

## Non-compliant products destroy industrial jobs!

### The case for stronger and more unified market surveillance and customs in Europe

European laws on industrial products, and their associated technical standards, achieve decent results in terms of safety, environmental protection, and industrial efficiency. However, they can only be effective and ensure a level playing field in the Single Market for goods if market surveillance is properly enforced. While the consumer is adequately protected against safety risks, industrial jobs are not protected against the illegal behaviour of non-compliant players. For example, between 20 and 50% of products make false claims about energy performance, and gain undeserved market advantage by displaying energy labels which claim high levels of energy efficiency – to the detriment of honest manufacturers and workers. In the framework of a recent [consultation](#) by the Commission, DG GROW, on the subject, industriAll Europe proposes stronger and more unified market surveillance and customs authorities in Europe, based on central registries, the thorough protection of whistle-blowers and the ability to impose dissuasive fines.

### European law placing requirements on industrial products is a cornerstone of policy, and of fair competition in the Single Market

Directives defining the water volume of toilets or the list of permitted ingredients in chocolate, prohibiting the usage of Perchlorophenyl 5-oxo-L-prolinate or setting out the European standard EN 50540:2010 “Conductors for overhead lines - Aluminium Conductors Steel Supported (ACSS)”. These are all examples of the dreaded, technocratic “Brussels” drowning citizens and SMEs in “red tape”, administrative burdens and overwhelming levels of detail - and providing easy, assured success for populist demagogues adept at “Brussels-bashing”.

There is, however, more to this simplistic picture. European Regulations and Directives define the requirements that industrial goods throughout the EU (and the EEA - including Switzerland, Norway - and potentially the United Kingdom, depending on the path it chooses to take, post-Brexit) must comply with in order to attain highly legitimate policy goals, including user **safety**, of course, at home and in the workplace, protection of the **environment** or **inter-operability** between components of industrial systems. And this works! The [Council Directive 89/392/EEC of 14 June 1989 on the approximation of the laws of the Member States relating to machinery](#) successfully addresses causes of accidents. The frequency of occupational injuries in Germany

dropped by more than **50% in 20 years**, from 30 accidents per million hours worked in 1995 to just 14 in 2014 (source: EuroGIP reports, 2006, 2016). The Energy Labelling Framework Directive of 1992, mandating *inter alia* the display of energy consumption on a colour label with categories from A to G, has reduced the EU’s electricity consumption by **65 TWh per year** in 2010 (equivalent to the annual consumption of a Member State such as Austria or Finland) compared to a “business as usual” scenario (Source: European Commission, 2008). The GSM standard ensured that all mobile phones could inter-operate with all base stations across Europe, and triggered the phenomenal growth of this sector over the last two decades.

Once general legal requirements have been defined by European law (Regulations or Directives), European standards translate these general requirements into detailed technical language understandable by engineers and technicians, and into compliance tests that deliver honest and unambiguous results. This work is performed by the European Standardisation Organisations (CEN for general industrial goods, CENELEC for electrical goods and ETSI for telecommunications), under a recently revised framework (Regulation 1025/2012), where the voice of trade unions is given a greater role.

European laws supported by technical standards – provided they are complied with – do not only serve

to achieve their policy goals. They also assure the **fairness of competition** in the European Single Market for goods, and specifically for industrial goods. They ensure that industrial jobs are safeguarded for honest and competent workers and companies, and are not lost to rogue and unscrupulous players, from within the country or from abroad. These laws therefore constitute the modest, invisible infrastructure that makes the Single Market work, and that places the focus of competition on quality, where it should be, and not on price alone.

For more information on this topic, see the [EESC opinion INT/731 on "Industrial products"](#) of 2014, where the rapporteur was Denis Meynent (CGT), available in all official languages of the Union.

### Market Surveillance: the weak link in the system – and why this won't spontaneously change

The mere existence of regulations and supporting standards is not sufficient, however, in terms of ensuring this level playing field within the European Single Market for industrial goods. We must ensure that these regulations are complied with, by all players in the market. This is called "**market surveillance**", and it is the **weak link** in the chain. The revision of market surveillance is the motivation behind a [consultation](#) on "enforcement and compliance", launched by the Commission, DG GROW, on 28 June 2016, with a deadline of 31 October 2016.

Market surveillance is and has been, to date, a national competence. Each Member State is in charge of inspecting goods within its own territory, and via customs at its borders – specifically when these borders are also external borders of the Union. In the words of the Commission itself in the accompanying document to its consultation, "*there are still many products on the EU market that do not comply with the rules on industrial products*".

To be more accurate, market surveillance operates swiftly between Member States when **consumer safety** is at stake. A central repository of alerts, called Rapid Information System (RAPEX), coordinates all information regarding potentially dangerous products, and disseminates information to all Member States, so that restrictive and protective

measures can be taken in time, hopefully before any danger has materialised. National market surveillance authorities are strongly motivated to act in these cases. If they don't, they risk casualties on their own territory, avoidable deaths that the State would immediately be held accountable for.

Similarly, the fight against **counterfeiting** (i.e. infringements to intellectual property rights such as trademarks, copyright or patents) is rather effective, because the owner of these intellectual property rights experiences direct, targeted damage to its turnover and profit. It therefore has a strong incentive to act, and is assisted in doing so by the highly repressive legislation that is in place, which namely involves the confiscation and destruction of counterfeit goods and prison sentences.

