

Compliance with and enforcement of Union harmonisation legislation on products

2017/0353(COD) - 25/06/2019 - Final act

PURPOSE: to improve the functioning of the internal market by strengthening product surveillance in the market.

LEGISLATIVE ACT: Regulation (EU) 2019/1020 of the European Parliament and of the Council on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011.

CONTENT: the Regulation aims to ensure that only compliant products which comply with the requirements guaranteeing a high level of protection of public interests such as health and safety in general, health and safety at work, consumer protection, protection of the environment and public safety and any other public interest protected by the said legislation, are placed on the market in the Union.

The Regulation establishes rules and procedures for economic operators with regard to products subject to certain provisions of EU harmonisation legislation and creates a framework for cooperation with economic operators. It also sets out a framework for controls on products entering the Union market.

Tasks of economic operators

Economic operators (manufacturers, importers, agents, fulfilment service providers established in the Union in respect of the products they handle) shall in particular be required to:

- 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 the supervisory authorities at their request;
- provide the authorities with all the information and documents 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, and ensure that the immediate and necessary corrective action is taken to remedy any case of non-compliance.

Joint activities to promote compliance with legislation

Market surveillance authorities may agree with other relevant authorities or with organisations representing economic operators or end users on the carrying out of joint activities that have the aim of promoting compliance, identifying non-compliance, raising awareness and providing guidance in relation to the Union harmonisation legislation with respect to specific categories of products, in particular categories of products that are often found to present a serious risk, including products offered for sale online.

Activities of market surveillance authorities

Each Member State shall designate one or more market surveillance authorities in its territory. Each Member State shall inform the Commission and the other Member States of its market surveillance authorities and the areas of competence of each of those authorities, using the information and communication system.

Each Member State shall appoint a single liaison office.

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 Regulation establishes a set of powers for market surveillance authorities to ensure the effective enforcement of EU product legislation in a cross-border context. This includes power:

- to access data related to a non-compliance event,
- to obtain information on the supply chain or for the purpose of identifying the owner of a website,
- to carry out on-site inspections,
- to make test purchases, including under a false identity,
- to bring the product into compliance, including by rectifying formal non-compliance as defined by the applicable Union harmonisation legislation, or by ensuring that the product no longer presents a risk;
- to prevent the product from being made available on the market;
- to withdraw or recall the product immediately and alerting the public to the risk presented;
- to impose sanctions and
- to alert the end users at risk immediately and in an appropriate form, including by publication of special 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 Regulation establishes a Union product compliance network within the Commission which will serve as a platform for coordination and structured cooperation between the supervisory authorities of the Member States and the Commission.

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.

The Regulation also sets out a reinforced framework for controls on products entering the EU market and reinforces the exchange of information between market surveillance and customs authorities.

ENTRY INTO FORCE: 15.7.2019.

APPLICATION: from 16.7.2021. However, certain provisions are applicable from 1.1.2021.