



'EC PROPOSAL ON COMPLIANCE & ENFORCEMENT OF EU PRODUCT LEGISLATION'

PAPERS PRESENTED AT THE EUROPEAN FORUM FOR MANUFACTURING

*Policy Roundtable Dinner Debate
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Maria GRAPANI MEP, Internal Market & Consumer Protection

I had extensive experience of manufacturing before I took up my political career, as you will have seen in the speaker biographies. I therefore very much welcome the opportunity to hear the views of manufacturing companies on this important European Commission proposal.

For those of you attending a European Forum for Manufacturing for the first time, it was established in 2009 by the then Chair of the Internal Market Committee in the Parliament. It is cross party and has a rolling programme of meetings bringing together the Commission, MEPs and Presidency to debate key policies relating to Manufacturing across our European Union.



We have a full agenda and I am very pleased to invite our keynote speaker from the European Commission to address us.

Joaquim NUNES DE ALMEIDA, EUROPEAN COMMISSION,
DG GROW, Director, Single Market Policy, Regulation &
Implementation



The Proposal for a Regulation on Compliance and Enforcement of EU Product Legislation is based on:

- President Juncker's priorities for a deeper and fairer internal market
- Letter from 36 MEPs on urgent action for market surveillance
- High rate of non compliance during inspections
- Non-compliance placing consumer safety at risk and leading to unfair competition

There are also a number of problem drivers:

- Resource constraints for market surveillance authorities (MSAs)
- Information gaps for businesses, and consumers
- Low deterrence of the current enforcement tools
- Fragmentation of the organisation of market surveillance
- Changing context of increasing sales online

It should be noted that:

- Legislative package is still pending
- Current proposal does not replace the 2013 proposal
- Toolbox for MSAs needs to be more fit-for-purpose for new digital supply chains (investigation, enforcement, market intelligence)
- Focus is on interaction between authorities, instead of how to follow-up on risk/non-compliance
- It is inspired by good practices of authorities and by enforcement of other legislation
- It includes promotion of compliance
- It takes into account the new European Union Customs Code

EU Product Compliance Network

There is a significant increase in concrete operational enforcement action and coordination through:

- A Board where Member States and Commission set priorities
- Thematic and sectoral groups (ADCOs) for joint control campaigns, enforcement coordination
- Secretariat provided by the Commission with 60 staff with support for control campaigns, IT tools, knowledge gathering, peer reviews.
- Technical assistance /capacity building for market surveillance authorities

This is subject to the post-2020 Multi-annual Financial Framework



Help is available for business to comply through:

- Free information from national Product Contact Points
- Compliance partnership arrangements
 - Authority gives a business advice and guidance, for free or for a fee
 - Other authorities informed; they will inform back when problem found
 - Similar to 'Primary Authority' in UK

Memoranda of understanding:

- Joint activities aiming at promoting compliance / identifying non-compliances
- Memorandum publicly available; no commercial secrets involved

Other main features:

- Person in EU responsible for compliance information
- State-of-the-art enforcement tools
- Clear assignment of tasks for authorities – Single Contact Point
- Better controls at the external borders

Conclusion:

The Commission believes the proposal will substantially improve end-user safety and fair competition for European Industry.



Pierre SELVA , SCHNEIDER ELECTRIC, Director Conformity Assessment & Market Surveillance

As the Global Specialist in Energy Management and Automation, the Schneider Electric Group serves 4 end markets: Building, Data Center, Industry and Infrastructure with products, software , platforms, Apps, analytics and services.

However, among all these offers, the residential electrical installation is more symptomatic of our subject today.

In short, this concerns all the products that you find at home in your switchboard and mainly the circuit breakers and differential circuit breakers. These products are intended to protect your installation against the risks of fire and to protect yourself against the risk of electric shock.

We are talking here of products having a vital role.

We consider this proposal as a significant step forward on several points to ensure the safety of our citizens and users when they are acquiring products with confidence.



Today, private initiatives of support to the market surveillance authorities exist in Europe, in various fields, but they are facing a major problem: the non recognition of the provided data by these authorities who must buy the products, perform again the tests and therefore waste precious time in the fight against non-compliant products and rogue operators.

So, I would put the emphasis on Article 8 of the Proposal which offers to the authorities, and encourages them, to establish memoranda of understandings with business organizations or organizations representing business in order to utilize the data provided. These organizations should follow the main objective to investigate non-compliant products and offer tangible, factual, and undisputable evidence to the Market Surveillance Authorities. As such, I would like to introduce you to an European-wide initiative on electrical products, itself mainly based on experience conducted for almost 10 years in France and in the United Kingdom .

This initiative is called MSSI-Electrical, for Market Surveillance Support Initiative.

