



## Joint Position Paper

# Market surveillance of machinery

### Executive summary

In view of the upcoming Market Surveillance Package (or Safety Package) CECE, CECIMO, CEMA and FEM stress that this is an important chance to streamline market surveillance in the EU and to restore credibility in the Internal Market.

We urge the EU to fully integrate the following principles in the legislative package in order to help ensure product safety in capital goods industries and to ensure a level playing field for European manufacturers of machinery:

- Market surveillance should focus mainly on the areas to be selected for targeted controls. These areas should be identified following a consistent assessment and after consultation with stakeholders, in particular those industry sectors which are affected by non-compliant products.
- Customs should have the responsibility, knowledge and capacity for implementing the first checks at borders and should decide whether or not to involve market surveillance authorities.
- Commonly agreed rules in Member States should make rogue traders liable for the cost of corrective actions undertaken by authorities.
- Market surveillance authorities should be obliged to follow up and submit an action report when alerted on individual cases.
- The European Commission should have the necessary financial capacity to coordinate projects on market surveillance of industrial products.

June 2012

## **Background**

In order to be legally placed on the EU market, machinery equipment must comply with a variety of regulatory requirements enshrined in a number of Directives and Regulations (Machinery Directive, Outdoor Noise Directive, Exhaust Emissions of NRMM Directive, to name a few).

As responsible industries, we work closely with EU decision-makers to ensure these requirements match the realities that our manufacturers are facing. As responsible industries, we also advocate and, when possible, try to facilitate through guidance the full compliance of our products and equipment with these requirements.

Whilst industry is therefore committed to ensuring conformity of its products, it is of paramount importance that the competent authorities fulfil their duty by consistently checking compliance of products placed on the EU market. It is only through effective and efficient market surveillance that a level playing field can be maintained on the market and that the safety and environmental objectives of the applicable legislation can be achieved.

## **The current situation: insufficient market surveillance**

### Situation on the market

Although no sector-specific statistics are officially available, CECE estimates that a considerable amount of machinery in use within the EU does not fully comply with the relevant legislative framework.

To identify the size of the issue, CECE conducted a survey in 2011 among manufacturers, dealers and rental companies.

The results were astonishing:

52% of companies recognised the problem was affecting their business.

1/3 of them replied they were losing business opportunities because customers opted for non-compliant (and very often cheaper) equipment.

Other machinery industries have come to similar conclusions and market surveillance has become their number one priority.

### Grey imports and unscrupulous manufacturers

For a great majority of manufacturers, non-conformities are first and foremost observed on imported equipment which, according to Eurostat figures, represented around 22% of the EU domestic demand for mechanical engineering equipment in 2010<sup>1</sup>.

Not all imports are delivered by unscrupulous manufacturers coming from third countries. In our experience, a significant portion of non-compliant equipment carries a well-known brand, is legally produced in the EU but intended for use in other markets according to the locally applicable legislation. These machines reach the EU market either through unlawful traders or via auctions.

### Consequences of lack of market surveillance in the EU

The current lack of market surveillance of machinery generates negative effects at different levels:

- *For compliant European manufacturers* and the 3 million jobs<sup>2</sup> they provide in the EU, due to unfair competition
- *For workers* with a less safe working environment and more accidents, due to potentially unsafe equipment
- *For the environment* due to higher emissions and neglected environmental requirements.

### From EU good intentions to the real world

Regulation 765/2008 entered into force on 1<sup>st</sup> January 2010 with the aim of ensuring uniformity among the 27 market surveillance systems, increasing transparency and cooperation between customs and market surveillance authorities for more efficient checks at the EU's external borders.

<sup>1</sup> See 2012 Study on Competitiveness of the EU Mechanical Engineering Industry, p191

<sup>2</sup> See 2012 Study on Competitiveness of the EU Mechanical Engineering Industry, p6

Despite these good intentions, the situation in the field has not improved for our sectors. As reported in the EC DG Enterprise conclusions in the draft “*ROADMAP – Enhancing the Market Surveillance enforcement for goods – A Multi Annual plan*”, market surveillance and customs controls remain weak in the EU, mainly due to scarce resources.

