ORGALIME

Position Paper

Brussels, 31 October 2016

Towards Smarter Enforcement and Compliance in the EU?

Orgalime answer to the Commission questionnaire on "Internal Market for Goods – Enforcement and Compliance"

We thank the European Commission for consulting stakeholders on what industry considers a key issue for the success of the operation of the Internal Market with significant impact on growth and jobs for our industry in Europe, as we have stated in a number of position papers over the past few years[1]. With our enclosed answer to the questionnaire, we are hereby pleased to assist the European Commission in making choices among the various policy options that it is currently contemplating. We support the idea of simplifying EU legislation and means to comply with it, on the one hand, and to improve the capacity of national market surveillance authorities to enforce a level-playing field among economic operators, on the other hand[2].

We hope that our contribution will facilitate the setting up of a smarter compliance and market surveillance system across all EU Member States, with a view to preserve the flexibility of the New Approach to technical harmonisation, simplify the demonstration of compliance to technical rules and eventually reduce the level of unfair competition from rogue economic operators.

In our view, it is paramount to preserve the dialogue between national authorities and willing economic operators to enable them to carry out voluntarily corrective measures. Therefore, we are against any "digital compliance system" that would no longer enable such a dialogue. Conversely, sanctions should be both effective and proportionate while applying in a differentiated and tougher manner to those that "*deliberately flout the rules to gain a competitive edge".*

Although the Commission's standards of consultation have improved in recent years, we remain concerned that consultation procedures are still often neither simple enough nor targeted enough. Some questions are not easy to understand or could elicit different types of answers, depending on whether you have in mind to address the behaviour of rogue traders versus those responsible of minor or unintentional cases of non-compliance. This is especially true for questions B1 -6, -15, -17; B2s'; and B4-5. Therefore, we are pleased to provide herewith explanations on our choices of answer, including on questions raised with a closed choice in the online questionnaire.

We also hope that the European Commission will take into account the European Parliament invitation of "*lowering of administrative burdens and compliance costs on businesses, especially SMEs, and repealing unnecessary legislation*" as stated in the EP IMCO "own initiative" resolution of 26 May 2016 on the Single Market Strategy (2015/2354(INI)[3].

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1 EC public consultation on the Internal Market for Goods (enforcement and compliance) until the 31st of October. http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8865

2 See the "inception impact assessment" on 13 may 2016 at http://ec.europa.eu/smart-regulation/roadmaps/docs/2017_grow_007_enforcement_compliance_en.pdf

3 More: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0237+0+DOC+XML+V0//EN&language=EN

Orgalime, the European Engineering Industries Association, speaks for 41 trade federations representing the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.9 million people in the EU and in 2015 accounted for more than €1,900 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union.

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Orgalime answer to the questionnaire:

Section A

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Orgalime's members deal with the following product sectors: electrical and electronic appliances and equipment, machinery of all types, construction products, Equipment and protective systems intended for use in potentially explosive atmospheres, gas appliances, lifts, radio equipment including the components for this equipment as all those products falling under Eco-design and Energy labelling legislation.

Section B

B1. Product compliance in the Single Market and Deterrence of existing enforcement mechanisms

Question B1.1. Are the products in your sector(s) affected by non-compliance with product requirements laid down in EU harmonisation legislation?

Yes, most of them.

Question B1.2. What is the approximate proportion of non-compliant products for your sector (product volumes)?

Unable to approximate at the level of Orgalime. The proportion of non-compliant products depends heavily on the market conditions in the (electrical, mechanical and metallic) product sectors in which manufacturers operate.

Question B1.3. Does the problem of non-compliance negatively affect consumers and other end-users in your sector?

Yes, on average to a moderate extent, with variations depending on the product sector.

Question B1.4. Do businesses complying with legal obligations experience negative effects on sales and/or market shares due to the presence of non-compliant products?

Overall, our industry experiences negative effects to a moderate extent. However, this may vary significantly depending on the specific product category/ sector concerned.

Question B1.5. What is the approximate loss in sales for your company due to competition from non-compliant products?

Unable to estimate at the level of Orgalime.

Question B1.6. What is the main reason for product non-compliance in the Single Market? (Please rank from 1 to 5, 1 being the most important reason)

- A deliberate choice to exploit market opportunities at the lowest cost = 2
- A lack of knowledge = 3
- A technical or other type of inability to comply with rules = 4
- Carelessness = 3
- Ambiguity in the rules = 2

We believe that the market is not swamped by non-compliant products. However, to the first question, our answer is meant to address the situation of rogue traders that deliberately do not comply and thereby exploit market opportunities at the lowest cost.