MSSI Electrical was founded in 2012 and is driven by 7 European-based companies: ABB, Benedict, Eaton, Hager, Legrand, Schneider Electric and Siemens. It is a platform for action at local level.

The main objective of MSSI Electrical is to develop national structures to support the Market Surveillance actions carried out by the Authorities, while respecting a strict framework of the competition law. The strong criteria of independence, neutrality, impartiality, competence and rigour, are essential for the credibility of the actions carried out.

To date, MSSI-Electrical is deployed in 9 countries, at more or less advanced stages, in United Kingdom, Germany, Belgium, Denmark, France, Spain, Italy, Poland, the Czech Republic. Other countries, like The Netherlands and Romania are likely to quickly add to the list. **Before providing** elements of understanding of the processes used, I wish to present you some significant results demonstrating the relevance of the actions undertaken:

In Poland, out of 24 commercial brands of residential circuit breakers tested, 50% do not meet the safety requirements.

In France, ASEC discovered about 15 non-compliant safety products for use in domestic electrical installations, while during the same period, only 5 equivalent products were mentioned on European website RAPEX.

In the United Kingdom, 5 disconnect switches used in industry on 7 samples of different brands have proved non-compliant.

These results demonstrate two things:

There are non-compliant products on the European market in the areas of safety of electrical installations, but does anyone doubt about it?

It is possible to detect dangerous products in a significant proportion when we are working together on specific areas.

However, one important issue still remains: how to ensure, once detected, that these products are actually removed from the Market?



Article 8 of the proposal is intended to improve the effectiveness of market surveillance authorities actions by directly using data provided by private organizations.

The processes used by the national entities of our Market Surveillance Support Initiative are now divided into 3 main parts:

Collection and detection of products on the market, through all distribution channels, including internet sales.

Technical analysis of products and eventual tests by an accredited third party laboratory. It has to be noted that these laboratories, by signing the MSSSI-Electrical Charter, are fully engaged with us.

Creation of a technical file containing administrative and technical information, test reports, a technical analysis of the hazards and their potential effects on users and properties and a risk analysis conducted according to the rules used by the Market Surveillance Authorities (MSA). And finally the deliverance of this file to the MSAs.

From our point of view, several factors are decisive to demonstrate the validity of our actions:

The rigor of the process, supported by permanent records

Collection of ALL available products, including those of companies involved in the process

Regular exchange with the MSA to keep them informed about our research and our results and to continuously improve our processes and work methods

A regular exchange between the different local initiatives to, again, share our best practices

The permanent follow-up by a specialised lawyer of our actions to ensure a strict respect of the rules related to unbiased competition

To date, MSSSI Electrical communicates about statistics and our methods.

Now, the main question is how to get recognition of the data provided by organizations such as MSSSI Electrical by the MSA to gain efficiency and to optimize the financial investment made by both parties.

In the proposal of 19 December, Article 8, Clause 2 specifies that this data can be used by MSAs only if the activities in question are carried out independently, impartially and without bias.

We believe that there is a clear need to clarify these concepts: what is independence and impartiality in this particular context?

As far as we are concerned, we have already described our vision of these terms and we are taking concrete steps to prove it.

For example, in my personal case, I am officially authorized by my company to work on behalf of the ASEC in France and to take all types of products, including those of Schneider Electric, and



to carry out all the necessary steps within the framework of the association, independently and without any possible consequences on my situation in the company. In the same way, I do not have to communicate the results of the ASEC, other than by statistics.

We are ready to explain this in more detail and to work together with the Council and the Parliament to provide the necessary explanations for understanding these terms. A possible official recognition of private structures could also be studied. The precise definition of the criteria to be respected could be done with our collaboration in the framework of the Union Product Compliance Network set in place in Chapter VIII.

Improved efficiency could also be achieved by using modern tools, like the Internet Address of our main contact points in different countries to interact directly with the local MSA. This is by far more efficient than a written postal address! This solution still needs to be officially recognized as a valuable alternative in the proposed regulation.

And finally, I would to share with you two sentences that I like:

Standardization without conformity assessment is only a good idea;

Conformity assessment without Market Surveillance is just a means to lose money!



Andre MALITTE, BSH HOME APPLIANCES, Senior Expert, Technical Regulation & Standardisation

BSH is the biggest manufacturer of household appliances in Europe, headquartered in Munich, with 21 European factories and 33.000 employees in Europe, BSH is wholly owned by the Bosch Group. BSH produces household and kitchen appliances with the brands Bosch, Siemens, Gaggenau, Neff and also under local brands.

BSH welcomes the proposed Regulation as it includes provisions for Member States to provide market surveillance authorities with the necessary financial resources (e.g. Article 11.4 and Article 21) and calls for an enhanced cooperation between market surveillance authorities across Europe (Articles 31 and 32). The proposal is on the right track to establish a level-playing field.

