ORGALIME

Position Paper

Brussels, 1 August 2014

Orgalime's response to the Commission's note on "Preliminary reflections on e-compliance"

1. INTRODUCTION

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 define better what is meant by "e-compliance".

In our view, e-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.

An e-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. This would lead to considerable administrative burdens for manufacturers, particularly SMEs, instead of boosting their competitiveness.

We have sincere concerns related to some of the ideas put forward in the Commission's note "preliminary reflections on e-compliance".

Therefore, we request extensive consultation and analysis on this issue with a view to:

- Keep the legal framework stable by avoiding to overturn current market surveillance procedures
- Minimise the burden of market surveillance both for economic operators and authorities. Therefore it should exclude the idea of pre-registration procedures
- Establish secure and efficient channels of communication for all actors involved.

Below you may find our answers to the Commission's questions in the note "preliminary reflections on e-compliance" (dated from 28 April 2014).

Orgalime, the European Engineering Industries Association, speaks for 40 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.3 million people in the EU and in 2013 accounted for some €1,800 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

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2. WHO WOULD BE THE STAKEHOLDERS OF AN E-COMPLIANCE SYSTEM? WHAT SHOULD BE THEIR ROLE?

E-compliance should only be considered as another technical means of communication with market surveillance authorities. Therefore, the roles of economic operators, conformity assessment bodies and market surveillance authorities should remain as defined in Decision 768/2008 and Regulation 765/2008.

3. WHAT WOULD BE THE FORM/STRUCTURE OF THE SYSTEM? WHAT KIND OF INFORMATION SHOULD BE AVAILABLE AND TO WHICH STAKEHOLDERS? IN AN E-COMPLIANCE SYSTEM, WHICH WOULD BE THE COMMUNICATION FLOWS AMONG THE STAKEHOLDERS?

Orgalime shares the Commission's ambition to make the best possible use of available technical means to improve market surveillance. Nevertheless, we would not be in favour of a radical overthrow of the current communication flows for three reasons.

Structure of the system

We are very concerned about the note's statement that "*authorities may have the opportunity to monitor a product before it is placed on the market*". Manufacturers are – and should remain – obliged to ensure product compliance, only when the products have been placed on the market.

If authorities monitor products before they are placed on the market, it is unclear which legal requirements would apply and which actions authorities could possibly take. Therefore, it would create legal uncertainty to require from manufacturers to share parts of the products' technical information before these products are placed on the market.

Additionally, enabling the control of products before they are placed on the market leads in our view to the misconception that authorities would be empowered to give a prior authorisation to place certain products on the market.

Communication flows among stakeholders

E-compliance should not remove the authorities' obligation to submit a reasoned request to economic operators in order to acquire the parts of a technical file which they deem necessary for their controls. Obliging manufacturers to upload parts of the technical file without a reasoned request would be a disproportionate breach of their intellectual property and contrary to existing legislation.

Furthermore, obliging manufacturers to systematically upload their technical file on an EU-wide database prior to placing a product on the market would entail huge costs:

- For complex products, the final provision of a technical file is divided among the manufacturers of the different parts of the product. Therefore, it would be very burdensome to systematically collate and upload the complete technical file. In medium and large companies, it is equally divided among various services that are responsible for compliance with the variety of applicable legislation.
- Giving access to several authorities across the 28 EU Member States to technical files would raise confidentiality issues that could lead to huge electronic security and insurance costs for authorities to protect manufacturers' intellectual property against piracy and mishandling, while this is today under manufacturers' responsibility and control.

Therefore, Orgalime would be against an e-compliance system that would overturn market surveillance's "*pure sequential procedure*".

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What kind of information should be available and to which stakeholders?

In Orgalime's view the manufacturer should only provide documentation for demonstrating product compliance on the basis of a reasoned request by specific market surveillance authorities.

This kind of information should not be further shared with any other authorities without a prior authorisation from the manufacturer. It should also not be shared under any conditions with any other stakeholders such as notified bodies, other manufacturers or consumer associations.