Question B1.7. Do you have experience/knowledge of instances where a market surveillance authority lacks/lacked sufficient financial resources to carry out specific tasks in your sector?

Yes. It is a common problem in most EU Member States.

Question B1.8. Do you have experience/knowledge of instances where a market surveillance authority lacks/lacked sufficient human resources to carry out specific tasks in your sector?

Yes. Our members reported examples of lack of enforcement in the area of environmental legislation (WEEE, RoHS, REACH). As regards to the enforcement of product safety legislation, it is often limited to consumer products, while market surveillance of business to business products is often relatively poor.

Question B1.9. Do you have experience/knowledge of instances where a market surveillance authority lacks/lacked the technical means (notably testing facilities) to carry out specific tasks in your sector?

Yes. Our members repeatedly report that market surveillance authorities have a disproportionate focus on administrative paperwork such as the provision of the EU declaration of conformity, instruction for use of the product, etc… and rarely request the technical construction file or test reports. They rarely ask to test an engineering product in their facilities.

Question B1.10. What is the approximate financial resource gap of the national authority in your sector?

Unable to estimate.

Question B1.11. How could the resources for market surveillance activities be increased in your sector?

a) Revenues obtained through sanctions should be allocated to market surveillance activities → **Orgalime strongly agrees**
b) Market surveillance authorities should levy administrative fees on operators in their sector to finance controls → **Orgalime strongly disagrees**
c) Programmes at European level should finance sufficient laboratory capacity in each Member State → **Orgalime agrees**

Question B1.12. Would you like to add any comments or suggestions on how to increase resources for market surveillance authorities?

Revenues obtained through sanctions should be allocated to market surveillance activities. This should, however, be established under two conditions:

1. the collection of fines from enforcement sanctions should be organised in a European collective scheme to avoid biased and unbalanced market surveillance practices from one Member State to another;
2. Sanctions and penalties should be related to the revenue derived from placing non-compliant products on the market, along with the seriousness, the duration and, where applicable, the intentional character of the infringement. Additionally, penalties should take into account whether the relevant economic operator has previously committed a similar infringement. On the contrary, sanctions should not be connected to the size of the undertaking.

Orgalime disagrees with levying "*administrative fees*" as part of an EU enforcement regulation. This would be an additional tax with no obvious direct benefit, given the past experience in many Member States where collected specific taxes do not actually fund their initial purpose.

However, Orgalime agrees that:

1. Programmes at European level should finance sufficient laboratory capacity in each Member State.
2. Testing costs could be recovered from the manufacturer or the importer in case the product is found to be technically non-compliant.

There is a recurrent link between non-compliance and the lowest retail price of products in their range, especially from unknown brands; it usually shows an insufficient investment into a safe and compliant design and testing for that product.

Market surveillance authorities should more often request the complete technical construction file of a suspicious product, including EMC test reports. Any clearly established case of non-compliance should be sanctioned, but in a proportionate manner.

Question B1.13. How could the resources for market surveillance activities be used more efficiently in your sector?

1. Orgalime **agrees** that market surveillance authorities should have **more knowledge** about the relevant sector (type and number of economic operators, market trends, etc.)
2. Orgalime **disagrees** that market surveillance authorities should have **stronger powers**
3. Orgalime **agrees** that market surveillance authorities' inspectors should receive **better training**
4. Orgalime **agrees** that market surveillance authorities' inspectors should receive **more standardised training** across the EU
5. Orgalime **agrees** that market surveillance authorities **within** a Member State should **share more intelligence**
6. Orgalime **strongly agrees** that market surveillance authorities **of different** Member States should **share more intelligence**
7. Orgalime **strongly agrees** that market surveillance authorities **within** a Member State should **better coordinate action**
8. Orgalime **strongly agrees** that market surveillance authorities **of different** Member States should **better coordinate action**
9. Orgalime **strongly agrees** that market surveillance authorities **within** a Member State should **share capacity of testing laboratories**
10. Orgalime **strongly agrees** that market surveillance authorities **of different** Member States should **share capacity of testing laboratories**

Question B1.14. Do you think that market surveillance in your sector provides sufficient deterrence?

No, several of our members' companies have done check measurements on products available on their market and found a number of instances of non-compliance.

Question B1.15. How could the deterrence of market surveillance action be improved in your sector?

1. Giving authorities more resources → **Strongly agree**
2. Through more efficient use of existing resources → **Strongly agree**
3. Giving authorities more powers → **Disagree**
4. Imposing higher fines for serious non-compliance → **Agree**
5. Giving more publicity to restrictive measures adopted against non-compliance (reputation effect) → **Agree**

In our view, the authorities have all the powers they need, on the basis of Regulation 765/2008. The point is that the authorities need to exercise these powers effectively.

