



POSITION PAPER

Market Surveillance and Product Safety Package

May 2013

EXECUTIVE SUMMARY

CECE-CECIMO-FEM-EUROMAP-CEMA welcome the proposal of the European Commission “Product Safety and Market Surveillance Package”, adopted on 13 February 2013. The European machinery industries share the Commission’s view that market surveillance is key to ensuring consumer and user safety, protection of the environment and fair competition in the Single Market. Whilst the integrity of the Commission’s proposal should be preserved, **we believe there is room and a need for including additional provisions** to adequately tackle the challenge of non-compliant products in the Single Market:

Greater approximation of sanctions

→ *Union-wide common minimum and maximum levels of sanctions should be set to ensure that rogue traders placing non-compliant products on the market face similar risks across all Member States.*

Adequate financial resources & earmarking

→ *The Regulation should impose a clear obligation on all Member States to charge costs related to tests, risk assessment and corrective actions taken by authorities to economic operators who infringe the rules, and to earmark revenues obtained through sanctions for market surveillance activities.*

Closer cooperation with industry

→ *The European Market Surveillance Forum must closely and regularly cooperate with industry stakeholders who should be regular participants of the EMSF or its sub-groups.*

Better coordination of Member States’ activities

→ *National market surveillance programmes should start only following a negotiation phase between the Commission, the EMSF and each Member State, and upon the approval of the Commission. The Commission should compile and publish statistics and reports (including product- or sector-specific statistics) regarding checks carried out by Member States and the results of these activities, including sanctions applied. This data should be put at the disposal of the EMSF to determine priorities on product groups and countries/regions which require particular attention.*

Legal certainty for compliant economic operators

→ *Market surveillance authorities should not be in a position to take restrictive action against products that are in conformity with EU harmonised legislation.*

CECE, CECIMO, CEMA, EUROMAP and FEM believe that the adoption of these additional measures would serve to strengthen the Regulation’s core elements so as to create the necessary framework for effective, uniform and coordinated market surveillance of all products placed on the Internal Market. **We call on the European Parliament and Council to take into due consideration the above suggestions in order to guarantee fair competition on the European single market.**

CECE-CECIMO-FEM-EUROMAP-CEMA welcome the proposal of the European Commission “Product Safety and Market Surveillance Package”, adopted on 13 February 2013. The European machinery industries share the Commission’s view that market surveillance is key to ensuring consumer and user safety, protection of the environment and fair competition in the Single Market.

The Commission proposal addresses to a large extent concerns which were raised by the machinery industry in a joint Manifesto in 2012.¹ Whilst the integrity of the Commission’s proposal should be preserved, we believe there is room and a need for including additional provisions to adequately tackle the challenge of non-compliant products in the Single Market.

Only efficient and effective market surveillance can ensure a high level of protection for public interests and guarantee fair trading conditions for European manufacturing businesses which are key for innovation, growth and jobs.

European Commission makes the right diagnosis

The Product Safety and Market Surveillance package correctly points out that “notwithstanding legislation in place, unsafe and non-compliant products still find their way onto the market”. This undermines the Internal Market and creates a disincentive to businesses investing resources in ensuring that the design and manufacture of their products are respectful of the various applicable regulatory requirements. The Commission recognises that rules are not respected and that enforcement is often not effective. Therefore, the Commission highlights the need to streamline enforcement efforts in the Single Market and to step up controls at the external borders of the EU through more coordinated, focused and determined action against non-compliant products. The proposal also aims at enhancing and simplifying rules for authorities and economic operators. The machinery industry strongly supports both these objectives.

The objectives of the new legislation cannot be sufficiently achieved by the Member States. Therefore, a high level of **cooperation, interaction** and **uniformity of operation** among competent authorities of the Member States is required. It is therefore clear that these objectives can be best achieved at Union level. Although market surveillance remains a competence of Member States, new mechanisms and rules must be introduced to ensure Union-wide coordination and uniform enforcement across Member States.

In this regard, the proposed implementing powers provided to the European Commission (e.g. for determining uniform conditions for carrying out checks, the provision of information, the adoption of temporary or permanent restrictions on the marketing of products presenting a serious risk) are a right step in support of these objectives.

