

# Market surveillance of products

2013/0048(COD) - 15/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 573 votes to 18, with 52 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on market surveillance of products and amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC, 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council.

Parliament adopted its position at first reading following the ordinary legislative procedure, and amend the Commission proposal as follows:

**Precautionary principle:** Parliament wanted the provisions of the Regulation to be based on the precautionary principle. The principle, is a fundamental principle for the safety of products and for the safety of consumers and should be taken into due account by market surveillance authorities when assessing the safety of a product.

This Regulation should apply to all forms of supply of products, including distance selling. Member States and the Commission should develop a common approach for the market surveillance of products sold online.

**Intermediary service providers:** these intermediaries, such as online hosts and registrars, should be obliged to cooperate with market surveillance authorities and take corrective actions where required, like other economic operators, in order to **prevent the selling of unsafe or otherwise non-compliant products online.**

**Product presenting an emerging risk:** market surveillance authorities should also tackle products presenting an emerging risk. A definition was proposed in order to be easily applied in a harmonised manner across the EU

**Market surveillance:** this should be carried out with a view to ensuring that products presenting a risk and non-compliant products are not placed or made available on the Union market and, where such products have been made available, effective and proportionate measures are taken to remove the risk presented by the product or to **resolve non-compliance.**

Member States should report on the market surveillance activities and external border controls to the Commission every year. The Commission should make that information available to the public electronically and, where appropriate, by other means.

**Market surveillance authorities:** each Member State shall grant market surveillance authorities **the powers and entrust them with the resources and means necessary** for the proper performance of their tasks. The Commission shall evaluate whether those powers and resources are sufficient for the proper performance of that Member State's market surveillance obligations.

**Effective surveillance:** Market surveillance authorities should organise their activities in such a way that maximum effectiveness can be achieved. They should, accordingly, **carry out the sample checks** on sufficient numbers of products made available on the market, enabling conformity and the real risk posed to be assessed.

Market surveillance authorities should also:

- **alert users in their territories without delay** of the identity of products that those authorities have identified as presenting a risk. Where available, that information shall also include data on the manufacturer, retail channel and period of sales;
- **cooperate** with economic operators and other competent national authorities to prevent or reduce risks caused by products;
- **follow up consumer complaints** within a reasonable time frame;
- verify that corrective action has been taken in a timely manner;
- **monitor accidents and damage to health** which are suspected to have been caused by those products;
- be encouraged to participate in national standardisation activities aimed at the development or revision of standards requested by the Commission.

**Market surveillance programmes:** general and sector-specific programmes should be drawn up **with the input of key stakeholders concerned**, including professional organisations, business organisations and consumer organisations. The Commission should evaluate the general and sector-specific programmes and, if appropriate, make recommendations to the Member States based on that evaluation.

The levels and methods for calculation of fees applicable to economic operators must be included in the general market surveillance programmes.

**General obligations of economic operators:** the latter must make available to market surveillance authorities information that enables the **precise identification of the product and facilitates the tracing of the product**. Market surveillance authorities should ensure confidentiality when that documentation and information is made available.

Economic operators shall cooperate with market surveillance authorities at their request, on any action taken to eliminate the risks presented by or non-compliance of products that they have placed or made available on the market.

**Products presenting a risk:** if the products in question present a serious risk, Members considered that preventing the product from being placed or made available on the market must be done Immediately.

**Measures taken by market surveillance authorities:** according to the amended text, the relevant economic operator should bear all of the expenses related to the destruction of products and the expenses incurred by the market surveillance authorities. Furthermore, market surveillance authorities shall **charge fees** for the relevant economic operators which are caught placing or making available non-compliant products and products presenting a risk on the Union market. Such fee should not exceed the actual costs of the market surveillance activity performed and may partly or entirely reflect the time taken by the staff of the market surveillance authorities to perform the market surveillance controls.

**The Union rapid information system (RAPEX):** this system must be **constantly updated**. RAPEX should also include notifications related to Food Contact Materials, moved there from the Rapid Alert System for Food and Feed (RASFF) platform.

**Risk assessment:** Parliament proposed using a **European Union reference laboratory** to carry out risk assessments. It should settle any disputes arising out of a divergent risk assessment among the market surveillance authorities of different Member States, the economic operators and the conformity assessment bodies.

**Pan-European Injuries Database:** the report required the Commission to adopt, two years after entry into force of the Regulation, delegated acts establishing a Pan-European Injuries Database which would cover all types of injuries, and in particular those related to products used at home and for leisure, transportation and work activities. The database shall be coordinated and operated by the Commission.

**Cooperation and exchange of information:** Parliament suggested establishing a European Market Surveillance Forum composed of representatives from market surveillance authorities. The Forum should serve as a **platform for structured cooperation** between the authorities of the Member States and should provide a continuous and permanent means of involving all stakeholders concerned, including professional organisations, business organisations and consumer organisations.

It wished to strengthen the future role of the Forum and suggest that the Commission should consider proposing, when this Regulation is next reviewed, that the Forum is given the power to set binding recommendations as to the quality and practices of market surveillance.

**Deterrent penalties:** Members proposed the introduction of EU-wide, harmonised administrative penalties. Administrative penalties applicable to infringements shall at least offset the economic advantage sought through the infringement, but shall not exceed 10 % of the annual turnover or an estimate thereof. To add to the deterrent effect sought, the penalties imposed under the Regulation should also be made public. In addition to this the report proposed establishing a public **blacklist** of operators who repeatedly breach this Regulation.