Question B1.16. Would you like to add any comments or suggestions on how to increase the deterrence of market surveillance action?

Market surveillance should be more visible and sanctions should have deterrence proportionate to the living standards of each EU country (homogeneous scheme of sanctions). Sanctions and their consequences should be advertised more prominently at both national and EU level, mostly in the professional communication channels: we do not imply that companies should be stigmatised. The purpose should be to make enforcement authorities decisions more visible, both to the rogue economic operators and to the poorly informed operators.

Question B1.17. What powers do you think market surveillance authorities need in order to carry out more effective and deterrent action in your sector?

1. Power to issue requests for information → **Strongly agree**
2. Power to take temporary measures against products when relevant economic operators do not reply to requests for information → **Strongly agree**
3. Power to inspect business premises → **Strongly agree**
4. Power to **sanction economic operators that do not submit to inspections** of business premises → **Strongly agree**
5. Power to take samples for free → **Agree**
6. Power to do **mystery shopping** → **Agree**
7. Power to take interim restrictive measures (e.g. seize products, ban sales) pending compliance assessment → **Agree**
8. Power to take restrictive measures against economic operators to stop infringements → **Strongly agree**
9. Power to take restrictive measures against economic operators to prevent future infringements → **Strongly agree**
10. Power to impose dissuasive fines for non-compliance → **Agree**
11. Power to conduct sector inquiries to gain more specific knowledge of the market → **Agree**
12. Power to carry out an inspection on behalf of another EU Member State's authority upon request → **Strongly agree**
13. Power to notify acts on behalf of another EU Member State's authority upon request → **Agree**
14. Power to enforce fines on behalf of another EU Member State's authority upon request → **Agree**

We wonder what is the purpose of this question. We believe that the Regulation 765/2008 and relevant EU product-related legislation already provide for the above-mentioned powers.

Question B1.18. Divergences exist in the methodologies applied by market surveillance authorities in different Member States to sanction non-compliant businesses. Which measures do you think should be taken to address this issue?

1. Establish a **set of minimum core elements** to be taken into account by all market surveillance authorities in calculating fines → **Disagree**
2. Establish a **more detailed common methodology** to be taken into account by all market surveillance authorities in calculating fines → **Disagree**
3. **None,** this is **not a priority** → **Agree**
4. **None,** different methodologies are **not an issue** for market surveillance in the Single Market → **No opinion**

Question B1.19. Would you like to add any comments or suggestions on methodology to be applied by market surveillance authorities to sanction non-compliant businesses?

1. Facilitate coordination at European level: There is a need to ensure equal treatment of all businesses throughout the internal market for industrial products. However, this does not necessarily require a European ruling: a European platform to co-ordinate efforts of national enforcement authorities would, however, facilitate their work, promote mutual cooperation and incentivise Member States to step up their national legislation to make it equally dissuasive in each Member State.

2. Enable rather than empower: There is no need to increase the powers of Market surveillance authorities; what is important is to give them the necessary resources to make use of their powers to carry out more effective and deterrent action. While we appreciate that the EC considers the "*power to do mystery shopping*", but it is unlikely to be carried out by MSA, if they have no corresponding funding from their government.

3. Make intelligence and tests sharing possible: Efficient reality checks are based on three key enabling elements: competence, finances and legitimacy. Industry could provide support to this, on a voluntary basis. However, the last key element — legitimacy — needs to be organised and agreed upon among national Market Surveillance Authorities at the European level. It should be facilitated by a European Market Surveillance Forum envisaged in the Commission proposal COM(2013) 75 final (Art. 25) of a Regulation on the market surveillance of products.

Therefore, we call on the European Commission to facilitate a high level agreement between the Member States, whereby they would accept a common set of criteria for the acceptation of test results carried out by independent laboratories, at the request of either other Member States authorities or accredited stakeholder organisations. Such an agreement would enable to set up a framework of acceptable conditions for a public-private partnership between market surveillance authorities and voluntary self-financed market surveillance support initiatives, such as the recent initiatives in the machinery sectors (http://**machinery-surveillance.eu**, supported by Cecimo, Cece, Cema, Cecip, Euromap, Fem & Orgalime), or the electrical installation sectors (http://**mssi-electrical.org**, supported by Capiel & Cecapi).

4. Sanctions: make them real and proportionate first, balance comes before harmonisation:

The living standards and the industrial capacities of Member States vary considerably from one country to another. Therefore, we do not believe that agreeing on "*common methodologies for sanctions*" is actually a priority. However, to improve the actual application of deterrent sanctions at

national level, guidance and exchange of information should be established in order to create a broader understanding of what could be considered as (dissuasive) minimum and a (proportionate) maximum level of sanctions.