The proposed Regulation not only covers new provisions improving market surveillance but goes hand in hand with additional or changed obligations for economic operators, such as for BSH as a manufacturer.

On one hand the proposed Regulation will apply in parallel to Regulation 765/2008 on market surveillance and Directive 2001/95/EC (General Product Safety Directive; including duties for competent authorities); on the other hand will also address new obligations on manufacturers. At the same time Decision 768/2008 and sectoral union harmonisation legislation based on it, remain unchanged in this regard.



As a result the structure of the Legislative Framework (NLF) is made unclear and not easy to understand anymore.

Furthermore, the coherence among applicable legislation cannot be seen as previously.

For BSH this coherence is very important as many different pieces of Union harmonisation legislation apply in parallel to BSH products. The key is a legislative framework which is clear and simple to apply, and which avoids unnecessary complexity. At the same time, this is also in the interest of efficient and effective surveillance and enforcement of the legislation.

Keep regulatory frameworks simple and make legislation easy to understand

As an example: Article 5 – EU Declaration of Conformity (DoC)

Most BSH products fall under Low-Voltage Directive, EMC Directive, RoHS Directive and Ecodesign Directive. Today, according to these Directives, the EU DoC must be provided to market surveillance authorities upon request. Art. 5 of the proposed Regulation would require an EU DoC upload to a website. Today ~1% of the issued EU DoCs are requested by authorities, with the new Regulation 100% must be provided. The new obligation increases administrative efforts and is considered as disproportionate, as the added value seems questionable.

BSH is in favour of individual requests by market surveillance authorities instead of distant checks without real communication. Market surveillance authorities are faced with many different products and product categories. All have specific differences. Requests and potential questions on product conformity should be clarified based on an individual communication. Both manufacturers and authorities can learn from such communication.

BSH drives the trend to home-connect appliances with wireless communication features. Such appliances fall under Radio Equipment Directive (RED). RED requires an EU DoC accompanying the appliance or simplified EU DoC with a conformity statement to be included in accompanying documentation. (RED applies since June 2017. Manufacturers and market surveillance authorities have an experience of half a year with RED.)

Lex specialis: Art 2 of the proposed Regulation describes the lex specialis principle but this remains unclear. The Article is limited to the provisions for market surveillance and enforcement – not for compliance provisions. Also if the article would be extended to compliance provisions it would remain unclear which provision covering the same objective is more specific? Provisions in Union harmonisation legislation or in the new Regulation? More specific for the manufacturer or more specific for market surveillance authorities?

In general, it is now unclear how to read and understand Union harmonisation legislation. With or without the new set of manufacturer obligations stipulated in the proposed Regulation? A new consolidated version of Union harmonisation legislation would not include the new obligations for economic operators as only aspects of market surveillance with reference to Regulation 765/2008 are replaced.

Statement: So far Union harmonisation legislation (based on Decision 768/2008) includes a complete and comprehensive set of obligations for economic operators. Especially with regard to the



EU DoC there is no need for a modification. It should be noted an EU DoC is a document for authorities and not for the general public. Therefore Art. 5 should be deleted from the proposed Regulation.

If new obligations for economic operators or new roles – such as persons responsible for compliance information – really need to be considered then it should be done via a recast of Decision 768/2008 followed by a modification of the relevant articles in sectoral Union harmonisation legislation.

Last but not least, regulatory changes, also if interpreted as a small change, have the potential for big implementation projects in enterprises. With regard to the example: a detailed process for the EU DoC issuing is in place and a website publication would make it even more complex. Many departments are involved, internal procedures and authorizations apply. Showing an EU DoC is just the tip of the iceberg, related efforts are not seen as they are below the surface of the water. It is not just a mouse click.



Marcel DUTRIEUX, THE TORO COMPANY, Manager, European Product Integrity

The Toro Company is a member of the European Garden Machinery Industry Federation, (EGMF). Which represents the manufacturers of garden, landscaping, forestry and turf maintenance equipment, such as lawnmowers, brush cutters, hedge trimmers, chain saws, robotic mowers etc. EGMF members need to comply with a plethora of EU legislation related to machinery, notably the New Approach Directives and Regulations (such as the MD, OND, LVD, EMCD, RED) as well as environmental legislation (REACH, RoHS, the waste package etc.).

EGMF generally supports the provisions in the new proposal on enforcement and compliance, aimed at improving and harmonising the market surveillance framework in Europe and making controls on products entering the EU market more efficient than today.

It is important that new provisions on market surveillance complement or replace existing requirements, to prevent overlaps, and thus confusion for both authorities and the industry. Moreover, although the way market surveillance is carried out and organised and the frequency and quality of activities are in the hands of each Member State, we need regulations which promote a uniform and harmonised framework for market surveillance.

