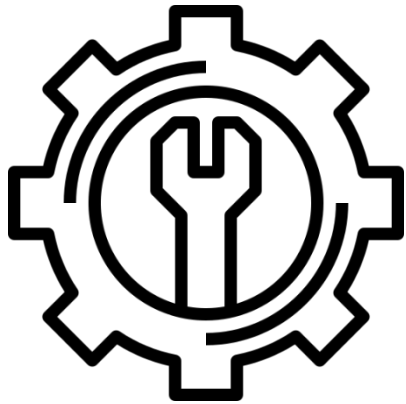


...that must comply with the relevant rules applicable in the Member State of origin and...



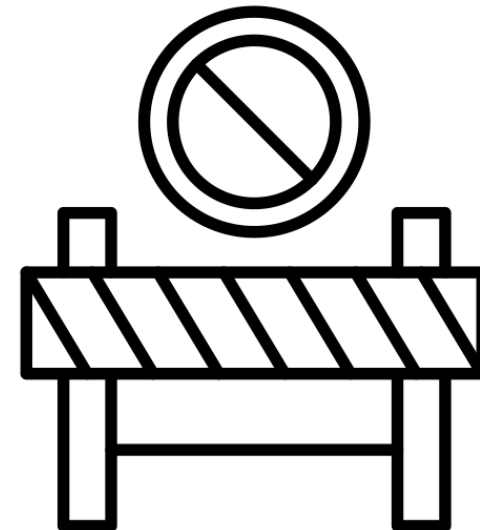
...that are made available to end users

“Administrative decisions that have been taken or are to be taken by a competent authority of a Member State of destination in relation to any such goods”

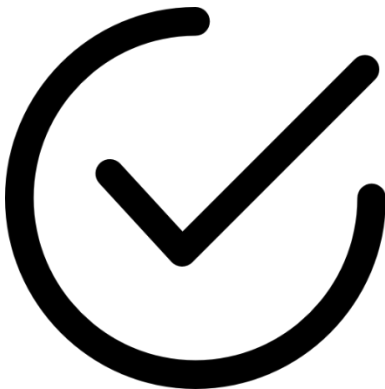


The basis for the administrative decision is a national technical rule

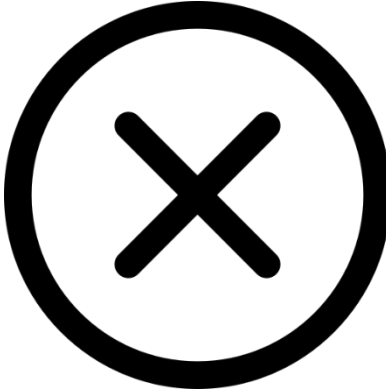
Its effect is to restrict or deny market access in the Member State of destination