B2. Compliance assistance in Member States and at EU level

As an organisation, we cannot easily approximate a sentiment which lies with each company's own experience.

Question B2.1. Have you had difficulty in finding the correct information on the technical rules that products need to meet?

- before they can be placed on the domestic market? → **rarely**
- before they can be placed on other EU markets? → **rarely**

Question B2.2. Have you had difficulty understanding the correct information on the technical rules that products need to meet?

- before they can be placed on the domestic market? → rarely
- before they can be placed on other EU markets? → sometimes

Question B2.3. What is the approach you most often use to look for support and information on technical rules that products need to meet?

- ☒ **Refer to information available on Commission websites**
- ☒ **Contact the European Commission**
- ☐ Refer to information available on the website of the relevant market surveillance authority
- ☐ Contact the relevant market surveillance authority
- ☐ Refer to information provided by the manufacturer
- ☐ Contact the relevant Product Contact Point established under Regulation (EC) No 764/2008 or Regulation (EU) 305/2011
- ☒ **Liaise with Industry/Trade Association(s)**
- ☒ **Another publically accessible source of information**
- ☐ Other

Refers to information available on EC websites, contacts with the EC Desk Officers, liaises with associations, relies on other publically available sources of information.
Orgalime would like to reiterate its suggestion to set up Product Contact Points for harmonisation legislation, as is the case pursuant to Article 9 of Regulation 764/2008/EC, with the tasks foreseen by Article 10 of the same Regulation. Such a facilitation has already been introduced under the Construction Product Regulation and our members consider it as a valuable support for cross-verifying the information on technical rules that they need to meet for placing their products on the Single Market.

Question B2.4. What is your opinion on the following approaches by national authorities to reduce the level of non-compliant products on the market?

1. National authorities should focus **exclusively on enforcement** and leave it entirely up to the businesses to ensure compliance by developing their own approaches. → **not effective**
2. In addition to enforcement national authorities should also provide **information** on product requirements. → **effective**

3. In addition to enforcement national authorities should also provide support to businesses through **guidance** on how to interpret product requirements. → **effective**
4. In addition to enforcement national authorities should also **allow businesses to enter into agreements with authorities** to receive binding advice from them on how to interpret product requirements in specific situations. → **not effective**

We would like to emphasize that information should be made available first and foremost at local level, in a tailored manner for each sector. While such information needs to be updated and co-ordinated centrally, a single multilingual portal is not the best way to ensure greater awareness of SMEs. We should also promote the role of national trade associations

B3. Businesses' demonstration of product compliance (optional)

Question B3.1. [For businesses only] How do you supply information about product compliance?

1. Declaration of conformity/technical documentation provided to the authority exclusively on paper → **Not applicable to Orgalime**
2. Declaration of conformity available also on company's website → **Not applicable to Orgalime**
3. Instruction for use or other information relevant to product users provided exclusively on paper → **Not applicable to Orgalime**
4. Instruction for use or other information relevant to product users provided also on company's website → **Not applicable to Orgalime**

Question B3.2. In your experience or understanding would a broader use of electronic means to demonstrate compliance help to

1. Reduce the administrative burden for businesses→ **disagree**
2. Reduce administrative costs of enforcement for authorities → **disagree**
3. Provide/allow information to be obtained faster → **disagree**
4. Provide more information to consumers / end users → **Strongly disagree**
5. Provide up-to-date information to consumers / end users → **Strongly disagree**

Question B3.3. What is your view about the following options to better exploit the potential of electronic means for demonstrating compliance?

1. **Voluntary decentralised** 'Digital Compliance' system: for instance the system could consist of information available on the websites of economic operators and notified bodies on a voluntary basis. They would be responsible for developing and maintaining information available. → **Disagree**
2. **Compulsory decentralised** 'Digital Compliance' system: for instance the system could consist of information available on the websites of manufacturers, authorised representatives, notified bodies. They would be responsible for developing and maintaining information available. → **Strongly disagree**
3. **Voluntary centralised** 'Digital Compliance' system: for instance the system could have the form of an electronic repository of information; it would be developed, owned and maintained by the European Commission; manufacturers, authorised representatives, notified bodies could upload information regarding conformity of products. → **Strongly disagree**
4. **Compulsory centralised** 'Digital Compliance' system: for instance the system could have the form of an electronic repository of information; it would be developed, owned

and maintained by the European Commission; manufacturers, authorised representatives, notified bodies would be required to upload information regarding conformity of products. → **Strongly disagree**

5. Would an e-labelling system containing the address of the electronic repository be beneficial? → **Disagree**
6. Would an e-labelling system containing the product identification and/or manufacturer contact details be beneficial? → **Agree**
7. Would resorting to an automatic identification and data capture system(*) to facilitate access to the repository be beneficial? → **Disagree**

Question B3.4. Would you like to add comments or suggestions on how to facilitate businesses' demonstration on compliance?