This swift and efficient coordinated action is not, however, the norm when the non-compliance relates to requirements on technical compatibility or on the environment (e.g. energy efficiency, and, in the future, eco-design requirements on long-life products, maintainability or recyclability). Here, no immediate human casualties are to be feared, and the damage is shared out amongst all honest players in the industry. Market surveillance authorities have **very low motivation to act** against a non-compliant company in their own Member State for the following reasons:

- sanctions will almost certainly cause immediate damage to the company, maybe leading to visible job losses, which can then be easily attacked by a populist communication campaign as the clearly attributable consequence of "administrative burdens" where "dumb and over-zealous civil servants" prevent "the real economy" from working and making a profit – a discourse that conveniently forgets that business is legitimate only when it is honest, and cannot be justified by the sole fact that it generates profit

- the absence of sanctions will only end up causing a distant, future and uncertain deterioration of the environment, or of technical performance in a system, and damage to honest companies, but this damage will be spread across the whole Single

Market, and most probably in a different Member State.

Therefore, the fact that national market surveillance authorities do not enforce existing legal requirements on industrial products is a covert means of supporting the national industry at the detriment of other Member States. This equally applies to **customs** officers when the issue involves monitoring the compliance of imported goods. To be seen as efficient, and thus competitive, the customs services of large container ports are under tremendous pressure to proceed with customs formalities as swiftly as possible. Being scrupulous (and thus, slow) is therefore of immediate and visible detriment to the port's competitiveness, while lax enforcement only ends up harming industrialists in other Member States.

These reasons are structural, and thus, the enforcement of legal requirements on industrial products in the Single Market for goods is exceedingly weak.

Concretely, the whole budget dedicated to the market surveillance of the highly successful Energy Labelling requirements, in all 28 Member States, was €7m in total, this means less than 1 /2,000 of the energy savings generated by this Directive. Only 5 Member States actively enforce this Directive, and even in these favourable cases, a staff of 0.5 to 4 full-time equivalents for the whole country monitor just **0.1% of the model types**, and visit 50 to 100 shops per year. This lax enforcement means that **non-compliance rates of 20 to 50%** go virtually unsanctioned (Source: Ecofys, 2013).

This does not need to be the case. We, as **workers in industry**, collectively **suffer the damage** from the manufacturing or import of non-compliant goods, of this weak market surveillance. Our **jobs** in honest, law-abiding companies are **threatened**, and often destroyed, by the unacceptably **lax** attitude of national authorities, which **fail to protect us** against **unfair competition**. We are forced to compete on price, and price alone, because the quality criteria that should be guaranteed by standards are rendered ineffective due to lack of enforcement. We restrict ourselves to designs, materials and processes that are legal – while rogue competitors use the ‘cheap, fast, dirty’ – and illegal – solution, and yet are

left unsanctioned when they claim a certain level of quality that they do not deliver.

Workers in industry need to call attention to the fact that **non-compliant products destroy jobs** in European industry, and that lax market surveillance is not acceptable.

### The way forward: concrete proposals

The following are a series of concrete measures that could potentially be used to guide industriAll Europe's answer to the 2016 consultation by the Commission, and our further work on the topic.

One key reason why national market surveillance and customs authorities act in such an irresponsible way is that they don't feel in charge. They are *de facto* responsible for the whole Single Market, but in reality, are only accountable for the narrow interests of their Member State.

As a first and modest step, a **central EU-level registry of non-compliant products**, mandatorily updated by national authorities on cases other than user safety already covered by RAPEX, would raise the stakes for being detected as non-compliant (being barred from access to the market) for the whole of the EU, and not only for the Member State where this non-compliance is detected.

This could be complemented by a **central registry of compliance information** provided mandatorily by the manufacturer or the importer upon placing its product on the market, using pre-defined templates:

- the list of standards that the product complies with – aka a “compliance list”,
- the nature of the tests performed and their results,
- the list of models to which this declaration applies (the same product is often sold under different brands and model types, specifically from one Member State to the next).

As a next step, industriAll Europe might propose the creation of a **unified European authority for market surveillance and customs**. This is the solution already taken for the supervision of banks ([European Banking Authority – EBA](#)), in a field where national sovereignty is of utmost sensitivity. Extending this principle of unified border control, and of unified

enforcement, to the Single Market for goods should be much less difficult to achieve. The **budget** of this authority could be calculated at 1 €/ inhabitant per year, i.e. €450 – 500 m / year – thus matching the scale of the problem to be addressed.

Additionally, industriAll Europe could propose that the legal regime protecting **whistle-blowers** in companies be extended to also protect workers that flag up the **non-compliance of products** (both locally produced and imported) with existing market regulations – even if there is no apparent threat of direct or immediate damage being caused. Job losses in honest companies should be prevented, and fair competition in the Internal Market is a legitimate public interest which should be defended.

**Finally**, minimal levels of **finances and penalties** for non-compliance should be established, at levels which are sufficient to deter even larger companies. Penal sanctions for managers could be considered, because any financial sanction could easily be insured against by setting sufficient provisions in the company's accounts. Aligning the regime of sanctions against non-compliant products with the severe regime sanctioning **counterfeit** products (i.e. products that infringe Intellectual Property Rights) could also be an option.

We are not alone in this struggle. For once, **employers and industry associations** can be on our side. Their duty is also to defend honest, law-abiding firms in Europe against unfair competition from illegal players in the EU or abroad. It could be the purpose of a joint initiative – and end up being a "win-win" for all involved.