

Action plan for more effective market surveillance

Introduction

Orgalim represents Europe's technology industries, comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU's largest manufacturing sector, generating annual turnover of over €2,835 billion, manufacturing one third of all European exports and providing 11.7 million direct jobs.

Orgalim's [key recommendations on the single market](#) identified a broad range of actions that European institutions should take in order to strengthen and deepen the EU's single market, one of which is strengthening market surveillance. This paper will delve deeper into this topic, provide further information on why it is a priority for our industries, and set out what can and should be done to improve the situation.

Action plan for more effective market surveillance

An effective system of market surveillance is a crucial component in ensuring that only compliant products are made available on the EU market. Market surveillance activity is therefore an essential element in the protection of European citizens. It also has a key role to play in ensuring fair competition, notably with regard to imported products. Whilst the EU has made some progress towards achieving these objectives, our system of market surveillance is still not working as it should. Addressing this issue is urgent, and the enforcement of the existing rules is fundamental to ensure the core goals of the EU single market are achieved.

Below we have compiled a priority list of actions that we believe would help the EU achieve a more effective system of market surveillance:

- Make full use of the Market Surveillance Regulation, (EU) 2019/1020 tools:
 - More and better checks on the ground
 - Strengthen the deterrence against non-compliant products
 - Develop harmonised European guidelines to strengthen cooperation between customs authorities and market surveillance authorities (MSAs)
 - Explore increased investment in EU testing facilities
 - Strengthen the evidence base for better policymaking
- Acknowledge that stricter requirements for economic operators are no substitute for the lack of enforcement of existing rules and prevent further measures being taken in this direction
- Enhance efforts to make the online marketplace safer

This list is not exhaustive, and Orgalim stands ready to engage with policymakers to discuss these and other proposals further, particularly in light of a possible new horizontal strategy for the single market, as called for by the Competitiveness Council in May 2024.¹

Make full use of the Market Surveillance Regulation tools

Regulation (EU) 2019/1020, otherwise known as the Market Surveillance Regulation, was adopted in 2019. The Regulation is broad in scope and contains a wide range of measures designed to strengthen the system of market surveillance in the EU. At the time of its adoption, Orgalim welcomed this initiative. Now, taking into account experience from applying the regulation and new developments in online retailing, it is evident that not all of the available tools are being used. We call on regulators to make full use of the Market Surveillance Regulation.

More and better checks on the ground

The Market Surveillance Regulation clearly stipulates that the responsibility for conducting checks lies with the Member States, via their national market surveillance authority (MSA). However, the data shows stark differences in the number of investigations per Member State. Many Member States perform less than 500 checks per year: some even show no sign of improvement since 2019. Furthermore, there appears to be a direct correlation between the number of checks performed and the level of non-compliance identified.² This would seem to indicate that the more MSAs look for non-compliant products, the more they find.

European citizens and businesses in certain Member States are more at risk of coming into contact with a non-compliant product than those in other Member States. Furthermore, these non-compliant products may circulate on the EU's single market. The uneven performance of market surveillance checks threatens to undermine Europe's greatest source of future prosperity – the single market. **Member States with a low investigation rate therefore need to significantly increase their market surveillance activities.** Greater transparency would also help to guarantee the performance of market surveillance activities. MSAs should vary the locations at which checks are conducted; an example being trade fairs, where market surveillance is expected. Member States should ensure that their MSAs are sufficiently resourced to conduct more robust market surveillance, particularly given that newly adopted legislation concerning sustainability and cybersecurity (for example the Ecodesign for Sustainable Products Regulation and the AI Act) will also involve market surveillance.

At the same time, focus should be on **encouraging the application of Article 9** of the regulation, to allow stakeholders, including organisations representing economic operators, to work together with authorities to carry out initiatives in support of enforcement on the ground. It is our view that joint activities provide the opportunity for authorities to draw upon the expertise of industry to understand and properly check state-of-the-art technology. Such cooperation at European-level, with the involvement of the relevant European-level association, is particularly welcome. One good example is MSSI-Electrical, a CECAPI initiative supported by Orgalim, which aims to bring industry representatives together to jointly raise awareness of the risks of non-compliant electrical installation products and support MSAs towards more effective enforcement.³

The European Commission has a role to play in guaranteeing the integrity of the single market and the protection of EU citizens and businesses. As foreseen in the Market Surveillance Regulation, where specific risks or serious breaches of applicable EU harmonisation legislation have continuously been identified, **the Commission should adopt implementing acts that determine the uniform conditions of checks, criteria for determination of the**

¹ [COMPET Council conclusions, 24 May 2024](#)

² [Single Market Scoreboard, Market surveillance \(non-food products\), 2022](#)

³ [MSSI Electrical](#)

frequency of checks and number of samples to be checked. Such acts should be complemented by equivalent implementing acts outlining benchmarks for imported products.

Strengthen the deterrence against non-compliant products

The Market Surveillance Regulation grants market surveillance authorities the power to oblige economic operators to take “corrective action” (i.e. withdrawing, destroying, applying penalties) against products that are identified as being non-compliant insofar as such actions relate to an overall actual or potential harm resulting from the instance of non-compliance. However, as already outlined, the level of checks being performed is inadequate and, as a result, the proper enforcement of responsibilities cannot be conducted. Without the proper enforcement of these rules, market surveillance becomes meaningless, as it loses its power of deterrence.