Orgalime welcomes the European Commission's intention to use new technologies for efficient and effective market surveillance and to ensure a secure and reliable framework for communicating with authorities.
New technologies may have the potential to remove administrative burdens, both for economic operators and market surveillance authorities, but their use should not change the paradigm of the New Legislative Framework.
Therefore, it is crucial to better define what is meant by "**electronic means for demonstrating compliance**".
In our view, digital compliance's main goal should be to develop a facilitation service for providing documentary evidence to increase the efficiency of market surveillance controls, so that more resources become available for physical checks on products.
A digital compliance system could in no way replace physical checks and on-the-spot controls of products placed on the market or at the borders of the EU.

Conversely, it should not lead to the set-up of an EU-wide database which would include all technical documentation for all products placed on the single market. Given the inevitable vulnerability to unauthorised access that such a system would have and the high value of information contained on it (manufacturers' IP for advanced products, many of which will be the state of the art at technology level), such a solution must be considered as totally unacceptable. Moreover, this would lead to considerable administrative burdens for manufacturers, particularly SMEs, instead of boosting their competitiveness.

Before communication via electronic means could become standard practice, Member States would need to adapt their legal framework to recognise the provision of documents of evidence via electronic means, and economic operators to obtain an adequate understanding and affordable means or equipment to meet the relevant procedures with ease.

Therefore, it is in our view necessary, as has been the case for other specific Regulations (such as the Construction Products Regulation), to carry out a study in the Member States to identify the legal obstacles to solve and to overcome before such a system is widely recognised and is operative.

Due care should also be taken to use standard information technology systems in order to guarantee a smooth flow of information which can be operated with most information systems.

Furthermore, we believe that attention should be devoted to achieving a change in mindset among market surveillance authorities and companies. Otherwise, it would be difficult for authorities and companies to shift away from traditional "paper-based" practices to communication only via electronic means.

Moreover, e-compliance should also promote the use of a website address as an alternative to a postal address. This would have tangible benefits such as:

- consumers and market surveillance authorities would be able to communicate easily with manufacturers, instead of receiving information about a postal address that they would in the normal course of business rarely, if ever, use.
- manufacturers would be in a position to update their contact details in case they move premises.

To avoid misuse by rogue traders, Orgalime suggests that the website referred to (if any) would have to meet very strict conditions for the product to be considered compliant:

- The website should be functioning and give access to all the required information as legally required.
- Any user should be able to find within minimum clicks the following information in a language easily understood by end-users and market surveillance authorities:
  - Physical address of the contact point.
  - A phone number where technical, administrative or commercial information can be addressed.
  - A contact form which allows the customer or the authority to communicate with the economic operator via the site.

B4. Cross-border market surveillance within the EU (optional)

Orgalime wishes to respond to some of the questions although these are **rather addressed to market surveillance authorities**.

Question B4.1. What is the approximate proportion of products placed on the market by manufacturers or EU importers located in another EU Member State in your sector (based on product volumes)?

Unable to respond at the level of Orgalime.

Question B4.2. Based on your experience what is your view on manufacturers or EU importers being contacted by a market surveillance authority of another EU Member State?

1. I think it is useful in correcting the non-compliance for all products concerned in the Single Market → **Disagree**
2. I think it is useful that authorities are able to discuss non-compliance directly with the business having the greatest level of responsibility and knowledge → **Disagree**
3. I think it is useless as the authority cannot impose sanctions so the manufacturer or EU importer would not answer → **Agree**
4. I think it is wrong as the authority is not entitled to contact a business outside its jurisdiction→ **Agree**

Question B4.3. In your experience what makes it difficult for a surveillance authority to take action against non-compliant products traded by businesses located in another EU Member State?

1. Authorities do not know how to identify and contact businesses located in another EU Member State → **Disagree**
2. Authorities find it more costly to contact businesses located another EU Member State → **Disagree**
3. Businesses contacted do not reply to requests for information/documentation → **No opinion**

4. Businesses contacted do not reply to requests for corrective actions → **No opinion**
5. Businesses sanctioned do not pay penalties → **No opinion**
6. In particular in the case of goods traded online businesses contacted consider that they are not manufacturing, importing, distributing or making the product available on the market → **Disagree**

Question B4.4. National authorities in the EU Member States can currently exchange information on measures adopted to restrict the marketing of non-compliant products via several means (Rapid Alert System, notification procedures, common databases (ICSMS), expert groups, administrative cooperation groups). In your experience or knowledge in the relevant product category(-ies) how often do national authorities restrict the marketing of a product following the exchange of information about measures adopted by another authority in the EU against the same product?