¹ <http://machinery-surveillance.eu/page/manifesto>

A good prescription likely to enhance market surveillance

The Commission proposes to set up ‘a single market surveillance system’ for all products, based on one single legislative act, in order to address inefficiencies caused by the fragmentation of rules over different legislations in the current system. As industry, we believe this proposal has the potential to provide to a large extent the missing links which undermine the current system: it imposes clear obligations on Member States as regards conformity controls, sets up a framework for administrative cooperation, defines common criteria and procedures for risk assessment, clarifies the rules related to notifications and specifies the steps of the market surveillance activity for authorities:

- ***Equal treatment of all products***

Industry welcomes the introduction of a **single legal instrument** for market surveillance for all products and without distinguishing between harmonised and non-harmonised products or between professional users and consumers. Moreover, according to the new definition of risk (Article 3(13)), it is not confined to health and safety but covers all public interests protected by harmonised EU legislation. This is a key aspect of the proposal, given that market surveillance currently tends to focus on safety only. This means that products not complying with EU harmonised legislation will be presumed to present a risk, which will trigger action from market surveillance authorities. For the first time since the creation of the Single Market, EU legislation clearly defines the legal obligation of Member States to check the conformity of products against all applicable EU directives and take action when formal non-compliance is detected.

- ***Standardised enforcement practices***

We welcome the obligation for Member States to draw up general and sector-specific market surveillance programmes including the resources to be allocated which will be reported to and monitored by the European Commission. To ensure the **uniformity of operation** and procedures across the Union, the Regulation sets out the steps of the market surveillance activity in a chronological and sequential manner. In order not to unduly obstruct the flow of goods, deadlines for the completion of certain steps – notably the risk assessments – should be established. Moreover, common procedures and criteria for risk assessment of both consumers and industrial products are defined.

- ***Closer cooperation***

The proposal sets out a comprehensive framework for administrative cooperation and exchange of information between competent national authorities in order to ensure **cooperation and interaction** between Member States. We appreciate that new (or updated) tools and mechanisms are introduced to this end: the EU rapid alert system (RAPEX) will be extended to all products, and ICSMS will serve as a database to allow authorities to exchange information on tests, assessments and reports to facilitate the exchange of information other than notifications made under RAPEX. A European Market Surveillance Forum (EMSF) is established to gather representatives of Member States and provide a platform to develop best practices for the uniform implementation in the EU and to plan joint projects. Whilst the establishment of such a

body is supported, we believe industry's involvement in its activities should be further strengthened, as explained later.

We also welcome that new obligations are imposed on Member States to step up cooperation, for example, by providing mutual assistance or sending border-to-border alerts to each other when suspecting illegal imports at customs. Mutual assistance is vital for ensuring an optimized use of resources and reinforced controls across the EU territories. It is an essential building block of a genuine European framework for market surveillance.

What is also crucial for our companies is the introduction of a new obligation for Member States to provide interested parties with the possibility to file complaints which they are required to follow up. This is an important step to shift the market surveillance activity from the realm of public authorities to a sphere where authorities closely cooperate with stakeholders. However, it must be ensured that the authorities follow up the complaints within a reasonable time.

- ***Determined and focused market surveillance activity***

We support the Commission's intention to help achieve more **determined action** against non-compliant products. The Regulation in fact obliges market surveillance authorities to "deal with the risk" (even if it is not 'a serious risk') when the identity of the relevant economic operator cannot be ascertained or when an economic operator has not taken corrective action, including by requesting the destruction of the products. Furthermore, a multi-annual action plan is adopted by the Commission as a part of the legislative package, to put in place coordination mechanisms, means, actions and methods for the development and implementation of the EU market surveillance framework, monitored by the EMSF. Better planning of the market surveillance activity through a structural dialogue with authorities in different EU countries, the Commission and industrial stakeholders represents an important potential to make it more determined and targeted.

Not all the gaps are filled. Complementary measures are needed.

Compared to the current situation, the proposal is a considerable step in the right direction. Although the Commission correctly identifies the gaps in the current system and sets relevant objectives, its proposed solutions do not address some major problems identified by the machinery industry.

- ***Approximation of sanctions***

Union market surveillance is heterogeneous, which creates soft spots and harms fair trading conditions. These weak spots are also a source of forum-shopping for rogue traders which intentionally sell non-compliant imported products in the Single Market. The Commission recognises that rogue traders harm competition and explains the underlying reason for these soft spots as insufficient enforcement practices in some countries. However, it neglects a major underlying reason: divergent sanctions.

Whilst the Single Market has one common external border, the stringency of conformity controls at borders and sanctions applied in cases of infringement largely diverge from one Member State to another.

➔ *Union-wide common minimum and maximum levels of sanctions should be set to ensure that rogue traders placing non-compliant products on the market face similar risks across Member States. The information on the levels of sanctions applied and on the frequency of convictions should be inserted into the market surveillance programme transmitted by the Member States to the Commission every year.*

- **Financial resources**

An important reason for insufficient market surveillance in certain parts of the Union is a lack of resources at the disposal of market surveillance authorities. Moreover, some Member States (for example those which host large harbours) are in a more vulnerable position than others.

The Regulation states that market surveillance may be financed at least in part by charging economic operators for costs incurred during corrective actions taken by authorities. However, it leaves it to the discretion of authorities to charge the aforementioned costs partly or wholly to economic operators. We believe this should not be an ‘option’ but a ‘common rule’ across Member States.

