

STRENGTHENING COMPLIANCE WITH EU PRODUCT RULES

The new Regulation on market surveillance and compliance of products



Market surveillance in the EU

- Product legislation at EU level
- Member States are responsible for the enforcement
- Common market surveillance framework
 - How to organise
 - What to investigate
 - What procedures to follow when problems found
 - How to cooperate
 - In Chapter III of Regulation (EC) No 765/2008 – soon to be replaced by..

Regulation 2019/1020



Provisions start applying from 16 July 2021

(except new European Product Compliance Network starting January 2021)

Scope of the new regulation

- Market surveillance provisions

- EU harmonization legislation on non-food products: 70 pieces of legislation listed in Annex I, including Toy Safety Directive
- *lex specialis*: provisions do not apply where already specifically regulated in the product-specific legislation itself

- Controls at the external borders

- All EU product legislation, unless specific provisions in that legislation (incl. Toy Safety Directive)

- Specific scope for Article 4 (economic operator in the EU)

- Applies to 19 product sectors, including Toy Safety Directive

(Articles 2 and 4)

Organisation of market surveillance

- Member State have to:
 - designate one or more market surveillance authorities in its territory
 - (when more than one) ensure that the respective duties are clearly defined and that they can collaborate closely
 - provide them with the necessary resources
 - provide the necessary powers, including those specified in the Regulation
 - appoint a single liaison office

(Articles 10 and 14)

Investigations

- Market surveillance authorities have to:
 - perform appropriate checks on an adequate scale
 - by means of documentary checks and, where appropriate, physical and laboratory checks
 - prioritising their resources and actions to ensure effective surveillance, and taking into account the national market surveillance strategy
 - follow a risk-based approach, taking into account product and operator-based factors
 - do this for online and offline with same effectiveness ..

(Articles 10 and 11)

Online

- New tools for market surveillance authorities:
 - Offers targeted at EU end-users are ‘placing on the EU market’
 - Powers:
 - cover also cooperation by fulfillment centers and information society service providers
 - include buying under cover identity, removal of content in case of serious risk, obtaining info on ownership of websites
 - Economic operator in the EU as interlocutor for certain products

(respectively Articles 6, 7 & 14, 4)

Further tools and measures in the forthcoming Digital Services Act

Economic operator in the EU

- When placing a product on the market
 - i.e. in case of online sales when targeting end-users in the EU
- Manufacturer, importer, authorised representative or fulfillment service provider
 - Identity indicated on or with the product
- On request of market surveillance authorities
 - Provides information (DoC, technical documentation)
 - Cooperates with authorities
- Commission will soon publish guidelines

When problems are found

- Market surveillance authorities have to:
 - Ask the relevant economic operator to take corrective action
 - Take measures if it does not
 - Inform colleagues across the EU through 'ICSMS' (who then also take action if the economic operator did not)
 - Exercise their powers (e.g. penalties) proportionately

(Articles 14-17)

Cooperation

- With business or consumer organisations ..
- With customs
- Cross-border mutual assistance: information and enforcement measures
- Voluntary peer reviews
- Data sharing via ICSMS (and RAPEX)
- EU testing facilities
- EU Product Compliance Network ..

(respectively Articles 9, 25-28, 22-24, 12, 34, 21, 29-33)

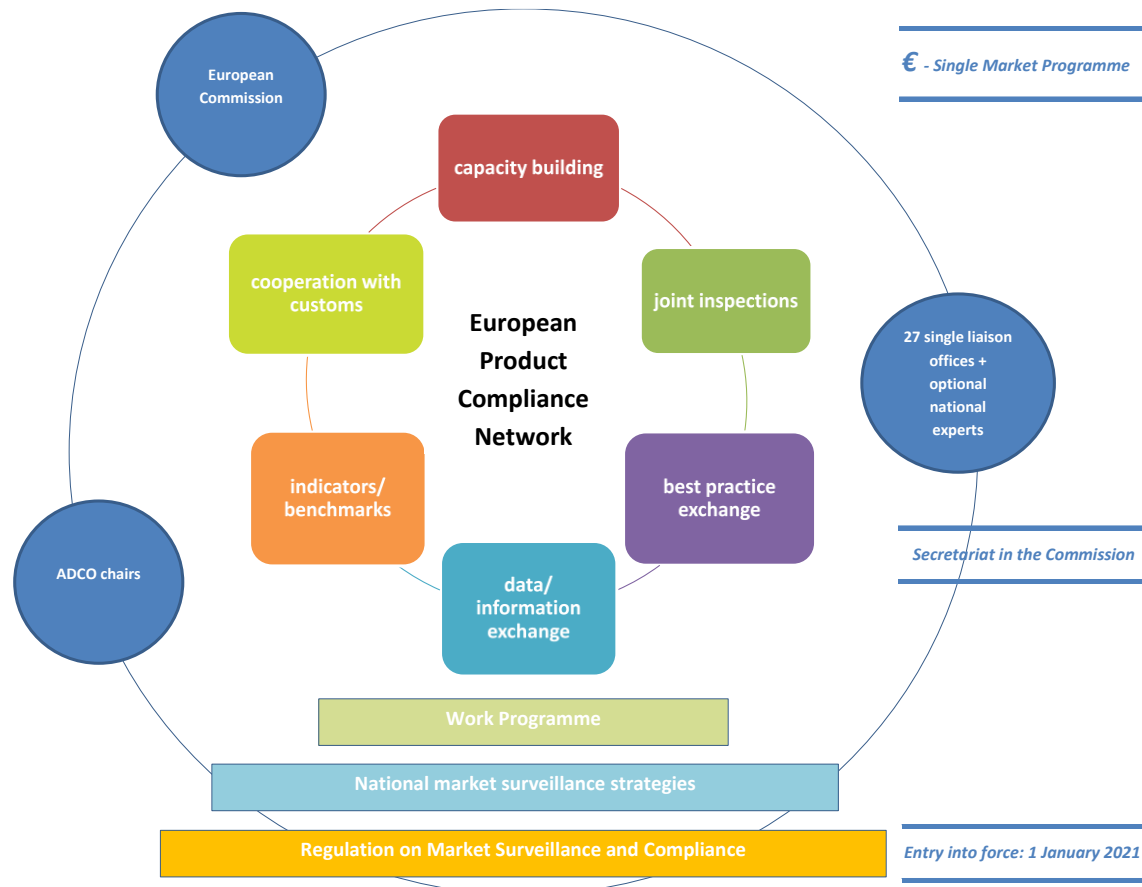
Cooperation with business or consumer organisations

- *Market surveillance authorities may agree [...] with organisations representing economic operators or end users on the carrying out of joint activities that have the aim of promoting compliance, identifying non-compliance, raising awareness and providing guidance [...]*
- *[...] ensure that [...] does not lead to unfair competition between economic operators and does not affect the objectivity, independence and impartiality of the parties.*
- A task force of market surveillance officials is preparing a common template/model, to present to the EU Product Compliance Network

(Article 9)

The European Product Compliance Network

- A permanent structure for coordination & cooperation between MS enforcement authorities and the Commission



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