EGMF welcomes the Commission's proposed measures to increase the EU-wide coordination of market surveillance. Such coordination should be coupled by the commitment that legal requirements and the understanding of various important concepts (for examples, serious risk) are interpreted and applied by authorities in the same manner, across the EU. This is to avoid disproportionate market surveillance actions taken, on the basis of a misconception on the level of risk and safety of a certain product.

Compliance and enforcement can be improved if the legislators provide the necessary tools to enhance the cooperation between market surveillance authorities (MSA) and stakeholders.



We especially support the cooperation mechanisms proposed by the Commission, notably the Union Product Compliance Network. This tool would allow the industry to work more closely together with authorities and engage in a systematic dialogue for different purposes: joint investigations, compiling best practice cases, detecting non-compliance cases and providing mutual assistance etc.

The industry can be of assistance to MSA who can benefit from manufacturers' technical knowledge and expertise (for instance, on the operation and verification of specific equipment against the legal requirements and applicable standards). EGMF's involvement in the Prosafe Joint Action (JA) on chain saws triggered a constructive cooperation both with Prosafe and the ten market surveillance authorities involved in the project. To facilitate the authorities' duties during the JA, we provided recommendations on test institutes with which our manufacturers worked and the test programme to follow.

Over the last years, EGMF has also been proactive in supporting MSA in their task to check compliance by developing different sets of compliance guides for various EGMF types of equipment (both electrical, and ICE). EGMF is currently updating its compliance guides, which will be posted on the website after the end of March.

In a nutshell, we are ready to further cooperate with MSA and provide our expertise, when requested. The experience EGMF had with the Prosafe JA has shown that this is possible, having mutually beneficial outcomes: building trust in EGMF's expertise, and at the same time, helping advance the project by making a concrete proposal for the test programme to be followed by the MSA involved.

The proposed cooperation mechanisms would hopefully incentivize the industry to enter into real and constructive partnerships with the authorities, leading to an overall better and more efficient market surveillance system in Europe.

Jasenko SELIMOVIC MEP, Internal Market & Consumer Protection Committee, Shadow Rapporteur, Proposed Regulation on Compliance and Enforcement

Boosting Trust in the EU Single Market – The Way Out of Populism?

“RESOLVED to ensure the economic and social progress of their States by common action to eliminate the barriers which divide Europe,

RECOGNISING that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition”



I am not sure that everyone remembers where those words come from. I certainly did not until I recently opened up my old edition of the Treaties. Those words are to be found in the Preamble of the Treaty of the Functioning of the European Union. They underline the broader ambitions of a



closer Union, which has, at its core, the deepening of the Single Market.

But what do we need in order to pursue that goal in such uncertain times? It does not come to a surprise for us that populism has blossomed all around Europe. The negative language about the European Union - that we only used to find in anonymous online fora – has come now to main stream politics, as the former Estonian President Toomas Hendrik Ilves underlined during his visit to the European Parliament in February 2016. Political leaders are now more and more questioning the benefits of EU Membership, and even propose similar referendums that the one that was held in the UK. And this is happening in front of us, even my own Member State. So the question that should be on our lips is – What should we do?

A Malay proverb teaches us that
“A tree with strong roots laughs at storms”.

It is my firm conviction that the crisis of populism that sweeps over the European Union could be solved by going back to the basis, one of them being a Single Market that works for everyone. We need to focus our work on enhancing and deepening a Single Market that binds together 500 billion of consumer by its common rules and standards.

The Communication that is accompanying the proposed Regulation on Compliance and Enforcement offers us a way forward in order to achieve that:

“The single market for goods is one of the greatest achievements of the European Union. We will celebrate its 25th anniversary in 2018. Its foundation is trust, between consumers, businesses and authorities”.

Trust is the both the cornerstone and the cement of the Single Market. The lack of trust in the Single Market is the main explanation why consumers do not dare to buy the products they need in another Member State than their own. The lack of trust also clarifies why businesses are not tempted by selling their products in EU markets. The Consumer Scoreboard, released in July 2017, highlights for example that retailers remain reluctant to sell online to consumers in other EU countries: they are also discouraged by differences in national contract laws, differences in national consumer protection rules, and potentially higher costs for solving disputes cross-border. They lack trust.

The proposed Regulation on Compliance and Enforcement will be a small but necessary step in order to address this issue. What we observe today is that market surveillance is one of the weakest parts of the Single Market – rules and standards are in place but are not followed or implemented. The Impact Assessment of the proposed Regulation is telling us, for instance, that 2126 notifications of dangerous products were submitted by Member States in 2016. Consumers risk buying toys for their children that contain dangerous chemicals, or mobiles phones that could overheat and damage their ears. Dangerous products are, in fact, a direct threat to our safety, health and environment. These issues are very serious and that is exactly why I am looking forward to working for an ambitious, detailed and clear Regulation on Compliance and Enforcement.