In addition, we are convinced that as long as the revenues collected from sanctions are transferred to the general budget, there will be no incentive for market surveillance authorities to step up their controls and the resources at their disposal will not increase.

➔ *The Regulation should impose a clear obligation on all Member States to charge costs related to tests, risk assessment and corrective actions taken by authorities to economic operators who infringe the rules.*

➔ *The Regulation should impose an obligation on all Member States to earmark revenues obtained through sanctions for market surveillance activities.*

➔ *The EMSF should identify, plan and finance large-scale joint projects to ensure effective controls at the borders. Vulnerable countries, i.e. small countries at the borders of the EU, should be given priority for such projects.*

- **Cooperation with industry**

The Regulation creates, for the first time, a means of cooperation between competent national authorities and industrial stakeholders. Industry’s input into the market surveillance activity is crucial.

Firstly, economic operators are best placed to know what is happening in their sector and therefore are in a unique position to help determine priority product groups. Secondly, capital goods are complex products covered by a large number of regulations and a variety of regulatory requirements. Therefore industry’s support is crucial to provide technical assistance to market surveillance authorities.

- *The European Market Surveillance Forum must closely and regularly cooperate with industry stakeholders and not only on an ad-hoc basis. It should be clarified that stakeholders are regular participants of the EMSF or its sub-groups.*
- *Customs authorities should be involved in the activities of the EMSF which should pay particular attention to controls at the external borders of the Union.*

- ***Effectiveness of Member States' activities:***

Market surveillance remains a competence of Member States. Hence, they establish the necessary mechanisms, allocate resources, create links between MSA and customs and cooperate with other Member States.

- *Upon receipt of national market surveillance programmes and in cooperation with the EMSF, the Commission should review the activities foreseen and give recommendations to Member States on their programmes in order to ensure that national programmes help achieve the uniformity of implementation of the Regulation. National programmes should start only following a negotiation phase between the Commission, EMSF and each Member State, and upon the approval of the Commission.*
- *The European Commission should compile and publish statistics and reports (including product- or sector-specific statistics) regarding checks carried out by Member States and the results of these activities, including sanctions applied. This data should be put at the disposal of the EMSF to determine priorities on product groups and countries/regions which require particular attention.*

- ***Legal certainty for economic operators***

A major function of market surveillance is to ensure that products move freely across the Single Market. New efforts geared at stepping up enforcement of market surveillance should not undermine the right to free movement of goods. There is one particular provision in the Commission proposal which raises concerns amongst industry.

When a product covered by Union harmonisation legislation is made subject to risk assessment by authorities, the conformity of this product with Union harmonisation legislation will raise a presumption that the product adequately safeguards public interests protected by the applicable EU legislation. However, market surveillance authorities might be able to take restrictive action against this product “where there is new evidence that the product presents a risk”. This is a major concern and source of uncertainty for our industry, which manufactures its products in compliance with EU legislation.

Administrative authorities should not be entitled to stop products from being placed or sold on the market when these products comply with essential requirements set in the EU legislation. We are concerned that this may lead to diverging and/or discretionary practices, especially in the absence of criteria defining what shall be considered as ‘new evidence’.

→ Market surveillance authorities should not be in a position to take restrictive action against products that are in conformity with EU harmonised legislation.

- **EU reference laboratories**

For specific products or a category or group of products or for specific risks related to a category or group of products, the Commission may by means of implementing acts designate Union reference laboratories. EU reference laboratories will provide expert, impartial technical advice and conduct tests on products required in relation to market surveillance activities.

→ EU reference laboratories should be subject to rules of the European accreditation system established by Regulation 765/2008.

CONCLUSION

CECE, CECIMO, CEMA, EUROMAP and FEM believe that the adoption of the additional measures outlined in this paper would serve to strengthen the Regulation's core elements so as to create the necessary framework for effective, uniform and coordinated market surveillance of all products placed on the Internal Market.

We call on the European Parliament and Council to take into due consideration the needs and suggestions of the industry in order to guarantee fair competition on the European single market.

About CECE, CECIMO, CEMA, FEM and EUROMAP

CECE

The Committee of European Construction Equipment (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 2012, these equipment manufacturers had a total turnover of 25 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.

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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

*Europe = EU + EFTA + Turkey

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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.

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EUROMAP

Europe's Association for plastics and rubber machinery manufacturers is a major European industry with almost 3,700 companies which together have an annual turnover of more than 17 billion EURO and about 100,000 employees. EUROMAP covers the plastics and rubber machinery manufacturing industries in Austria, France, Germany, Italy, Luxembourg, Spain, Switzerland, Turkey and the United Kingdom.

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FEM

Created in 1953, the European Materials Handling Federation (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 more than €50 billion (2011).

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