→ **No opinion**
The situation depends very much from one country to another. The examination of RAPEX figures shows in an exemplary manner the diverging approach to enforcement from one Member State. to another
For instance, "*Graph IV • Notifications in 2015 by type of measures taken by notifying country*" (page 27 of the RAPEX Report 2015 Results) shows a striking divide between 2 groups of Member States. In the first group (14 Member States): Austria, Belgium, Estonia, France, Germany, Greece, Iceland, Ireland, Latvia, Poland, Portugal Slovenia, Sweden and UK. Authorities in this group seem to have few traceability issues and are able to communicate with market operators. On the contrary a larger group of 16 Member States including Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Hungary, Italy Lithuania, Luxembourg, Malta, Netherlands, Norway, Romania, Slovakia and Spain are mostly taking compulsory measures. Either these latter countries get all the products from unknown origin (10% only) or, rather, they do not bother to get in touch with the market operators involved, which is regrettable.

Question B4.5. What is your view about the possibility that a national authority uses information on measures adopted to restrict the marketing of non-compliant products by another EU authority to adopt restrictive measures against the same products supplied within its own jurisdiction?

1. I find it **useful** to ensure that restrictive measures are adopted in other jurisdictions on the same basis as that way they can be **effective** in a larger part of the Single Market
   → **Agree**
2. I find it **useful** because the authority using information can be more **efficient** and focus its inspection on the specific product requirements likely to have been infringed
   → **Agree**
3. I find it **useful** because using the evidence gathered by the foreign authority on non-compliance allows **time and cost savings**
   → **Agree**
4. I find it **wrong** as the decision of the foreign authority may be based on an incorrect assessment → **Disagree**
5. I find it **unfeasible** as many authorities are unlikely to have the resources to follow up on decisions by foreign authorities → **No opinion**

We do not understand the question: it is current practice, and actually required by the existing market surveillance system under Regulation 765/2008/EC, that national Member States authorities inform each other about any measures taken.

Question B4.6. Would the following mechanisms make it easier to contact manufacturers or EU importers located in another EU Member State?

1. More explicit **obligations on economic operators** to answer requests from authorities located in other EU Member States
   → **Disagree**
2. Specific **procedures for mutual assistance** among authorities of EU Member States
   → **Strongly agree**
3. Stricter **obligations for EU authorities** to respond to requests for mutual assistance by other EU authorities
   → **Agree**
4. Possibility for EU authorities to ask other EU authorities for **mutual assistance to sanction businesses** located abroad that do not respond to their requests
   → **Agree**

Question B4.7. Would you like to add any comments or suggestions on how to make it easier for authorities to contact manufacturers or EU importers located in another EU Member State?

We suggest having a single contact point in the Member States for the Market Surveillance Authority.

Question B4.8. Do you agree that the following mechanisms would increase the effectiveness of market surveillance in the Single Market?

1. More exchange of information and **discussion among EU national authorities prior to final assessment** on product non-compliance and corrective action so as to prevent diverging conclusions among authorities → **Agree**
2. Stricter rules on **follow up to restrictive measures** adopted by other EU authorities → **Agree**
3. Legal principles to **ensure easy replication of measures** taken by authorities in other EU Member States (e.g. portability of test results, presumption that products found to be non-compliant in Member State A are also non-compliant in Member State B) → **Agree**
4. Procedure for the **recognition of national decisions** in other EU Member States → **Agree**
5. **Direct applicability of national decisions** in other EU Member States → **Disagree**
6. **Decisions** against non-compliant products to be **taken by authorities** of various EU Member States **in close coordination** (e.g. via a Product Compliance Forum established at EU level) and being applicable simultaneously in all relevant jurisdictions → **Agree**

   If you agree, which criterion should be used to select the lead authority?

   - ☐ First authority opening a case
   - ☒ **Authority of same Member State as the manufacturer or EU importer**
   - ☐ Special expertise of authority
   - ☐ Authority of market most affected by non-compliance

7. Same as above **plus appointment of a lead authority** to facilitate coordination of national decisions → **Agree**
8. **Lead authority with powers to adopt decisions** against non-compliant products **applicable in different Member States** (e.g. subject to consultation with relevant national authorities) → **Disagree**
9. **Decisions** against non-compliant products supplied in various EU Member States **taken by the Commission → Disagree**
10. Powers to the Commission to **check the functioning of market surveillance** in Member States → **Agree**

Question B4.9. Would you like to add any comments or suggestions on how to improve the effectiveness of market surveillance in the Single Market?

