



Confédération Européenne de la Chaussure  
European Footwear Confederation



## Declaration

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# The social and economic harm caused to law-abiding companies by non-compliant products must be prevented and punished

## Joint declaration of industrial social partners and industry associations on the proposed Regulation on Market Surveillance

Brussels, October 2018

IndustriAll European trade union, the European federation of trade unions in manufacturing value chains and CEC and Cotance, employers' associations in the sectors of footwear, tanneries and leather, follow with great attention the current debates in the Parliament and the Council about the proposed Regulation "*laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products*" COM(2017) 795 (hereafter: the proposed Regulation on Market Surveillance).

The harmonised legislation on products defines common requirements on industrial products placed on the Internal Market, relating to user safety, to public health, to the preservation of the environment, or to security.

The signatories welcome that the European institutions have selected Market Surveillance as one of their priorities for this legislature. Indeed, laws are effective only if they are properly enforced. Harmonised legislation on products is no exception to this general rule. They also welcome that the proposed Regulation goes in the direction of a more coherent, reinforced and unified Market Surveillance.

### Market Surveillance should prevent loss of turnover and employment by law-abiding companies, due to the placing of non-compliant products on the Internal Market

In the views of the signatories, the mission of Market Surveillance goes beyond the preservation of the primary public interests described above (user safety, public health, preservation of the environment, security). It contributes to a **fair competition** in the Internal Market, and to the preservation of the social and economic interests of law-abiding companies and their workers. It is a cornerstone of the good functioning of the Internal Market – which adds another, derived, public interest to the primary mission of Market Surveillance.

Non-compliant products should not be present on the Internal Market. Thus, the proportion of non-compliant products gives an estimation of the loss of turnover and employment by law-abiding companies, who are being deprived of their legitimate business and jobs by the unlawful behaviour of local and foreign-based suppliers. According to the Impact Assessment of the Commission (SWD(2017) 466, pp. 13-14), the market share of non-compliant products is in the range of **40%** – meaning a loss of **employment and turnover** of the same order of magnitude for law-abiding companies. This situation is unacceptable to industrial producers in Europe, represented by industriAll Europe, CEC and Cotance.

### The current versions of the proposed Regulation ignore the social and economic harm to law-abiding companies

The current versions of the proposed Regulation on Market Surveillance (original proposal by the Commission, and amended version voted for by the IMCO report of the Parliament on the 6<sup>th</sup> September 2018) consider only the health and safety risks to end-users in the **obligations** (Art. 10) and in the **activities** of Market Surveillance authorities, and in the **penalties** inflicted to producers of non-compliant products (Art. 61), i.e. in the substance of the Regulation,. These versions completely ignore all the other primary public interests to be protected by Market Surveillance (public health, preservation of the environment, security),



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and also the derived public interests (labelling and protection of consumers and producers against deceptive practices, counterfeiting) represented by the social and economic harm caused to law-abiding producers.

industriAll Europe, CEC and Cotance therefore urge the Parliament and the Council to include these primary and derived public interests in the scope of the obligations and activities of the Market Surveillance authorities, and in the elements to be considered when inflicting penalties to infringing companies. A detailed set of proposed amendments is provided in the Appendix 1 below.

## List of signatories

industriAll European trade union	European Footwear Confederation – CEC	Cotance
Luc Triangle, General Secretary	Carmen Arias, Secretary General	Gustavo González-Quijano, Secretary General

## Appendix 1: proposed amendments to the proposed Regulation on Market Surveillance

(Proposed additions to the Commission proposal underscored, proposed suppressions ~~stroke through~~).

### Recitals

(1 bis) Non-compliance with Union harmonisation legislation on products creates risks to health and safety and can lead to harm to users. It may also cause long-term harm to health, the environment and public security and leads to social and economic harm to law-abiding companies and workers. The presence on the market of products that do not comply with Union harmonisation legislation, creates a direct and immediate loss of turnover and of value added to law-abiding companies. It also destroys the employment or degrades the wages and working conditions of their workers.

(1 ter) The presence on the market of products that do not comply with Union harmonisation legislation destroys consumer trust in the identity, quality, the safety, the security and the environmental friendliness of the products present in the Internal Market, and thus their willingness to pay for features that they fear can be absent. Such products jeopardise the effective functioning of the Internal Market, one of the most valuable achievements of the European Union.

