

EuroCommerce Position on the Market Surveillance Regulation

A. Evaluation criteria

Relevance

The Regulation's objectives remain relevant but require reframing to address the new realities and challenges introduced by e-commerce and specifically the individual shipments entering the EU market from third countries. Our recommendations to tackle the aforementioned challenges and renew the Regulation's relevance can be found in our position for [Restoring the level playing field in retail](#), while **in this position paper we further develop two recommendations: a) a system of certified Authorised Representatives, and b) possible responsibilities for an EU Market Surveillance Authority**, provided that setting up such an authority will introduce real added value. To assess this, it may be fruitful to first assess what the enforcement needs are, and then evaluate whether these can only be fulfilled by an authority or by other means (e.g. rules of engagement from authorities authored by the Commission, oversight by the Commission of the system of certified authorised representatives).

Effectiveness

The Market Surveillance Regulation is an instrument that contributes to product compliance for products which have a manufacturer or importer based in the EU. However, effectiveness declines when it comes to addressing unfair competition from third country marketplaces and traders in the EU market, a challenge we have addressed by our [campaign Compliance4All](#).

Efficiency

If the Regulation does not address the new challenges, the result will be disproportionate burdens on compliant EU businesses, particularly SMEs.

Coherence

The current framework would benefit from coherence across enforcement domains, such as consumer protection, customs, product safety, sustainability, or chemicals. EuroCommerce calls for alignment with the Digital Services Act, the General Product Safety Regulation, the Customs Code reform, and the upcoming Digital Product Passport implementation among others.

EU Added-Value for EU Based Action

The cross-border nature of the challenge and systemic non-compliance of individual shipments from third countries cannot be addressed by Member States alone. EuroCommerce strongly supports EU-level coordination and a holistic EU enforcement framework across multiple legislations.

B. Policy Option Recommendations

We therefore recommend the adoption of a combination of **Legislative and Non-Legislative Options**.

C. Concrete Recommendations

Our recommendations can be found in our position for our position for [Restoring the level playing field in retail](#). But since discussions have progressed from the publication of our position, **below we elaborate on a solution to a key problem**: the lack of an EU actor (responsible person) with full responsibility for product compliance for individual product shipments from third countries.

1. System of Certified Authorised Representatives

Key Problem: Concerning third country product shipments that are offered to the consumer directly, there is no economic operator based in the EU with full responsibility for product compliance that can be held accountable. In particular, the problem arises when these products do not have an EU based manufacturer or importer. While they might instead have an EU Authorised Representative, an enforcement gap arises, since relying on the system of Authorised Representatives as it currently stands is insufficient for the following reasons:

1. The Authorised Representative (AR) listed is often fictitious, or;
2. The AR is not aware of or does not have a mandate from the seller on the products offered, and in each case;
3. The AR only has limited tasks and obligations, and is **not responsible for product compliance**.

Solution: We thus recommend addressing the three enforcement gaps identified above via the following solution:

System of Certified Authorised Representatives with Full Responsibility for Product Compliance:

1. For products placed on in the EU market without an EU based manufacturer or importer, there should be a **certified Authorised Representative, that is fully responsible** for product compliance.
2. All products from non-EU manufacturers/importers that are listed by third-country traders on online marketplaces offered to EU consumers, should have a certified Authorised Representative with an **active mandate**.
3. **Online marketplaces** should be obliged to verify that the Authorised Representative for the products listed is **certified, via a central EU database**.

***However*:** for the solution above to be functional and complete, the following element is missing and should be further elaborated: **how will the verification** of an active Authorised Representative mandate be achieved for all products listed by third-country traders on marketplaces.

2. EU Market Surveillance Authority

First, before deciding on the introduction of an EU Market Surveillance Authority, it may be more fruitful to first assess which enforcement tasks would be more effectively and efficiently organised at EU level and then assess how this should be realised e.g. creating an EU authority or by other means, such as rules of engagement for authorities. We believe that enforcement is currently organised in

silos, we thus need to ensure that any new authority has as part of its objectives to collaborate with other enforcement domains.

Second, the creation of an EU-level Market Surveillance Authority should complement, not replace or weaken the role of national market surveillance authorities. Enforcement ultimately takes place on the ground in the Member States, and any EU-level body must reinforce national action.

Third, an EU-level Market Surveillance Authority would only add value if it is endowed with real powers and a clear, actionable mandate. Below we list what this mandate could entail, taking inspiration from our position on [Restoring the level playing field in retail](#), where we recommend what actions the Commission can take. By analogy, an EU Market Surveillance Authority could play a targeted role by:

1. Establishing a binding **EU framework for enforcement and rules of engagement** for authorities to collaborate and coordinate activities across enforcement domains at national and EU level.
2. Assuming **investigative powers** across different legislations, and to initiate or take over investigations when certain criteria are met, for example multiple Member States impact.
3. **Limiting or restricting** Union market access, especially for third-country traders and marketplaces in cases of persistent and serious non-compliance.
4. **Overseeing the functioning and performance of certified Authorised Representatives**, including monitoring compliance/certification process, ensuring accountability, and supporting harmonised implementation across the EU.
5. **Supporting and facilitating knowledge management** by issuing guidance in support of more harmonised interpretation and risk management, facilitating (cross-border) data sharing and information flows across platforms, joint actions, and the use of digital enforcement tools.
6. Working towards a certain level of **harmonisation on the implementation or transparency of penalties across** member states, to discourage rogue players from leveraging fragmentation between member states.
7. **Conducting enforceability/enforcement checks** across evaluations and impact assessments of EU product legislation.

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EuroCommerce is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 27 countries and 5 million companies, including leading global players and many small businesses. Over a billion times a day, retailers and wholesalers distribute goods and provide an essential service to millions of business and individual customers. The sector generates 1 in 7 jobs, offering a varied career to 26 million Europeans, many of them young people. It also supports millions of further jobs throughout the supply chain, from small local suppliers to international businesses. EuroCommerce is the recognised European social partner for the retail and wholesale sector.