

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

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SUBCOMMITTEE I ON THE FREE MOVEMENT OF GOODS

EEA EFTA Comment

on the evaluation of the market surveillance provisions of Regulation (EC) No 765/2008 and on actions to enhance enforcement and compliance in the Single Market for goods

1. INTRODUCTION

1. The EEA EFTA States refer to the Single Market Strategy adopted by the European Commission on 28 October 2015. Reference is given to Chapter 4.3. *Strengthening the Single Market for Goods*, and the action stating that the Commission will launch a comprehensive set of actions to further enhance efforts to keep non-compliant products from the EU market. Reference is also made to the ongoing evaluation of the market surveillance provisions of Regulation (EC) No 765/2008 and the Commission's intention to adopt a legislative proposal in 2017.
2. The EEA EFTA States welcome the Commission's commitment to strengthening product compliance by providing the right incentives to economic operators, promoting closer cross-border cooperation among market surveillance authorities and increasing the cooperation between market surveillance and customs authorities.
3. With regard to the planned actions and upcoming legislative proposal, the EEA EFTA States would like to draw the Commission's attention to important issues that should be taken into account.
4. Further comments may be put forward by the EEA EFTA States once the above-mentioned legislative proposal has been tabled.

2. GENERAL REMARKS

5. The EEA EFTA States share the Commission's opinion that there are still many products on the EEA market that do not comply with the rules on industrial products. Non-compliant products cause harm to both consumers and law-abiding businesses.
6. The EEA EFTA States believe that a lack of knowledge of the applicable product requirements by the economic operators is a key factor. It can be challenging to establish which piece(s) of legislation applies to the product in question, and the legislation is often difficult to process for small companies.
7. We share the Commission's view that deterrence and effective enforcement mechanisms are essential to create a level playing field for businesses selling products in the European Economic Area. Stronger efforts are needed to target the rogue traders who cut corners or deliberately flout the rules to gain a competitive advantage.
8. The EEA EFTA States note that no unnecessary administrative burdens should be placed on market surveillance authorities, leaving fewer resources for market surveillance activities, or on economic operators, cf. the Internal Market simplification agenda (e.g. REFIT).

3. RECOMMENDATIONS

3.1. More resources for market surveillance

9. Sufficient resources (staff and budget) are needed to enable national authorities to carry out adequate checks.
10. The EEA EFTA States support steps towards making the use of resources more efficient, and therefore welcome the Commission's idea to launch a new EU financial support programme that will invest in more product checks, more national inspectors, and joint inspections with national authorities. However, it should not be burdensome to participate in such a financial programme. We also support the laboratories of the Commission's Joint Research Centre increasing their available testing capacity.
11. The EEA EFTA States believe that Articles 19 and 29 of Regulation (EC) No 765/2008 should be amended in order to clarify that it is the economic operator making the product available on the market who would need to bear the costs in the case of a product presenting a serious risk leading to its potential destruction or otherwise rendering the product inoperable. This would help free up some resources for the market surveillance authorities.

3.2. Closer coordination of cross-border market surveillance

12. In order to carry out effective market surveillance it is indispensable to strengthen the coordination among market surveillance authorities in the different EEA States.
13. The Information and Communication System on Market Surveillance (ICSMS) plays a key role in this regard, as it enables market surveillance bodies in the EU and in the EFTA countries to share information on non-compliant products with the aim of avoiding duplication of work and speeding up the removal of unsafe products from the market.
14. The EEA EFTA States believe that there is still room for improvement in ICSMS to make it easier to use the results from market surveillance activities in other EEA States. Today, for instance, it is not clear to what extent test reports from a national market surveillance authority can be applied in other EEA States. In addition, the public part of ICSMS should be used more widely by consumers to increase their awareness.
15. To encourage a wider and more consistent use of ICSMS, amendments should be made to the existing market surveillance provisions of Regulation (EC) No 765/2008 to explicitly state in the relevant provisions (present Article 22 and 23) that RAPEX and ICSMS are the information systems that should be used.
16. The EEA EFTA States have gained several years of experience in preparing national market surveillance programmes, and welcome the Commission's efforts in developing a better common model to facilitate the work of the authorities. It is not clear, however, whether the information contained in the programmes is actively made use of in the way it is intended. In this context, in the ongoing evaluation of Regulation (EC) No 765/2008, it should be assessed if resources put into preparing the programmes are outweighed by what is gained in increased cooperation on market surveillance activities.

3.3. Online sales of non-compliant products and checks on imported products

17. The EEA EFTA States welcome the Commission's ongoing work on the development of guidelines concerning the surveillance of the safety of products sold online. The rapid expansion of e-commerce has come with some important compliance challenges, and EEA market surveillance authorities have difficulties in identifying responsible economic operators and in effectively sanctioning businesses established outside the EEA that sell non-compliant products directly to consumers or users in the EEA.
18. The EEA EFTA States believe that improved cooperation between market surveillance and customs authorities is needed, as it is much more efficient to check products coming from third countries at the borders, thus before they are distributed across the Single Market. In addition, the EEA EFTA States support the amendment of Regulation (EC) No 765/2008 to include an obligation on economic operators supplying EEA customers from third countries to appoint an authorised representative in the EEA, who can be held

liable in case of non-compliant imports, for recovery of product verification and/or destruction costs.

19. The EEA EFTA States think it is essential to raise consumers' awareness about challenges linked to this distribution channel and to empower them to make well-informed decisions.

3.4. Guidance and information campaigns

20. The EEA EFTA States believe that more resources need to be allocated to guidance documents and information campaigns targeted at economic operators to raise their awareness of applicable product requirements. This would save time and costs for national market surveillance authorities, who currently spend time on training economic operators due to a lack of formal guidance on the Commission's side on sectoral product legislation.

3.5. Additional remarks concerning the revision of Regulation (EC) No 765/2008

21. It should be stated explicitly that it is the responsibility of the economic operators to ensure that the products manufactured or placed on the market comply with the applicable product requirements.
 22. The EEA EFTA States consider that it could be useful in the future to simplify the legislation further by creating a horizontal regulation covering both the harmonised and non-harmonised areas along the lines of what was proposed in the draft Market Surveillance Regulation that formed part of the Product Safety and Market Surveillance Package. This would be complemented by specific provisions for each sector in sectoral legislation. The provisions on how to monitor and follow up on the various forms of non-compliance, especially formal non-compliance, should also be made clearer.
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