Member States’ market surveillance authorities have to be better at collaborating and exchanging information so as to ban dangerous products from the EU Single Market. They need a set of minimum powers in order to enforce decisions to ban products in a more effective way. They need



to regularly check the quality of the products on the market by following a risk-based approach. Not addressing those very serious issues will certainly give a perfect excuse for populist leaders so that they can blame the Single Market. Finding those dangerous products in the market will certainly nourish their argumentation on why it is necessary to leave the European Union.

My idea of the Single Market is, on a contrary, a very open one – where manufacturers do not encounter hindrances and can sell their products all over Europe. It is by binding together our economies that we achieved peace in Europe and constructed the European institutions. A strong Single Market is the roots that will make the tree laugh even during storms. But a strong Single Market cannot be achieved without enhancing trust for both consumers and businesses. Let us work together towards that goal.



Ivan ŠTEFANEC MEP Internal Market & Consumer Protection Committee

Introduction

The single market for goods is one of the greatest achievements of the European Union. We will celebrate its 25th anniversary in 2018. Its foundation is trust, between consumers, businesses and authorities.

Achieving a deeper and fairer single market is one of the key political priorities of the European Commission. The follow-up and the implementation of the Single Market Strategy, *Upgrading the Single Market: more opportunities for people and business*, adopted on 28 October 2015 constitute one of the main objectives of the 2017 Commission Work Programme.

Trust has enabled unprecedented integration of markets within the EU, has been and continues to be a cornerstone of economic growth. Industry added value alone has grown by 25% in EU27 (23% in EU28) in real terms since 2009. Its share as a proportion of the economy has therefore significantly increased since 2009 from 15.5% (14.7% in EU28) to 17.1% (16.1% in EU28) today.

Strengthening the Single Market for Goods

The first structural weakness of the single market for goods relates to the enforcement of EU harmonised product safety rules. Despite far-reaching safety rules, there are still too many unsafe and illicit products on the market.

The second structural weakness relates to products that do not fall under harmonised EU product safety rules, or only fall partially under such rules, for example in the area of furniture, tableware or certain construction products.

Therefore, the Commission is proposing a «goods package» that will comprehensively address these weaknesses for a better functioning single market for goods. It contains two ambitious legislative proposals. The first aims to strengthen compliance and enforcement of EU product rules. The second intends to revamp and facilitate the use of mutual recognition in the Single market.



Trust in the Enforcement of EU Product Rules

Consumer safety and environmental protection are the cornerstones of the single market for goods. Across the EU, we have agreed on common safety and environmental rules to protect us against safety hazards, pollution and environmental damage.

Large numbers of unsafe products are being sold in Europe every day. This ranges from mislabelled products to products posing severe risks to health or the environment. Between 2011 and 2017, there were about 2,500 incidents where illegal products had to be withdrawn from the market. And this is probably the tip of the iceberg.

Consumers need to regain trust that the goods they purchase online or offline are safe. If problems arise, we need to have the right framework for addressing the risks and restoring a level playing field.

Therefore, this package is a big step towards smarter enforcement, complementing and strengthening, where necessary, existing and future Union harmonisation legislation: Enforcement authorities will work more closely together through single liaison offices. Use of another Member State's evidence, test reports and decisions will be made easier.

Actions against incompliant products can only be effective when authorities share more information about investigations and illegal products. The Commission will engage more intensively in ensuring common knowledge gathering among enforcement authorities and convergence of different IT tools, such as the Rapid Alert System for dangerous non-food products (RAPEX) and the Information and Communication System on Market Surveillance (ICSMS).

National enforcement authorities will get more support for the coordination and performance of their tasks. A Union product compliance network will be set up. This network will provide administrative support for the joint investigations needed to coordinate the enforcement actions of over 500 national authorities.

Closer cooperation between businesses and enforcement authorities is also essential. Both parties need to trust each other. The following strands of closer cooperation are envisaged:

Compliance information:

1. Manufacturers consider that they should be the first to be contacted if there is a suspicion their products fall short of the rules.
2. 'Compliance Partnership Agreements' with their local authorities will allow businesses to get advice on compliance issues.
3. Businesses and authorities can conclude 'memoranda of understanding' about joint projects to identify incompliant products.
4. As prevention and enforcement go hand in hand, businesses in the EU and around the globe can seek regulatory advice from national 'Product Contact Points'.

Enforcement at External Borders

In a globalised world, it remains a challenge to ensure that imported products also meet EU requirements and do not compete unfairly by breaking EU rules.



The new proposal adapts the current legal setting to the new customs rules. It provides for more clarity for controls on products entering the EU, and for coordination of and cooperation between customs and market surveillance authorities

It also simplifies the paperwork for importers. Trusted businesses will benefit from lighter controls and, as a result, authorities will be able to concentrate their efforts where the risk to product safety is greatest.

