

## Background

The Single Market has been a frontrunner in EU economic integration. The most important legislative obstacles have been eliminated through EU harmonisation legislation. The objective of this legislation is twofold, first ensuring that industrial products placed on the European market guarantee high levels of protection for health and safety and the environment and secondly, ensuring the free movement of industrial products by replacing national rules with a single harmonised set of conditions for placing these products on the market.

Although non-compliance often passes unnoticed and the exact share of non-compliant products on the market cannot be quantified, there are still many products on the EU market that do not comply with the rules on industrial products. Non-compliant products cause harm to consumers and law-abiding businesses alike. In practice, non-compliance means that citizens are exposed to potentially dangerous products or that the environment is put at risk. Furthermore, non-compliance means that businesses selling compliant products face distorted competition from those traders who cut corners or deliberately flout the rules to gain a competitive edge.

The problem of non-compliant products within the Single Market is driven by many factors which can be categorised into two main categories:

- *Lack of familiarity with product legislation based on EU harmonised rules*<sup>1</sup>. The first condition for regulatory compliance is that businesses have to be aware and understand their obligations under applicable legislation. Unawareness or misunderstanding of requirements may bring about unintentional non-compliance;
- *Low incentives for businesses to comply with the rules*. The second condition for regulatory compliance is that businesses have to be willing to comply. Economic incentives can motivate compliance. A strong enforcement programme and a considerable risk of detection of infringements can discourage non-compliant behaviour.

The existing regulatory framework and these conditions constitute the framework in which the following drivers of non-compliance will be examined:

### 1) Lack of regulatory knowledge or comprehension

**Familiarisation with EU legislation on non-food products is an important and on-going task for all businesses that supply those goods.** They typically obtain information about product legislation based on EU harmonised rules, the accompanying technical standards and administrative requirements from a variety of sources (e.g. EC webpages, governments and market surveillance authorities, manufacturers, industry and trade associations, etc). However, there are indications that the level of knowledge among SMEs and especially micro businesses about harmonised rules applicable to industrial products is not always very high<sup>2</sup>. Furthermore, e-commerce presents serious compliance challenges for suppliers, partly due to ignorance or ambiguity over responsibilities for importing products or placing products on the market in the case of e-commerce<sup>3</sup>.

**Compliance information:** The exchange of information between businesses that supply products to the EU market and the authorities responsible for checking those products is often laborious and beset with delays. As industrial products become more and more complex and incorporate various different technologies and while product cycles become ever shorter, the traditional paper-based

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<sup>1</sup> Depending on the sector legal product requirements can be contained in EU legislative acts that are directly applicable or in national legislation having transposed EU harmonisation legislation.

<sup>2</sup> See Commission Staff Working document SWD(2015)202.

<sup>3</sup> Ibidem.

procedures for demonstrating and controlling product compliance are less and less convenient for businesses (especially SMEs), conformity assessment bodies and national authorities.

## 2) **Low incentives to comply with the rules**

Currently, enforcement mechanisms consist of two distinct elements: market surveillance and deterrence. Effective enforcement actions by market surveillance authorities will have the effect not only of detecting and punishing the placing on the market of non-compliant products but will also have a deterrent effect on other suppliers tempted to cut corners when placing products on the market. By doing so it provides businesses with stronger incentive to comply. Vice-versa ineffective enforcement lowers businesses' willingness to comply with the rules and discriminates businesses that abide to the rules against those who do not.

a. **Market surveillance:** Market surveillance is a crucial tool to protect consumers and other users from unsafe and non-compliant products, by ensuring that all economic actors stick to the rules. However, enforcement of EU harmonisation legislation must rely on efficient and effective controls carried out by market surveillance authorities operating in the different Member States. Unfortunately, market surveillance does not operate as effectively as it should in the European Union because:

- Market surveillance is fragmented in the Single Market. Coordination among market surveillance authorities in different Member States is fairly weak and the functioning of EU procedures for exchange of information on risky products needs to be improved.
- Businesses often supply products from outside the jurisdiction of the market surveillance authority where the end customer is located, hence the risk that market surveillance authorities in the latter country might experience difficulties in communicating with the supplier of the products and/or the market surveillance authorities in the supplier's country.
- It is often difficult for competent authorities to effectively sanction businesses established outside the EU who sell non-compliant products directly to consumers or users in the EU. Market surveillance authorities face significant practical problems to trace and intercept non-compliant products imported from outside the EU, for example via e-commerce, and to identify the responsible business within their jurisdiction. As a result, the risk of being caught and effectively punished for non-compliance is sometimes too low to be an effective deterrent to supplying non-compliant products to the EU market.
- The amount of resources allocated for market surveillance appears overall to be fairly limited with respect to the size of the Single Market.

b. **Deterrence failure:** enforcement mechanisms help creating a level playing field for businesses selling products in the EU. Many businesses breaking the rules have high rewards and low probabilities of detection. For example, penalties for non-compliance may not be high enough to offset the profits potentially available from selling non-compliant products. Yet, a fine large enough to deter may bankrupt the business or at least deplete the liquid assets of the business that employees will lose their jobs. In some Member States, market surveillance authorities are entitled to impose fines on businesses selling non-compliant products while in other Member States, sanctions can only be imposed by courts. Some stakeholders argue that a disaggregated, scattered system of economic sanctions results in non-compliance with EU law. Additionally, because of limited market surveillance resources or inconsistency/inefficiency in monitoring and enforcement, non-compliance may have a low probability of being detected and punished, and thus there will be a lack of deterrent effect.