Hamonization of standards



More flexible standards

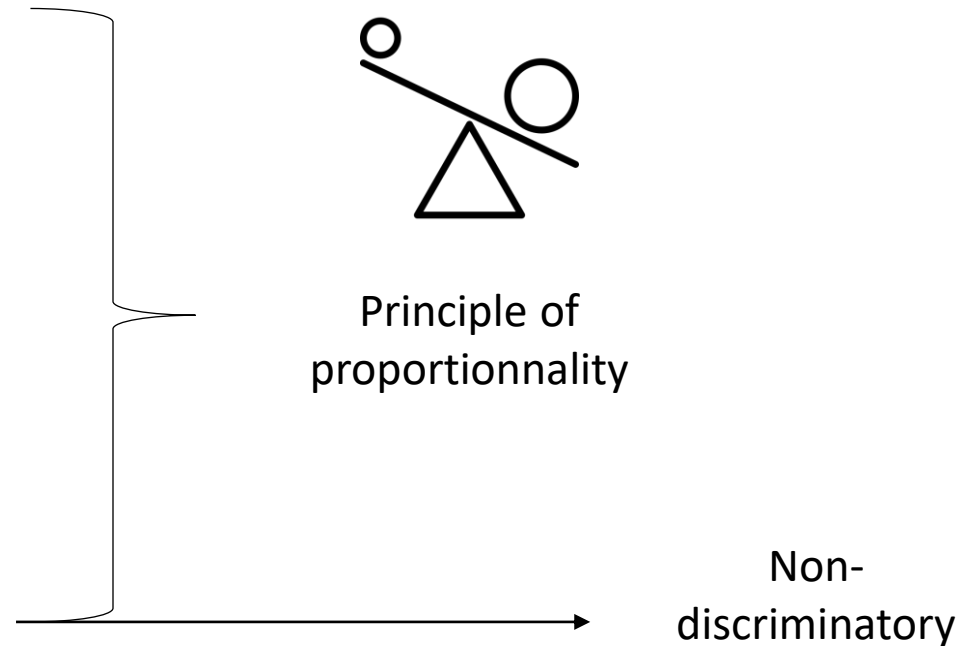


Less safe standards

Reasons of public interest

Article 36 TFEU

- Public morality, public policy or **public security**
- Protection of health and life of humans, animals or plants
- Protection of national treasures possessing artistic, historic or archaeological value
- Protection of industrial and commercial property
- **Other**



Prior authorization

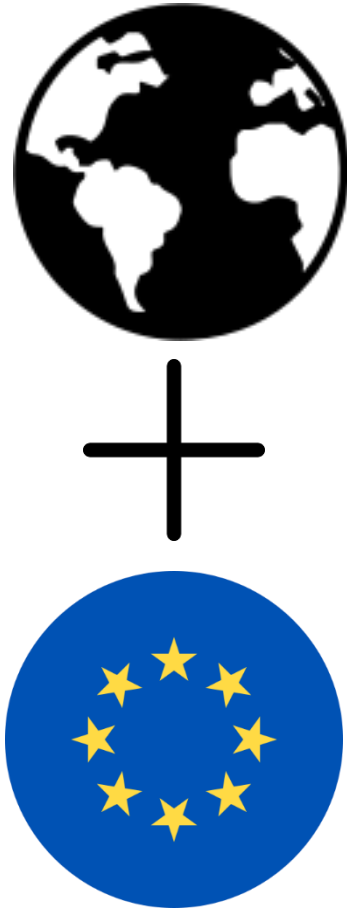


The Convention on Nuclear Safety: *a system of licensing with regard to nuclear installations and the prohibition of the operation of a nuclear installation without a licence.*



Licensing by mutual recognition?

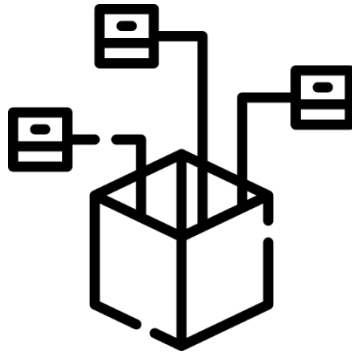
Technical barriers to trade under the WTO rules



“no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal, and plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate”

Members' regulatory flexibility is limited by the requirement that technical regulations “are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade”.

Technical regulations and standards / Conformity assessment procedures

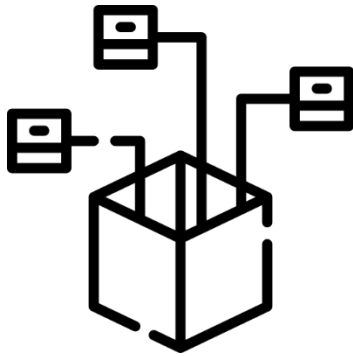


Technical regulations and standards set out specific characteristics of a product

Conformity assessment procedures are technical procedures — such as testing, verification, inspection and certification — which confirm that products fulfil the requirements laid down in regulations and standards.

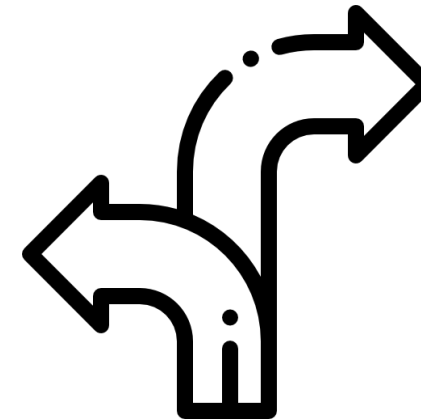


Avoidance of unnecessary obstacles to trade



Specifying, whenever appropriate, product regulations in terms of performance rather than descriptive characteristics

If the circumstances that led a country to adopt technical regulations no longer exist or have changed, or the policy objective pursued can be achieved by an alternative less trade-restrictive measure, they should not be maintained.