4. WHAT WOULD BE THE LEGAL VALIDITY OF SUCH A SYSTEM? WOULD THERE BE A NEED FOR A LEGAL BASIS? FOR THE TIME BEING, THERE IS NO LEGAL OBLIGATION FOR STAKEHOLDERS TO UPLOAD INFORMATION ON SUCH A SYSTEM. HOWEVER IF THE USE OF THE SYSTEM WOULD REMAIN VOLUNTARY, ITS CAPABILITY TO REFLECT THE "COMPLETE PICTURE" HAS TO BE EXAMINED

For the reasons explained above, Orgalime does not find it appropriate to revise the system of the New Legislative Framework, which requires manufacturers to provide information and documentation to national authorities only on the basis of a prior reasoned request. Therefore, we do not see the need for a new legal basis.

Moreover, it would need to be precisely analysed and tested over through a substantial transitional period that any e-compliance system would not lead to a considerable administrative burden for economic operators involved and to any security concerns. Otherwise, the result would be far from the simplification objectives set by the Commission and therefore it should not be implemented.

5. IS IT POSSIBLE (AND REALISTIC) TO GET THE USE OF AN E-COMPLIANCE SYSTEM COMPULSORY (MAYBE AFTER A TRANSITION PERIOD)? IF YES WHAT ARE THE MEANS TO POLICE THAT ALL STAKEHOLDERS MAKE (LAWFUL) USE IT?

Economic operators should not be obliged to adapt to e-compliance faster than they can. Market surveillance authorities are best positioned to be forerunners of e-compliance as they can deploy new practices and systems on a large scale. If authorities implement e-compliance, economic operators would soon follow them at their own pace, if the system proves its value.

Moreover, any e-compliance system – voluntary or not – should apply the strictest information management procedures because it would electronically transmit sensitive data.

Confidentiality and security aspects must be ensured not only through a system of access authorisations (as mentioned by the Commission), but also through logging registration, so that it is clear which market surveillance authorities had access to the information.

Finally, even if the system were to become compulsory in the future with the agreement of involved stakeholders, it should not be expected to "reflect the complete picture". There are no means to ensure that all stakeholders will use a compulsory system. If all economic operators were following the law, there would be no reason for market surveillance at all. The only way to make market surveillance efficient is to check products on the market and then see if they are in the system.

6. WHAT WOULD BE THE LEGAL VALIDITY OF THE TOOLS THAT HAVE TO BE USED IN AN E-COMPLIANCE SYSTEM SUCH AS ELECTRONIC DECLARATIONS OF CONFORMITY OR E-LABELLING? FOR THE TIME BEING AND IN MOST CASES ONLY THE "PAPER VERSION" DECLARATION OF CONFORMITY IS RECOGNISED AS A VALID SOURCE OF INFORMATION.

Before communication via electronic means could become standard practice, it requires Member States 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 with ease the relevant procedures.

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Therefore, it is in our view necessary, as it has been the case for 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 mind-set 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.

7. HOW WOULD THE INFORMATION BE UPLOADED ON THE SYSTEM? TAKING INTO ACCOUNT THAT MORE AND MORE PRODUCTS ARE EQUIPPED WITH WIRE LINE OR WIRELESS COMMUNICATION DEVICES AND CAN BE IDENTIFIED BY COMPUTERS, IS IT TECHNICALLY/ECONOMICALLY/LEGALLY REALISTIC THAT A PRODUCT "REGISTERS" ITSELF IN THE E-COMPLIANCE SYSTEM? OR THE INFORMATION HAS TO BE INPUT INTO THE SYSTEM ONLY BY A PHYSICAL PERSON?

Orgalime would like to reiterate its view that e-compliance should not lead to "registering" products in any kind of centralised "system".

An e-compliance system should aim at increasing the efficiency of market surveillance by facilitating information exchange and enabling authorities to do more physical checks and keep rogue economic operators from the market.

Therefore, we would welcome new suggestions from the Commission on using the products communication possibilities to promote e-labelling. We expect further analysis of the potential use of e-labelling and electronic addresses instead of physical ones. You can find more argumentation on these issues on our position paper "Concrete suggestions to improve the 'vision for the internal market for industrial products'".

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