Also, when enforcement authorities have doubts about the legality of a product, they will suspend release for free circulation in the EU until they receive appropriate evidence that the product is fit to be sold in the EU.

Accreditation and CE-marking

While the current market surveillance rules are in need of improvement, the EU rules for accreditation and the CE marking have shown to work reasonably well. This communication is accompanied by a report that highlights the importance of a well-run and reliable accreditation and conformity assessment system that underpins EU policy and reinforces trust in product safety.

Tomas HEDENBORG, FASTEMS OY AB, Group CEO,
ORGALIME President

Orgalime's initial views on the Commission's proposal for a Regulation laying down rules and procedures for compliance with and enforcement of EU harmonisation legislation on products (COM (2017) 795)

Orgalime advocates a forward-looking EU industrial strategy that will connect the dots between the myriad policies affecting the engineering and tech sectors we represent. However, this can only strengthen the competitiveness of European companies in reality if these policies are enforced effectively and efficiently on the ground. This is why we have been calling for enhanced market surveillance of products across all EU Member States for over a decade.

So we welcome the European Commission's efforts to coordinate and support the functioning of the Single Market for goods – in particular with its proposal for a Regulation on compliance with and enforcement of EU harmonisation legislation on products, which would apply to almost all products manufactured by our industry, in the electrical, electronic, mechanical and metallic fields.

The proposal is a positive step forward both in terms of protecting the health and safety of consumers and other users, and preserving the ability of the European manufacturing industry to grow and create jobs. However, there are some points that we feel could be improved upon.

Where the proposal gets it right:

1. Particularly positive is the proposal to strengthen border controls and administrative checks by Member States' authorities for products entering the Union market and, more specifically, the provisions on cooperation with authorised economic operators. These measures can ensure a level





playing field between domestic products and products imported into the EU.

In general, the proposed concept that a person established within the EU market should be responsible for providing compliance information is also welcome.

2. The provisions enabling market surveillance authorities to enter into memoranda of understanding with businesses or organisations representing businesses or end-users will help improve compliance or identify non-compliance in a given sector or region of the EU.

3. We welcome the proposal to establish a Union Product Compliance Network and the EU Product Compliance Board that will form part of this, where the “representatives of the relevant business associations” would be involved in “separate or joint administrative coordination groups” to provide, for instance, input about risk assessment methods and priority-setting for both market surveillance and import controls, or to collect and share expertise and views.

4. We appreciate the efforts to simplify how companies can obtain information on applicable product rules from the national Product Contact Points in all EU Member States, regardless of whether these rules apply in harmonised or non-harmonised areas.

5. We support the proposal to oblige Member States to provide sufficient budgetary and other resources to market surveillance authorities for the proper performance of their duties, as these authorities are typically understaffed and often lack access to testing labs.

Where we see need for improvement:

1. The proposal adds complexity to the EU legislative framework for placing engineering products on the Union market, as it would apply on top of Regulation (EC) 765/2008 on accreditation and market surveillance, Directive 2001/95/EC on general product safety (GPSD) and product-specific harmonisation legislation. We are concerned that this will make it more difficult for authorities to perform their support and enforcement tasks in all Member States, and for economic operators to understand and comply with their obligations – something that would be particularly challenging and burdensome for micro and small manufacturers.

2. Under the scope of the present proposal, it is unclear whether provisions falling under the Lex Specialis clause would replace or be additional to the corresponding rights or obligations of the manufacturer under product-specific legislation. In its current form, this clause appears limited to the provisions on “market surveillance and enforcement”, while the proposal mixes up the market surveillance provisions with new pre-marketing obligations for economic operators. However, such proposed provisions differ from those comprehensively set out in Decision 768/2008/EC on a common framework for the marketing of products and the aligned specific provisions in certain sectoral EU legislation. For instance there would be either contradicting requirements or an unnecessary additional burden for manufacturers regarding the provision of compliance information and contact details, or for the making available of the declaration of conformity.

3. We believe that to some extent the proposal disproportionately expands the powers of market surveillance authorities relative to their purpose and means. We acknowledge there is a need to strengthen their powers in general and provide the same legal basis across all EU Member States in order to ensure more rapid and coordinated enforcement of harmonisation legislation. However, there is no need to grant powers beyond what would be necessary to prevent, stop or remove hazardous and otherwise materially non-compliant products from the market. Certain powers



usually granted to courts of law are not appropriate for national enforcement administrations: for example, those granted “as a minimum” “to perform system audits of economic operators’ organisations” or “to request any (...) member of staff of the economic operator to give explanations”. The proportionality principle is particularly important in instances of formal non-conformity entailing restrictive measures or bans.