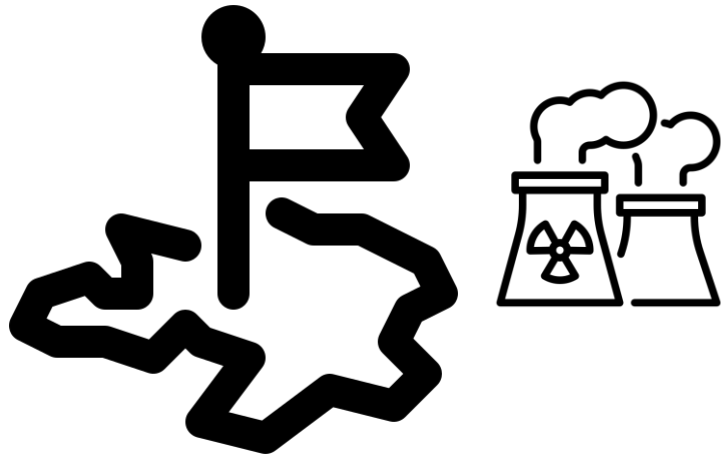


GATT's Most favoured nation treatment and national treatment

Article 2.1 of the GATT

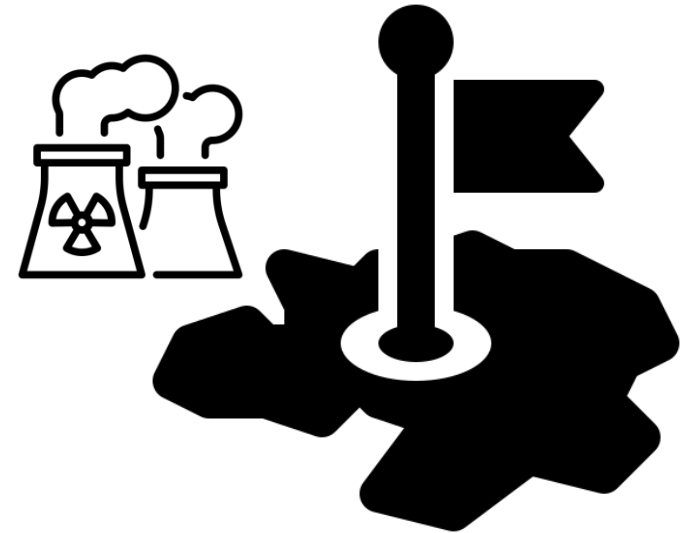
*“in respect of their technical regulations, products imported from the territory of any Member be accorded **treatment no less favourable** than that accorded to like **products of national origin** and to **like products originating in any other country**”*

Equivalence and mutual recognition

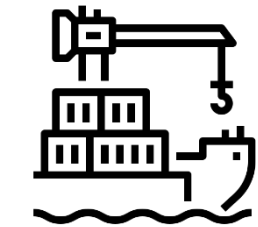
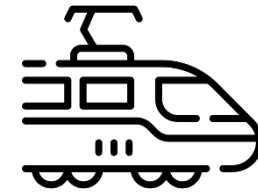
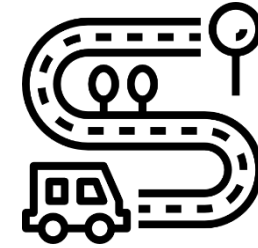


Equivalent

- Technical regulations (equivalence)
- Mutual recognition (conformity assessment procedures)

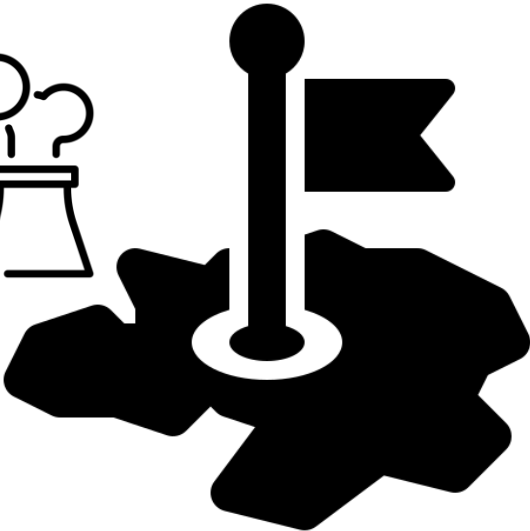
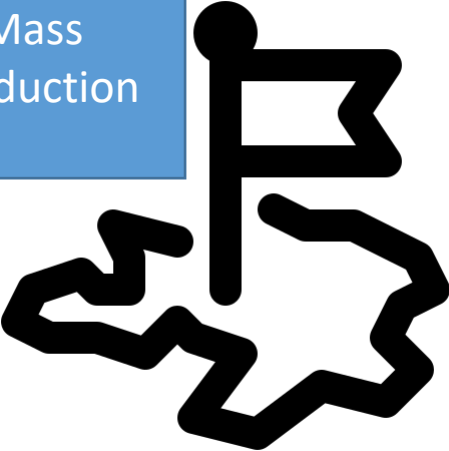