We believe that if a national Member State Authority (NMSA) takes a decision on a product which is marketed all over Europe, then authorities in other member states ought to use this decision to make their own evaluation on their own territory, as is currently the case further to a RAPEX notification. We would support the idea of nominating a lead authority for that purpose in the very same country where the challenged economic operator is located.

However, we would not support the creation of a European market surveillance agency. The Commission frequently acknowledges itself, that it has neither the technical competence nor the resources to take often technically difficult decisions for the enforcement of existing legislation. This is confirmed by the recent history of cases on compliance checks of standards further to a safeguard clause from a Member States authority.

Orgalime calls on the European Commission to consider the establishment of a *"quick-assessment procedure"* (QAP) to assess the proportionality and relevance of the decision of a Member State market surveillance authority, when it exerts a national technical rule (red tape) on a product that is covered by harmonisation legislation. Such QAP would be also extremely useful when a NMSA takes a restrictive interpretation of a non-compliance with the harmonised legislation applicable to a product and takes measures restricting its placing or making available on the market. This would be absolutely necessary, in cases of direct applicability of a national NMSA decision in other EU Member States.

B5. Market surveillance of products imported from non-EU countries (optional)

Question B5.1. What is the approximate proportion of products imported from non-EU countries in your sector (based on product volumes)?

The proportion of imports from non-EU countries to the EU28 of machinery (and mechanical appliances and parts – HS Chapter 84) **and electrical machinery** (and equipment and parts, telecommunications equipment, sound recorders, television recorders – HS Chapter 85) **represents 24 % of the total amount of imports into the EU in 2015**.
Source: Eurostat compiled data for HS 84 (203,66 billion euros) and HS 85 (212,49 billion euros) amounting 416,16 billion euros out of a total of 1726,5 billion euros of imports into the EU in 2015.

Question B5.2. Are products in your sector imported from non-EU countries affected by non-compliance?

Unable to reply at the level of Orgalime. This varies very much from one product sector to another.

Question B5.3. Are the non-compliant products in your sector imported from non-EU countries supplied 'online'? (as opposed to through 'brick and mortar' shops)

Yes, a few of them. This depends on the product category. While most trade deals – including in business-to-business – are concluded further to exchanges of electronic communications 'online', non-compliant products in our sectors are not provided via online shopping platforms such as those that operate mostly in the business-to-consumer area.

Question B5.4. What is the country of origin of imported products you often found to be non-compliant

According to our members, most come from China, Hong-Kong and South Korea.

Question B5.5. In your experience what makes it difficult to take action against non-compliant products traded by businesses located in a non-EU country?

1. Authorities do not know how to identify and contact businesses located in non-EU countries → **No opinion**
2. Authorities find it more costly to contact businesses located in non-EU countries → **No opinion**
3. Businesses contacted do not reply to requests for information/documentation → **No opinion**
4. Businesses contacted do not reply to requests for corrective actions → **No opinion**
5. Businesses sanctioned do not pay penalties → **No opinion**
6. In particular, in the case of goods traded online businesses contacted consider that they are not manufacturing, importing, distributing or making the product available on the market → **No opinion**

Question B5.6. In your experience or understanding would the following options help in taking action against non-compliant products traded by businesses located in a non-EU country?

1. Obligation on businesses to appoint a responsible person or designate an importer located in the EU → **Agree**
2. Broaden definition of EU importer to explicitly include possible EU based main contractors of the manufacturer in the absence of an another responsible person in the EU → **No opinion**
3. More enforcement action addressed to EU importers placing non-compliant products on the market → **Agree**
4. Power to national authorities to ban products when businesses contacted do not reply to queries or when they cannot be contacted → **Agree**
5. Strengthen cooperation with authorities in non-EU countries to obtain corrective action from businesses → **Agree**
6. Strengthen cooperation with authorities in non-EU countries to impose penalties on businesses → **Agree**
7. Strengthen cooperation with authorities in non-EU countries to obtain information on businesses likely to export non-compliant products to the EU → **Agree**
8. More controls of products entering the EU → **Agree**
9. More controls of products purchased online → **Agree**

10. Obligation to indicate the manufacturer's name and contact details in customs declaration → **Agree**
11. More coordination of controls of products entering the EU by customs (e.g. more exchange of risk information, alignment of measures) → **Agree**
12. More coordination of controls of products entering the EU between customs and market surveillance authorities (e.g. common risk profiles, seamless workflow) → **Agree**
13. More coordination of controls of products entering the EU (as in the previous option) targeting specifically products purchased online (e.g. via a pan-European Task Force of national authorities) → **Agree**

Question B5.7. Would you like to add any comments or suggestions on how to help to take action against non-compliant products traded by businesses located in a non-EU country?