4. The current proposal does not grant economic operators the possibility to trigger the Internal Market Problem Solving Network (SOLVIT) problem-solving procedure. With due consideration for the proposed extended powers of market surveillance in this proposal, we believe manufacturers under EU harmonisation legislation should be able to benefit from the same problem-solving procedure put forward in the COM(2017)796 proposal on mutual recognition: an economic operator affected by an administrative decision of a local enforcement authority should be allowed to lodge a complaint to SOLVIT.



Iliyana ATANASOVA EU COUNCIL PRESIDENCY, Bulgarian Permanent Representation, Consellor, Competitiveness & Growth

Iliyana Atanasova stated that she was attending the European Forum for Manufacturing to listen to the views of manufacturers from across Europe, as the Presidency was still formulating its position on Compliance and Enforcement.

Paul COEBERGH VAN DEN BRAAK, PHILIPS, Intellectual Property & Standards & BUSINESSEUROPE, Chair, Free Movement of Goods

This is a highlight of selected views on behalf of BusinessEurope 2018, which plans to have a complete position paper ready by end March.

Stronger enforcement of harmonisation legislation is indeed necessary. We welcome the proposed Regulation as one of its stated goals is to foster a level playing field with fair competition.

Also, it addresses a number of issues as to market surveillance that we signalled before.

The proposal targets harmonized products. Market authorities should maintain a good balance of enforcement priorities between harmonized and non-harmonized products.

Effective enforcement requires powers for market authorities and it is good to make them more uniform. The Regulation allocates extensive powers and duties to national authorities, like in Articles 12 and 14.





However this must be balanced by safeguards for proportional use and keeping company information confidential, in a uniform manner across the union, including via appropriate appeal procedures with practicable timelines.

We cannot stress enough that all surveillance actions, fees and penalties must be proportionate, prioritizing actions for the largest risk-reduction opportunities. Also, company information must be treated with appropriate confidentiality measures.

It is better to take a product from the market that causes electrical shocks than to ask a fee from a manufacturer for a misprint in the declaration of conformity of a safe product. This is a more effective use of scarce resources and links better to the aims of the regulator.

The Regulation addresses these concerns, but we had hoped for stronger safeguards to ensure these are practised in all member states.

Article 25.3 will cause the strictest opinion among market surveillance authorities to get automatically elevated to the EU level. This is a problem, as a spread of interpretations should instead lead to deeper examination of proportionality and proper reflection of the intent of the legislator.

We welcome the Coordination in the Union Product Compliance Network with administrative support by the Commission. We are happy that business associations can take part in administrative coordination groups, and call for clear terms of reference for that.

Resuming, while some further clarifications or refinements would be necessary or advisable, we welcome this proposed Regulation and we hope for a swift handling of the dossier in the Parliament.



Carsten DANNÖHL, CATERPILLAR, EU Government Affairs Manager

It is a great pleasure to be here and share with you some thoughts on how to improve compliance and enforcement of EU product legislation. Effective market surveillance is crucial for my company, Caterpillar, and the whole industry. It's key for Europe's high-value added industries, which face global competition. Caterpillar supports any changes of the EU's current system of market surveillance that help to increase the authorities' controls on the market and improve fair competition within the EU.

A few words about Caterpillar; with 2017 sales and revenues of over \$45 billion, Caterpillar is the world's leading manufacturer of:

- construction and mining equipment
- diesel and natural gas engines
- industrial gas turbines and
- diesel-electric locomotives.



For more than 90 years, Caterpillar has been making sustainable progress possible and driving positive change on every continent. The company principally operates through its three primary segments - Construction Industries, Resource Industries and Energy & Transportation.

Being the world's leading manufacturer in our sector not only makes us very proud – it is an incentive and a commitment: Caterpillar makes every effort to ensure that we are meeting or exceeding the expectations of the countries in which we operate or sell our products. That's the way we do business, and that's how we have set up our internal processes! We cannot accept machines produced for another region or country of the world with different requirements finding their way into the European Market without complying with the needed requirements over here.

We are alarmed when we observe that unlawful distributors collect machines that were meant for non-EU countries and place them illegally on the EU's single market. Very often such ad-hoc distributors disappear from the EU immediately after concluding the sale, which makes it very difficult for authorities to catch them when they find non-compliant products.

These are serious problems, and here are a few thoughts on how to tackle them:

- firstly, having adequate resources, a clear prioritisation and a better coordination between national market surveillance authorities is key.
- additionally, there should be EU-wide common minimum and maximum levels of sanctions to ensure that rogue traders placing non-compliant products on the market face similar risks across all Member States.
- finally, increase cooperation between legitimate industry stakeholders and market authorities:
 - Companies are well placed to know what is happening in their sector and therefore are in a unique position to help determine priority product groups.
 - Moreover, capital goods like construction equipment are complex products covered by a large number of regulations and a variety of regulatory requirements. Industry stakeholders are well placed to provide technical assistance to market surveillance authorities.

