

Compliance with and enforcement of Union harmonisation legislation on products

2017/0353(COD) - 17/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 562 votes to 60, with 33 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Strengthening market surveillance

The proposed Regulation aims to improve the functioning of the internal market by strengthening the market surveillance of products covered by the Union harmonisation legislation, with a view to ensuring that only compliant products that fulfil requirements providing a high level of protection of public interests, such as health and safety in general, health and safety in the workplace, the protection of consumers, the protection of the environment and public security and any other public interests protected by that legislation, are made available on the Union market.

This Regulation lays down rules and procedures for economic operators regarding products subject to certain Union harmonisation legislation and establishes a framework for cooperation with economic operators.

Tasks of economic operators

A product covered by Union legislation may only be placed on the market if an economic operator established in the Union performs the following tasks with regard to that product:

- verify that the EU declaration of conformity or the declaration of performance and technical documentation have been drawn up and ensure that the technical documentation can be made available to these authorities upon request;
- provide the authorities with all the information and documentation necessary to demonstrate the conformity of the product in a language that can be easily understood by that authority;
- cooperate with market surveillance authorities, including, following a reasoned request, ensuring that the immediate and necessary corrective action is taken to remedy any case of non-compliance with the requirements laid down in the Union harmonisation legislation applicable to the product in question.

Economic operators shall be required to cooperate with market surveillance authorities with a view to adopting measures that would eliminate or reduce the risks posed by products made available on the market by these operators.

Activities of market surveillance authorities

These authorities shall ensure effective market surveillance of products made available online and offline on their territory and the adoption of appropriate and proportionate measures if the operator does not take corrective measures.

Market surveillance authorities shall exercise their powers and carry out their duties independently, impartially and without bias.

They shall perform appropriate checks on the characteristics of products on an adequate scale, by means of documentary checks and, where appropriate, physical and laboratory checks based on adequate samples. This shall be based on a risk-based approach taking into account factors such as potential hazards associated with the product, the economic operator's history of non-compliance and consumer complaints.

In order to assist market surveillance authorities to strengthen consistency in their activities related to the application of this Regulation, an effective peer review system should be established for those market surveillance authorities wishing to participate.

Market surveillance powers and measures

The powers conferred on market surveillance authorities shall include at least the following:

- to require economic operators to provide relevant documents, technical specifications, data or information on compliance and technical aspects of the product;
- to require economic operators to provide relevant information required for the purpose of ascertaining the ownership of websites;
- to carry out unannounced on-site inspections and physical checks of products;
- to require economic operators to take appropriate action to bring an instance of non-compliance to an end or to eliminate the risk;
- to take appropriate measures where an economic operator fails to take appropriate corrective action or where the non-compliance or the risk persists, including the power to prohibit or restrict the making available of a product on the market or to order that the product is withdrawn or recalled;
- to impose penalties in accordance with Article 41;
- the power to acquire product samples, including under a cover identity, to inspect those samples and to reverse-engineer them in order to identify non-compliance and to obtain evidence;
- to require the removal of content referring to the related products from an online interface or to require the explicit display of a warning to end users when they access an online interface. or

Corrective actions that may be imposed on the economic operator shall include (i) bringing the product into compliance, (ii) preventing the product from being made available on the market, (iii) immediately withdrawing or recalling the product and warning the public of the risk involved, (iv) destroying the product or rendering it inoperable, (v) immediately alerting end-users exposed to the risk, including by publishing specific warnings in the language or languages determined by the Member State in which the product is made available on the market.

Union Product Compliance Network

The amended text specifies that the purpose of the Network is to serve as a platform for structured coordination and cooperation between enforcement authorities of the Member States and the Commission, and to streamline the practices of market surveillance within the Union, thereby making market surveillance more effective.

The role of the network shall be strengthened. In particular, it would be able to (i) adopt its work programme defining priorities for joint market surveillance actions; (ii) facilitate the identification of common priorities for market surveillance activities and the exchange of information across sectors on evaluations of products; (iii) promote cooperation and the exchange of expertise and best practices between market surveillance authorities and authorities in charge of controls at the Union's external borders.

Lastly, a number of existing tools, such as the information and communication system for market surveillance (ICSMS) and RAPEX have been developed in order to increase the level of cooperation and exchange of information between Member States and the Commission.