In this situation, we suggest that:

1. The investigating market surveillance authority consults trade associations representing EU manufacturers that are selling the same type of products (intelligence gathering).
2. The legal person exporting to the EU (exporter) should be requested to affix his name and address on the product or its packaging, as is the case for imports when there is an importer or an authorised representative.
3. The legal person exporting to the EU (exporter) should be requested to appoint a responsible person – or designate an importer – located in the EU.

Question B5.8. Would you like to add any comments or suggestions on how to help to improve the effectiveness of market surveillance in the Single Market?

Where market surveillance authorities do not have testing laboratories in their country, European companies could make available their facilities for them.

C. CONCLUSION AND SUBMISSION

The European engineering industry calls on the European and national policy makers to set in place a **smarter market surveillance system**. Such a system means:

1. **Simpler industrial product legislation** with simpler conformity assessment procedures;
    a. Simpler legislation does not mean less protective but easier to understand, to apply and to enforce, starting from setting apart compliance information requirements – intended for authorities – for consumer information requirements.
    b. Simpler conformity assessment procedures does not mean a single procedure for all products, or a uniform “digital compliance” system, but flexible and digitized means for businesses to demonstrate that their products are compliant.

2. **Deterrent but proportionate sanctions that privilege dialogue over fines** with coherent market surveillance practices across the whole European Union territory, especially at its external borders that will:
    a. Preserve the dialogue between national authorities and economic operators, which is key to enabling willing operators, especially the smaller ones, to carry out voluntarily corrective measures.

b. Sanction effectively in a proportionate but differentiated manner, those "*traders who cut corners*" from those that "*deliberately flout the rules to gain a competitive edge*". Sanctions and penalties should be related to the revenue derived from placing non-compliant products on the market, along with the seriousness, the duration and, where applicable, the intentional character of the infringement. Additionally, penalties should take into account whether the relevant economic operator has previously committed a similar infringement. On the contrary, sanctions should not be connected to the size of the undertaking.

c. Peer assess the relevance and effectiveness of enforcement decisions for the equity of all operators before the law, thanks to a quick assessment procedure at EU level in case of challenge.

In particular, Orgalime calls on the European Commission to set up an Advisory Board composed of relevant EU stakeholders (especially organisations representing manufacturers and importers) which could provide input to a "European Market Surveillance Forum" (as proposed by the Commission), for example along the lines of the European Accreditation Advisory Board. Such a consultative body would enable a coherent and regular dialogue between the Commission, national Market Surveillance Authorities (NMSAs) and European stakeholders in order to provide input about risk assessment methods and priority settings for both market surveillance and import controls. Such a dialogue comparable to the one initiated under the "*Joint Initiative on Standards*" would enable the Commission and Member States to detect problems and needs, collect expertise and views on areas of concern (implementation at national level). It would provide feedback on guidance documents for the market surveillance authorities and economic operators.

Besides, Orgalime calls on the European Commission to promote the use of ICSMS, the EU internet-supported information and communication system for the pan-European market surveillance, not only for supporting the co-ordination work among Member States, but also to enable relevant European stakeholders to feed in their technical expertise and experience with the design and placing on the market of products. An example of the type of information that could be made available is provided by the European machinery industries that have set up a resource database[4] of practical guides and technical documents for use by NMSAs.

3. **Intelligent information exchanges between authorities and other stakeholders** to:

a. Raise the awareness of economic operators that are willing to improve their level of compliance with EU requirements, e.g. through target information campaign with the support of relevant stakeholder organisations

b. Assist authorities in collecting intelligence and expertise to swiftly and efficiently fight the misdoings of rogue economic operators, namely through an accreditation programme of voluntary market surveillance support initiatives from economic operators;

In particular, we call on the European Commission to attach a particular importance to assess in detail the impact of the establishment of a uniform digital compliance system, especially with regards to the aspects of preserving flexibility for economic operators to choose the means to demonstrate their conformity according to the law.

To create real incentives for economic operators to meet applicable legislation, digital compliance procedures should not become mandatory to preserve economic operators' free choice between traditional paper-based means and alternative technology-neutral digital means, such as electronic portable document formats or a web-based solution.

[4] http://machinery-surveillance.eu/

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