Summing up, I would like to underline again that Caterpillar welcomes the Commission's initiative to reinforce market surveillance. But I would like to conclude with a word of caution: don't forget that there are also many companies on the market that play by the rules. We must not overshoot with new obligations that make life more complex for compliant companies. The focus must be on products presenting a risk, and that non-compliant products are not placed or made available on the EU's market. Where such products have been made available, effective and proportionate measures shall be taken to remove the risk presented by the product or to resolve non-compliance.

We want everybody to play by the same rules and unfair competitors to be caught and kept out of the market. You can count on Caterpillar to support you on this.



JAN DAEM, BARCO, Environment Compliance Officer

Barco is a Belgian based company that produces professional image technology solutions; like cinema projectors, medical displays and wireless presentations systems.

Barco performs in-house validation testing, covering EMC, LVD, ErP and RoHS directive related harmonized standard. By benchmarking several competitors' products several non-compliances were discovered. These non-compliant products represent unfair competition and represent often risks for the consumer or professional end users.



We would like to share the following examples where competitors' products or parts deviate from the applicable standards or Essential health and safety requirements. The examples are each time linked to a dedicated new approach directive:

- EMC Directive: radiated emission limits of LED tiles exceeded by a factor 8 by competition → unequal level-playing field as Barco R&D places extra effort in designing high performing shielded products. LED walls are now present in vast numbers, non-compliant tiles create potential interference issues with different electrical products.
- LVD Directive: misclassification of laser illuminated products (Class 3R vs Class 1 RG3) → unfair competition: Barco perceived as over restrictive and cannot sell its products in certain laser class restricted markets. This situation represents for the end user an unexpected high potential eye hazard; in addition this creates significant confusion when performing a risk assessment at the workplace.
- RED Directive: un-licensed WIFI modules used in competition products → Unequal level-playing field in terms of extra certification costs and big negative impact on time to market.
- Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive: we encounter a lot of manufacturers that issue unrealistic RoHS exemptions → Consequently, Barco needs to invest time in research and testing to positively validate this component. This situation reflects a general market problem for products/components that are used by less diligent manufacturers.
- Eco-design of Energy Related Products (ERP Directive): we often encounter products that consume more energy than indicated; or are less energy efficient than required. → Unfair competition: Barco has to invest in expensive power management and dedicated power supply = creates DKP cost handicap.

For all these issues we have no central point to file complaints, we are hoping that the current Commission proposal will help in exposing more non-compliant products, thanks to the memorandum of understanding of authorities with trade associations.



In addition we suggest focusing on:

- Educating importers into the EU who write often a CE declaration of conformity (DoC) without checking the validity of the product.
- Industry is well placed in assisting market surveillance authorities in creating easy/fast checks in order to spot potential non-compliance issues based on the info provided by manufacturers/ importers (e.g. DoC, RoHS COC, test reports), without extensive physical testing
- Invest in software, online data grabbing¹: this has proven huge potential targeting suspicious products in Scandinavian countries for example: NORDCRAWL tool setup by Market Surveillance Authorities though low cost data capture, analysis and targeting for energy labeling.
- Third part test houses (located outside the EU) are often not held responsible for non-compliant products. In our experience non-EU based test labs are not sufficient stringent. In addition within the EU there are difference among the national accreditation bodies; different benchmarks to verify third party test houses are not constructive and create a large amount of uncertainty.
- Ensure that market surveillance authorities focus on checking the EU open market, not only the application of local occupational health and safety regulations. We are faced with several examples of product safety optical radiation requirements that are referring to local OSHA requirements.
- Liaise more actively with standardization bodies and align enforcement inspection campaigns if major product safety standards change or are past their sunset date. For example the upcoming hazard based standard (IEC 62368-1).
- Barco clearly encourages more material/product checks instead over mere documentary checks.



Malte LOHAN, ORGALIME, Director General

The Director General summarised the main points of the discussion and thanked the EFM and contributors.

Antony FELL, EUROPEAN FORUM FOR MANUFACTURING, Secretary General

Ladies and Gentlemen – 3 points

1. Papers

In addition to the MEPs from the different political groups, it is important that all the speakers provide their papers which will then go up on the website to fulfill the Parliament's transparency policy.

2. Future Programme

I would also like to alert you to future EFM programme topics.





The first is Ecodesign which is currently under discussion with MEPs on the Environment Committee

The second is Sustainable Finance for Manufacturing. Vice President Dombrovskis will be launching his action plan shortly on this subject.

3. Thanks

Finally I would like to thank ORGALIME's Philippe Portalier for his excellent policy input to this Forum and Anna, Caroline and Chloe for their very efficient organisation and above all, Maria Grapini MEP for her superb chairmanship.


