



Enhancing enforcement and compliance for goods

31 October 2016

CONTEXT

The Commission intends to create a deeper and fairer Internal Market with a strengthened industrial base through the implementation of its Single Market Strategy. In this context, the functioning of the Single Market for goods relies upon accurate compliance with harmonised product rules to enable free circulation.

This concerns rules related to non-food (industrial) products subject to Art 114 of the Treaty on the Functioning of the European Union (eg. electrical and electronic devices, machinery, medical devices, lifts, radio equipment, toys etc.) These harmonised rules aim to protect citizens from health, safety and environmental risks while improving business competitiveness through lowering internal market barriers.

To secure these aims, national market surveillance authorities are entrusted with carrying out activities to ensure proper enforcement and compliance of these rules in the market. However, the Commission believes more needs to be done to enhance the current situation and keep more non-compliant goods off of the market.

In this context, the Commission requests input on the effectiveness and efficiency of the provisions laid down in Chapter III of Regulation 765/2008, which set market surveillance and accreditation requirements relating to the marketing of these products.

This strategy paper constitutes BUSINESSEUROPE's initial contribution to the Commission's proposed initiative to strengthen enforcement towards better product compliance and encourage national market surveillance cooperation.

EXECUTIVE SUMMARY

- *Harmonising EU law in certain product areas has enabled the single market to become a front runner of European economic integration.*
- *The existence of non-compliant products in the single market harms consumers, lowers the trust in products, also from bona fide businesses and distorts competition.*
- *Continuing to make stricter rules will only harm the competitiveness of bona fide businesses while rogue traders continue to profit from their non-compliance.*
- *A political will to prioritise market surveillance and join forces across the EU is needed. More resources and smarter ways are required to create a more effective and concerted system of market surveillance in the single market for goods.*
- *Without effective market surveillance, businesses are left to uphold the correct functioning of the single market. Yet no realistic remedy systems exist to address any complaints about decisions that affect them.*

MAIN MESSAGES

Harmonising conflicting national rules in many product areas has enabled the Single Market for goods to become a front runner of EU economic integration.

More recently however, stricter requirements are being placed on businesses without improving the safety or fairness of the Single Market for goods. While compliant businesses will always apply rules, no matter how disproportionate or burdensome, non-compliant businesses will continue to break the rules and cut corners, no matter how strict.

The impact of non-compliant products on the Single Market not only causes harm to consumers and lowers the reputation of compliant businesses in similar sectors, but it distorts competition as compliant businesses continue to invest in applying the rules.

The total compliance cost of EU legislation for industrial goods is estimated at €342 million.¹

The lack of effective or efficient market surveillance has enabled non-compliant businesses to intentionally break the rules and gain an illegal competitive advantage in the Single Market. While Regulation 765/2008 goes in the right direction to achieve this, cooperation of market surveillance could be improved to strengthen it.

Also, due to the complexity of some rules, businesses are unaware or misunderstand rules that apply to the products they provide. This can cause some unintentional non-compliance to exist in the Single Market. Various administrative burdens also make it harder for reputable businesses to demonstrate compliance of products in practice.

92% of businesses consider their sector to be affected by non-compliance.²

But, **achieving better enforcement of rules in practice without equipping market surveillance authorities with strong enough powers is an illusion. Equally important is balancing these powers with realistic appeal procedures** for businesses. Otherwise they remain open to abuse and can work against those playing by the rules. Balancing investigative and corrective actions in this manner would precisely align the intent and meaning of EU law related to the free movement of goods.

Access to appeal procedures should also be made more accessible for businesses. Currently, businesses are left to uphold the functioning of the Single Market through complaints, but as court cases are lengthy and costly, wrongful decisions are rarely challenged. This creates fragmentation in the Single Market for Goods.

Intra-EU trade in goods reached 2935 billion in 2014 increasing by 3.3% on the previous year.³

When functioning properly, The 'New Legislative Framework' reduces costs for businesses to legally place products on the market. It also offers a certain flexibility of demonstrating compliance. Any efforts to improve market surveillance should continually uphold these core principles.



Fulfilment centres

All economic operators in the production and distribution chain may affect compliance and therefore should assume legal obligations fitting their specific roles to ensure product safety and conformity. The existing New Legislative Framework, defines four categories of economic operators: manufacturers, importers, distributors or authorised representatives.