The lack of financial means and manpower at national and EU level, the insufficient coordination between customs and market surveillance authorities, the inconsistency of penalties among the different Member States and the absence of concrete follow-up obligations on national authorities are persisting problems which render market surveillance insufficient and inconsistent, and therefore damage the credibility of the Internal Market.

Following the conclusions of the EC and within the framework of the planned revision of the market surveillance system, better known as “The Safety Package”, CECE, CECIMO, CEMA and FEM would like to make some important recommendations.

### **CECE-CECIMO-CEMA-FEM position on the content of the new EC legislative and financial initiative**

Effective and efficient market surveillance must become an Internal Market priority.

In addition to comprehensive legislative provisions, determined actions by authorities on the ground should lead to more efficient market surveillance. The political will to provide the authorities with the necessary resources should be clearly demonstrated by both EU institutions and Member States.

As Member States alone are not in a position to offer our industry protection from unfair competition, the European Commission must assume this responsibility and indicate the way forward.

Hence we very much support the EC initiative to propose a New Market Surveillance Framework and the corresponding Multi Annual Plan for market surveillance.

The main sectors of the mechanical engineering industry believe in a reform of the market surveillance system aimed at:

#### Providing a single framework for all products and enhancing market surveillance for industrial products:

- Machinery industries expect to see a rules-based Internal Market where regulations are properly enforced for all goods (consumer and capital) without discrimination.
- As in the past all efforts were focused on the establishment of the Rapex system, the Prosafe network and relevant implementation projects, we believe that there should now be a specific focus on the improvement of market surveillance for industrial products.
- Hence, whilst DG SANCO is looking after market surveillance for consumer products, we believe that DG ENTR services should be given the responsibility and necessary financial capacity to coordinate market surveillance of capital goods.

#### Ensuring closer cooperation/coordination of authorities and obligation to follow up:

- Better coordination of market surveillance and harmonisation of enforcement practices (e.g. a common approach to risk assessment) should be ensured with colleagues in other Member States. It is of the utmost importance to enhance mutual confidence, avoid double checks and maximise the use of human resources for multiple and intelligent market surveillance activities. For this purpose, the multiannual action plan should foresee the financing of cooperation projects among the authorities so that they can share best practices and working methods throughout Europe. The industry stakeholders signing this paper commit to providing their expertise and human resources for these projects.
- There should be commonly agreed standards for the organisation of market surveillance in Member States. Market surveillance authorities should be obliged to follow up and issue an action report when, on the basis of concrete evidence, they are alerted to non-compliant products circulating on the market. They should communicate the measures to the other Member States and to the Commission.

#### Providing a permanent platform for cooperation among market surveillance authorities:

- A permanent Commission - Member States cooperation Platform should be set up under the new Stand Alone Market Surveillance framework, with an industry advisory forum for

preparing Europe-wide targeted campaigns focusing on certain products or product categories. This should ensure maximum effectiveness with limited resources. The decision on the areas to be selected should be made following a consistent assessment and after consultation with stakeholders, in particular those industry sectors which are affected by non-compliant products.

Ensuring better coordination of customs and market surveillance for checks and inspections:

- Customs should be the first checkpoint to control the compliance of imported products. The earlier products are checked in the supply chain, the less damage they cause on the market if they are not compliant.
- Relations between market surveillance and customs authorities should be further tightened. Customs officials should receive training to help them identify potentially non-compliant products (e.g. by making use of the manufacturer's declaration of conformity, as requested for all harmonised products under the NLF). The industry should be involved in such training projects.

Ensuring a more permanent structure for sharing information and identifying problems on the market:

- A dedicated information system under the responsibility of DG Enterprise, where non-compliant industrial products are notified further to failing controls, should be used. This system should also provide the possibility for industry stakeholders and workers to alert Member States authorities when a suspected non-compliant product is identified.
- Statistics are important to understand the size of the problem and ensure that actions are focused on those countries and products which are the most problematic. Within this framework, Member States should be obliged to report annually to the Commission the number of products identified, checked and destroyed. These statistics should be collected by product category and made available to the general public. The combination of these statistics, Eurostat figures on imports and the dedicated information system notification reports will provide a clear picture of where to focus the resources and on which products.