Transport

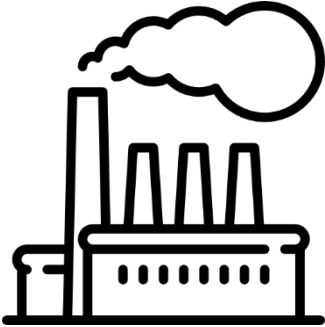


If mass production, transport is unavoidable

Mass production



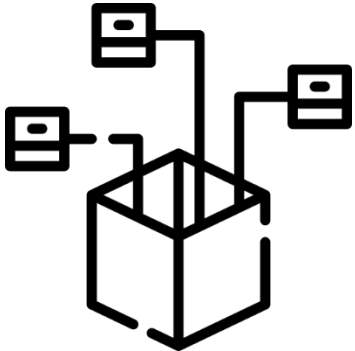
SMR components



Factory manufactured

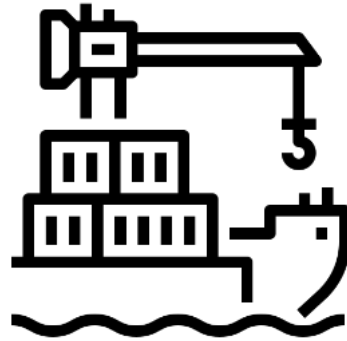


Transported



Modularization is the main challenge

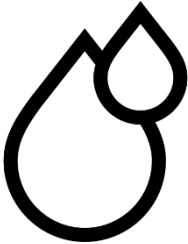
The law of the sea



Products shall also be compliant with the law of the sea in order to insure possible mutual recognition
Territorial sea; international waters...

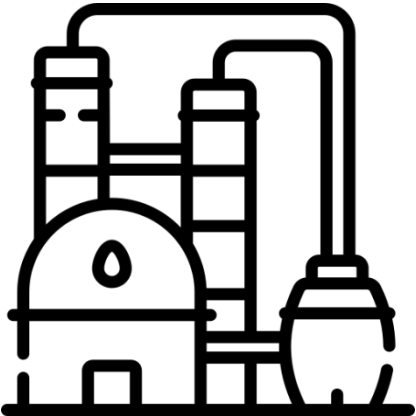
Nuclear floating power plant

Factory fueled vs. non factory fueled



Current legal and regulatory framework applies

Challenge



Many concerns for factory fueled SMRs



Safety

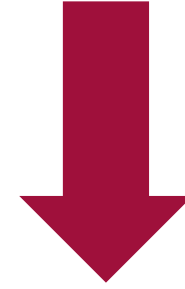
Security

Safeguard

Liability

Conclusion

Non discrimination



Mutual
recognition/harmonisation



Compliance with
transport regulations

Competitive
position in
Europe

Thank you for your attention



FINE ART IN LEGAL PRACTICE



BRUXELLES - BRUSSEL

Chaussée de la Hulpe 181 / 9 Terhulpesteenweg 181 / 9
B - 1170 Bruxelles / Brussel
T +32 2 250 39 80
F +32 2 250 39 81

WEST-VLAANDEREN

Kwadestraat 153 bus 4/3
B - 8800 Roeselare
T +32 51 20 28 76
F +32 51 21 28 76

LIÈGE

Boulevard Frère-Orban 34/32
B - 4000 Liège
T +32 4 220 52 00
F +32 4 223 42 39

MONS

Rue Notre-Dame Débonnaire 16
B - 7000 Mons
T +32 65 400 410
F +32 65 348 969

LUXEMBOURG

Boulevard Grande-Duchesse Charlotte 30
L - 1330 Luxembourg
T +352 266 886
F +352 266 88 700

LONDON

59A Star Street
London W2 1QQ Great Britain
T +44 789 5072 544

PARIS

Avenue d'Eylau 35
F - 75116 Paris
T +33 1 53 70 05 80
F +33 1 49 54 04 55