(3) **Currently the enforcement of market surveillance rules is inadequate. Therefore,** the framework for market surveillance should be strengthened with a view to further improving compliance with and enforcement of Union harmonisation legislation on products.

(7) Safety and health of consumers and of workers, protection of the environment, public security, correct and trustworthy labelling and description of products, the social and economic sustainability of law-abiding companies and workers and protection against unfair competition and unfair commercial practices largely depend on the active enforcement of Union harmonisation legislation on products providing for safety requirements. It is therefore necessary to strengthen those enforcement measures. [...]



***(13a) While this Regulation does not deal with the protection of intellectual property rights, it should nevertheless be borne in mind that counterfeit and false description of products do not comply with the requirements set out in the Union harmonisation legislation, pose serious risks to health and safety of end-users, distort competition, endanger public interests and support other illegal activities. Therefore, pursuant to Regulation (EU) 608/2013, Member States should continue taking effective measures to prevent the entry of counterfeit products on to the Union's market. In the interest of efficiency, customs authorities should be able to use their expertise and relevant information on risks, related to products infringing an intellectual property rights or which are falsely described, for the purpose of effective market surveillance of products entering the Union's market pursuant to this Regulation.***

*(44) The diversity of sanctions across the Union is one of the main reasons for inadequate deterrence and uneven protection. Rules on establishing sanctions, including monetary penalties, are a matter of national jurisdiction and are therefore, determined by national law. However, common criteria and guidance principles in determining the level of penalties should be established in order to achieve uniform and effective deterrence, **together with a level playing field and coordination** across the Union. Defining a set of criteria for determining effective, proportionate and dissuasive levels of penalty across the Union, in particular with regards to the past behaviour of the economic operators, their cooperation during investigation by market surveillance authorities, and the level of harm, is essential to avoid weak spots that could encourage forum-shopping.*

### *Article 3 Definitions*

(3) 'market surveillance' means the activities carried out and measures taken by market surveillance authorities to ensure that products comply with the requirements under Union harmonisation legislation and do not endanger health, safety, the environment, public security, the social and economic sustainability of law-abiding companies and workers against unfair competition and unfair commercial practices, the integrity of the Internal Market or any other aspect of public interest protection;

### *Article 10 Obligations of market surveillance authorities as regards organisation*

2. Market surveillance authorities shall establish the following procedures in connection with products subject to the Union harmonisation legislation set out in the Annex:

- a) procedures for following up of complaints or reports on issues relating to risks;
- b) procedures for monitoring any accidents or any harm to the health or safety of end-users or to any public interest referred to in Article 3(1)-3 which are suspected of having been caused by such products;
- c) procedures for verifying that corrective action to be taken by economic operators has been taken;
- d) procedures for collecting and exploring scientific and technical knowledge concerning safety issues and issues of harm to public interest referred to in Article 3(1)-3, caused by the making available on the market of non-compliant products.



### *Article 12 Activities of market surveillance authorities*

2. Market surveillance authorities shall perform controls as part of their activities set out in paragraph 1, on a risk-based approach, taking into account, as a minimum, the following factors:

- a) the identified risks associated with:
  - i. the product, such as the number of products on the market and any hazards or harm to any public interest referred to in Article 3(1)-3 associated with that product;
  - ii. the activities and operations under the control of the economic operator;

### *Article 61 Penalties*

1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation ***in a coordinated and even matter*** that impose obligations on economic operators and to infringements of provisions of any Union harmonisation legislation on products covered by this Regulation that impose obligations on economic operators where that legislation does not provide for penalties, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive

2. When a decision is being made whether to impose a penalty in each individual case, due regard shall be given to the following:

- (a) the financial situation of small and medium-sized enterprises;
- (b) the nature, gravity and duration of the non-compliance taking into account the harm caused to end-users or to any public interest referred to in Article 3(1)-3;

## Appendix 2: reference documents

- IndustriAll Europe: Policy Brief "[Non-compliant products destroy industrial jobs](#)"
- [A Future for the European Leather Industry](#) – Joint declaration of the Social Partners