Ensuring a consistent system of deterrent sanctions throughout the EU:

- Penalties applying in the different Member States should be aligned, in order to avoid that rogue traders choose to import their non-compliant products into those countries where the penalties are less deterrent. Such products are then traded within the whole single market; hence this situation affects all companies and workers in Europe. Revenue from these penalties should be earmarked for market surveillance initiatives.
- The new regulation should provide for the importer who is caught trading non-compliant goods in the EU to pay for all actions which need to be undertaken by customs and market surveillance authorities for checks, identification and destruction of the products. This should automatically reinforce the income of market surveillance authorities and customs.

## **CONCLUSION**

Market surveillance is an essential pillar of the internal market: without appropriate controls on compliance, requirements are of no value. The internal market will only be completed when rules are respected, not when they are just in place. At present the internal market for machinery is only virtual.

Our industries have been working very hard to reduce noise, particulates and CO<sub>2</sub> emissions, and to improve the safety conditions of the workers who use our machines. These efforts are monopolising an ever-increasing share of manufacturers' R&D budgets, and this while innovation is paramount for an industry that contributes to improving the EU trade balance. However these efforts are currently rendered pointless by the substantial presence of non-compliant machinery on the market.

Hence, our industry would not support the introduction of any new legislative safety and environmental requirements on our manufacturers as long as proper market surveillance and customs controls are not ensured in the EU. The effectiveness of market surveillance could easily be assessed by including a market surveillance evaluation in each upcoming impact assessment on planned legislation.

## About CECE, CECIMO, CEMA and FEM

### **CECE**

The Committee of European Construction Equipment ([www.cece.eu](http://www.cece.eu)) is the recognised organisation representing and promoting the European construction equipment and related industries in order to achieve a fair competitive environment via harmonised standards and regulations. CECE is a European network consisting of a secretariat in Brussels and national association offices in 14 different European countries.

The industry behind CECE comprises 1,200 companies. In 2011, these equipment manufacturers had a total turnover of 23 billion € and employed 130,000 people directly. European construction machines represent around 25% of the worldwide production. Manufacturers include large European and multinational companies with production sites in Europe, but the majority of companies are small or medium-sized.

Contact: Valentina Mauri, Public Affairs Manager, [valentina.mauri@cece.eu](mailto:valentina.mauri@cece.eu)

### **CECIMO**

CECIMO is the European Association of the Machine Tool Industries. We bring together 15 national Associations of Machine Tool Builders, which represent approximately 1500 industrial enterprises in Europe\*, over 80% of which are SMEs. CECIMO covers more than 97% of total Machine Tool production in Europe and more than one third worldwide. It accounts for almost 150,000 employees and a turnover of nearly €21 Billion in 2011. Three quarters of CECIMO production is shipped abroad, whereas more than half of it is exported outside Europe\*. For more information visit [www.cecimo.eu](http://www.cecimo.eu)

\*Europe = EU + EFTA + Turkey

Contact: Filip Geerts, Director General, [filip.geerts@cecimo.eu](mailto:filip.geerts@cecimo.eu)

### **CEMA**

CEMA is the European association representing the agricultural machinery industry. For 50 years CEMA has acted as a network of national associations and provides services, advice and a common European industry view on relevant topics.

The industry represented by CEMA includes 4,500 manufacturers of agricultural equipment employing directly 135,000 persons and indirectly in the distribution and service network another 125,000 persons. The companies are mainly small and medium-sized manufacturers according to the EU definition and in 2011 had a total turnover of 26 billion euro.

Contact: Ralf Wezel, Secretary General, [ralf.wezel@cema-agri.org](mailto:ralf.wezel@cema-agri.org)

### **FEM**

Created in 1953, the European Materials Handling Federation ([www.fem-eur.com](http://www.fem-eur.com)) represents, defends and promotes European manufacturers of materials handling, lifting and storage equipment. FEM speaks for 15 members representing some 1,000 companies (mostly SMEs) employing 160,000 people directly and with an annual turnover of €45 billion (2008).

Contact: Olivier Janin, Secretary General, [olivier.janin@orgalime.org](mailto:olivier.janin@orgalime.org)