Once again, the Commission has an important role to play in guaranteeing that robust enforcement of the Market Surveillance Regulation is harmonised across the 27 countries of the EU. **A dedicated Chief Enforcement Officer could be tasked with overseeing proper and coordinated enforcement by market surveillance authorities in Member States.** Earlier this year, Orgalim joined wider industry representatives in supporting calls for such an appointment.⁴

Develop guidelines to strengthen coordination between customs authorities and market surveillance authorities

Our industries welcome competition from inside and outside the EU, which stimulates innovation and has many positive impacts for consumers, such as providing a wider range of options, higher quality products and lower prices. However, this competition must be fair. Currently, around 75% of identified hazardous products come from outside the EU.⁵ Often, these products also benefit from very favourable pricing, putting manufacturers of compliant products at a competitive disadvantage.

The Market Surveillance Regulation includes provisions on products entering the EU market. However, in order to further address the issue of non-compliant products being imported, **the Commission should develop guidelines on how to ensure the seamless flow of information between customs authorities and market surveillance authorities, for the purpose of strengthening market surveillance.** This includes checks, if requirements for a responsible economic operator according to Article 4 of the Market Surveillance Regulation are fulfilled.

Explore increased investment in EU testing facilities

The Market Surveillance Regulation states that the Commission may designate one of its own testing facilities as an EU testing facility if testing capacity is missing or is insufficient. The purpose of this is to enhance laboratory capacity, and to ensure the reliability and consistency of testing for the purposes of market surveillance.

Where necessary, Member States should make full use of EU testing facilities. Further investment into these testing facilities should be explored if there is still insufficient capacity after this option has been utilised.

Strengthen the evidence base for better policymaking

The Market Surveillance Regulation foresaw an evaluation of the implementation of Article 4 (Tasks of economic operators regarding products subject to certain Union harmonisation legislation) by July 2023. This was expected to

⁴ [Single Market Coalition – Joint Statement](#), 2024

⁵ [Much more than a market](#), Enrico Letta, 2024

evaluate the scope of the Article, its effects, costs and benefits and would have been key in evaluating the effectiveness of the Market Surveillance Regulation and whether the requirements for economic operators and their cooperation with market surveillance authorities had been fulfilled. If necessary, the evaluation could have been accompanied by a legislative proposal. Regrettably, however, this deadline was not met. **An evaluation of the entire Regulation is foreseen by 31 December 2026. This deadline must not be missed.**

Evidence-based decision-making should always be the way forward. The Commission must meet its obligations as regards evaluation and reporting. New resources should be allocated if a lack of resources is preventing the Commission from doing so, given the significance of market surveillance for the proper enforcement of harmonised legislation.

Acknowledge that stricter requirements for economic operators are no substitute for a lack of enforcement of existing rules and prevent further measures being taken in this direction

We are seeing a concerning trend, with legislators setting more and more requirements for manufacturers whereas the current existing legal requirements for market surveillance are not sufficiently enforced by national authorities. These additional requirements include calls by legislators for increased mandatory third-party conformity assessments on a broader range of products and calls for product registration in databases before placing them on the market. This appears to reflect the view that third-party conformity assessments or registration in databases can somehow constitute a replacement for market surveillance. This, however, is a fundamental mistake, as non-compliant economic operators will also evade higher administrative requirements (forged conformity assessment certificates and entries in databases) because the application of market surveillance tools is not sufficient to deter these practices. Indeed, there is no data to support the view that products that were subject to third party conformity assessment comply better than those that have been subject to self-assessment and declaration. At the same time, setting higher requirements without proper enforcement simply increases the administrative burden and costs for law-abiding manufacturers, especially for SMEs, while not achieving a level playing field across the European market. It is important to be clear that MSAs are the only entities that can enforce the application of product requirements and economic operator obligations. We are also concerned that data entry into centralised databases is not sufficiently checked and verified.

Enhance efforts to make the online marketplace safer

Online platforms play an increasingly significant role in the buying and selling of products. The Digital Services Act acknowledged this fact, and actioned the principle that, in Europe, what is illegal offline should also be illegal online. While this is a significant and positive first step in the right direction, gaps remain in the implementation of this principle and European businesses and consumers remain at risk due to the availability of dangerous products on the online marketplace; one concrete example being used safety controls sold as spare parts.

When conducting its evaluation of the Market Surveillance Regulation, the Commission should also consider the interplay with other significant pieces of legislation, including, but not limited to, the Digital Services Act and the General Product Safety Regulation for consumer products. Our system of market surveillance needs to be fit for the digital age. The MSAs and the Commission should also jointly develop and implement effective communication aimed at end-users and others to make market surveillance activities more transparent, together with other initiatives that raise public awareness of the potential consequences of using deficient products.

With this in mind, we welcome the Commission's commitment, as expressed in the Political Guidelines for the next Commission 2024-2029, to ramp up and intensify the enforcement of the digital legislation (for example the Digital

Services Act) that was adopted during the previous mandate, as well as the announcement that the challenges presented by e-commerce platforms will be tackled to ensure consumers and businesses benefit from a level playing field.⁶ The Commission, Member States, industry and digital platforms have a joint responsibility to ensure that any existing loopholes are closed, in order to guarantee the safety of our citizens and prevent abuse of the system by irresponsible market operators.

⁶ [Europe's Choice: Political Guidelines for the next European Commission 2024-2029](#), 2024

Links to Orgalim publications

Orgalim Policy Agenda and key recommendations for the upcoming EU legislative period 2024-2029

- [Orgalim Policy Agenda](#) for a European high-tech manufacturing base
- Orgalim [key recommendations on the single market](#)

Relevant position papers, joint letters and joint statements

- Orgalim position [on enhancing EU manufacturing competitiveness with a future-proof approach to placing products on the Single Market](#)
- Orgalim position on [securing Europe's industrial competitiveness](#)
- Orgalim position on the [Machinery proposal – mandatory third party certification is a step backwards](#)

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