
Brussels, 5 December 2018

Towards effective, efficient EU market surveillance: all for a level-playing field without additional burdens for legitimate manufacturers

Comments on the report of the European Parliament's Internal Market and Consumer Committee (IMCO) and the general approach of the Council of the EU on the Commission proposal for a Regulation laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products COM(2017) 795 ¹

Executive summary

The European technology industries represented by Orgalime should almost all comply with Union harmonisation legislation in the mechanical engineering, electrical and electronic engineering and metalworking sectors.

Orgalime has welcomed the Commission proposal on compliance with and enforcement of EU legislation on products ² and we support the efforts of both the European Parliament and the Council to improve this proposal with a view to “*prevent illegal and non-compliant products on the market distorting competition and putting consumers and professional end-users at risk*”³. We especially welcome the Council's drive to deliver a “*strengthened framework for controls on products entering the Union market and for improved cooperation between market surveillance authorities and customs authorities*”, a framework that should be compatible with the New Legislative Framework to the greatest possible extent.

Under Article 4, we call on the European institutions to clarify that economic operators should cooperate with authorities without the latter requesting the technical file to be physically present within the EU territory, or requesting that these operators should mitigate risks beyond their competence or role in the distribution chain.

We call on the Commission and the Council to support the Parliament's amendments to Article 8, which would preserve a key feature of more efficient and effective market surveillance across countries and industry sectors to better protect end-users.

Orgalime calls on the European institutions to rapidly come to an agreement, with pragmatic and novel solutions that would not add administrative burden to economic operators.

We believe that these solutions depend on both increased cross-border cooperation among market surveillance and customs authorities and a legal framework that could facilitate novel solutions such as business or multi-stakeholder initiatives to support market surveillance authorities in carrying out their internal market control duties.

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

² More: <http://www.orgalime.org/position/simpler-compliance-and-smarter-enforcement-eu-harmonisation-legislation-orgalime-comments>

³ More: <https://www.consilium.europa.eu/en/press/press-releases/2018/11/23/eu-moves-to-keep-unsafe-products-off-the-market-council-agrees-position-on-enhanced-enforcement-and-compliance-rules/>

Orgalime, Europe's Technology Industries, speaks for 45 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 2017 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.

Article 1 – Subject matter and 3 – Definitions

Orgalime fully supports as thorough an alignment with Regulation (EC) 765/2008 and Decision 768/2008/EC⁴ as possible, which would adequately address in an enforceable manner any source of unfair competition to our industries.

Article 4 – Person responsible for compliance information

Orgalime welcomes a strengthened framework for controls on products entering the Union market, which would contribute to a level-playing field provided it is as closely aligned with the New Legislative Framework as possible.

As stated in our initial position paper on this proposal, **we support, in principle**, the idea of obliging manufacturers established outside the EU to designate an economic operator established within the EU – usually an importer or an authorised representative – who would be **tasked with providing compliance information to the market surveillance authorities** further to a reasoned request. This would be consistent with the provisions of Article R3 of Decision 768/2008/EC.

However, to prevent discrepancies in the interpretation of such an obligation and to avoid unnecessary administrative burdens and additional costs for manufacturers, **it should be clarified** that the **tasks** of the designated economic operator are **limited to the following**:

1. **Compliance information** – especially the technical file, which contains trade secrets – **should not be requested to be permanently and physically present within the territory of the Union**. It should be sufficient to require that this information is communicated to the authorities within a reasonable period of time in a language agreed by all involved parties, in line with the provisions of product-specific Union harmonisation legislation.
2. **Due cooperation with the authorities to mitigate any risk** in case a product was deemed to be not compliant **should be proportionate to the role of the economic operator in the distribution chain**:
 - a. For instance, authorised representatives cannot be requested to bring a product into compliance if they do not have the technical competence to do so, or to destroy the product if they do not have ownership of the product.
 - b. Importers or authorised representatives can in no way be held liable for the non-compliance of the product itself.

Orgalime would strongly recommend postponing the direct application of Article 4 under any other conditions than those mentioned above until the Commission has carried out a thorough impact assessment of any additional obligations for economic operators. Such an impact assessment should include the enforceability of those obligations, especially with regards to the prevention of illegal trade that uses postal and parcel-shipping services to deliver products to European consumers from offshore non-EU based e-commerce marketplaces.

Article 5 – Declaration of conformity

Orgalime supports the Council suggestion to delete Article 5 as it would oblige manufacturers to publish the Declaration of Conformity (DoC) for all their products on their website, on top of existing administrative obligations. This would only add an unnecessary requirement for market surveillance authorities to check the veracity of the declaration and would not be enforceable on economic operators established outside of the EU.

⁴ <https://publications.europa.eu/en/publication-detail/-/publication/fdd70f57-7032-4121-92ae-ccf8ef68c15b/language-en;https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32008D0768>

Article 8 – Memoranda of understanding with stakeholders

It is in our view essential to set up a Europe-wide regulatory framework that would enable cooperation between economic operators and market surveillance authorities. This would pave the way for solutions to support and increase the efficiency of market surveillance activities, on a voluntary basis, for both authorities and other parties.

Orgalime calls on the Council delegations to endorse the Commission proposal on Article 8 with all the improvements brought by the European Parliament.

Specifically, we believe it is essential for the effectiveness of future cooperation to retain the possibility offered in paragraph 2 for market surveillance authorities to use any information resulting from activities carried out or financed by other parties within a memorandum of understanding, under the condition that these are carried out independently, impartially and without bias, as stressed in EP IMCO Amendments 73 on Article 8 and 82 on Article 12.

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