The impact of digitisation has developed a new economic operator into this mix: the fulfilment centre. As a business to business service provider in support of e-commerce, they often store, package and ship products following receipt of an order. Some even deal with returns. Because these newer economic operators do not exhibit all characteristics of the four existing recognised economic operators, it must be examined whether a fifth economic operator should be incorporated and exist in further Regulation.

Market surveillance authorities should be equipped with powers over all economic operators in the distribution chain. A solution should therefore be found to enable market surveillance authorities to proceed against any other party involved in the marketing of a product in the absence of the four existing operators already specified in the New Legislative Framework.

Capacity and coordination

Budgets of national market surveillance authorities have suffered from severe cuts during the last ten years despite a constant increase in the volume of imports of consumer goods from third-countries.

A commitment is needed to boost the political willingness to create a more effective market surveillance system in Europe. This includes a more concerted and determined market surveillance. Cross-border cooperation with third countries must also be improved, as well as strengthening controls at external borders with customs authorities.

Market surveillance also needs adequate resources, suitable facilities and skilled officers benefiting from high quality training in order to function effectively and efficiently. This requires considerable financial resources at a national and European level.

In order to address the lack of State funding, voluntary cooperation schemes could gather public-private resources and capacities. This approach could be tried out for a given period of time following prioritisation of certain product categories.

Such ad-hoc schemes would make the best possible use of available financial and human resources and market intelligence through better coordination between the Commission, Market Surveillance authorities, entry ports and businesses. The technical expertise and market knowledge of economic operators is currently underused despite the willingness of many to cooperate with authorities.

Fees and Penalties

Fees charged in the pursuit of market surveillance activities should not become a general tax. This would disadvantage reputable businesses that already contribute by investing and ensuring their own compliance. Fees should instead be linked to the

actions taken by market surveillance authorities because of a motivated suspicion of non-compliance.

While it is understood that market surveillance needs to be sufficiently financed and this could take place through charging fees on the basis of actions, this should in no way become an incentive for market surveillance authorities to take unnecessary or low priority corrective actions in pursuit of financial gains. The same goes for penalties.

When applied, penalties should be proportionate and dissuasive. They should relate to the revenue derived from placing the non-compliant product on the market and could take into account: repeated offences, seriousness, duration and intentional character of infringement (if applicable). While penalties can remain a matter of Member State competence they should not be connected to the size of a business's undertaking.

Formal non-conformity arises from administrative errors that may give rise to a need for further investigations by market surveillance authorities; however, they do not imply risk. For this reason, material and formal deficiencies must be dealt with in separate ways. If all deficiencies are dealt with in the same manner, a false and distorted picture of the goals and nature of regulations in the Single Market would emerge.

Before any official sanctions are made, economic operators should be given the opportunity to rectify their errors, in part to ensure proportionality but also to enable constructive and effective problem resolution.

e-Compliance

Creating a centralised electronic database for businesses to demonstrate compliance would create newfound confidentiality issues and burdens. Demonstrating compliance through electronic means should remain voluntary so businesses can determine the benefits of its use. Furthermore, the overall market surveillance of products will not be improved. Just as paper documentation, electronic technical documentation could be easily falsified, counterfeited or misused by rogue businesses not willing to fully comply with requirements.

Would non-compliance exist if all technical documentation was not uploaded to the central system? Digitalising all of this information to a central location exasperates the situation as there is an increased risk of the database not being fully updated or correct at the moment of assessment by market surveillance authorities. We feel that direct contact between market surveillance authorities and business should be apparent upon a reasoned request.

Prioritising electronic market surveillance sends the wrong message to national market surveillance authorities. Physical on-the-spot checks in the Single market or at its borders should not be replaced.

More information on these points can be found [here](#) in BusinessEurope's previous comments paper on provisional options the Commission considered for an eCompliance system in 2015.

1. Commission Staff Working Document SWD(2014)23, (*Eight categories only: Electric motors, laptops, domestic refrigerators/freezers, lifts, gardening equipment, petrol pumps, air conditioners and integrated circuits*).
2. Commission Staff Working Paper 'Impact Assessment 10 Proposals to align product harmonisation Directives to Decision 768/2008/EC' (2010).
3. Commission Inception Impact Assessment 'Internal Market for Goods – Enforcement and Compliance' (2016).