



## Calling for improved enforcement of harmonisation legislation for safe and compliant products

Orgalime's initial views on the Commission's proposal for a Regulation laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products COM(2017) 795<sup>1</sup>

Orgalime advocates for 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 Union 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 between domestic products and products imported into the EU**. In general, the proposed concept that a person established within the Union 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 Union 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.

<sup>1</sup> <https://ec.europa.eu/docsroom/documents/26824>



## Where we see room 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<sup>2</sup>, Directive 2001/95/EC on general product safety (GPSD)<sup>3</sup> 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<sup>4</sup> and the aligned specific provisions in certain sectoral Union 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 SOLVIT problem-solving procedure**. With due consideration for the proposed extended powers of market surveillance in this proposal, we believe manufacturers under Union harmonisation legislation should be able to benefit from the same problem-solving procedure put forward in the COM(2017)796 proposal on mutual recognition<sup>5</sup>: an economic operator affected by an administrative decision of a local enforcement authority should be allowed to lodge a complaint to the Internal Market Problem Solving Network (SOLVIT).

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*Orgalime, the European Engineering Industries Association, speaks for 42 trade federations representing the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs nearly 11 million people in the EU and in 2016 accounted for some €2,000 billion of output. The industry represents over a quarter of the output of manufactured products and over a third of the manufactured exports of the European Union.*

<sup>2</sup> Accreditation and Market Surveillance <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008R0765>

<sup>3</sup> GPSD <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0095>

<sup>4</sup> Harmonised Framework <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008D0768>

<sup>5</sup> Mutual Recogn. <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-796-F1-EN-MAIN-PART-1.PDF>