

# Belgian market surveillance authorities experience with respect to products entering the EU

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**EASTERN PARTNERSHIP PLATFORM 2  
2019.05.23**

## Overview

1. Legal base
2. Belgian authorities involved (MSA)
3. Exchange of information
4. Workflow
5. Tools
6. Advice for importers

# 1. Legal base : EU legislation

## 1.1 Legal text

## 1.2 Objectives



## 1.1. Legal text

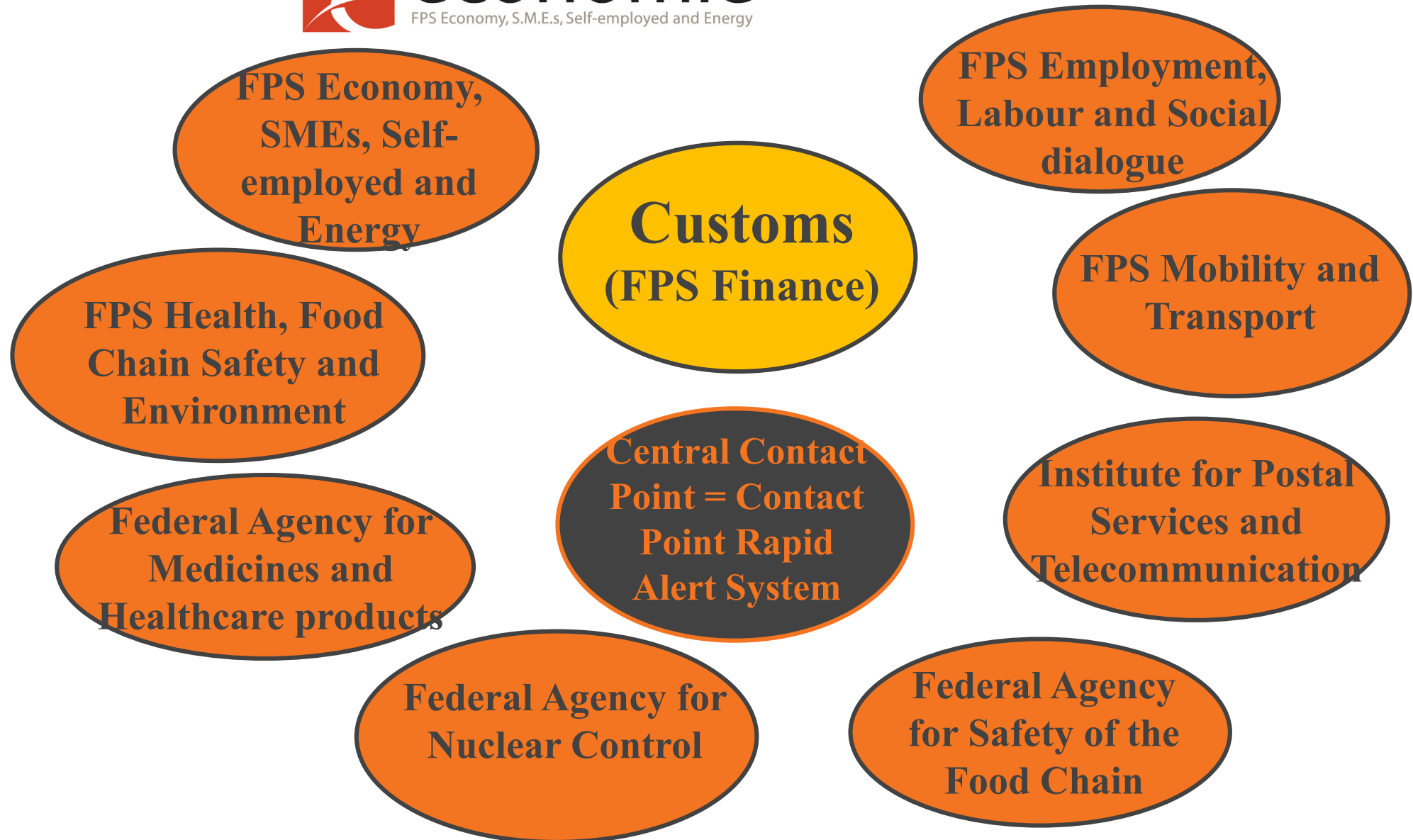
- [Regulation \(EC\) 765/2008](#) setting out the requirements for accreditation and the market surveillance of products
  - SECTION 3: Controls of products entering the Community market
    - > Articles 27, 28 and 29
- Under revision : “Goods Package” (Compliance and Enforcement Regulation)

## 1.2. Objectives

- high level of protection of public interests such as health and safety in general, health and safety at the workplace, protection of consumers, protection of the environment and security
- improve internal market for goods & stimulate competitiveness and economic growth in Europe
- cooperation between customs authorities and market surveillance authorities at national level, and across borders



## 2. BE authorities involved



### 3. Exchange of information

- at operational level:
  - monthly meetings between national MSA
  - trimestral meetings between Customs and national MSA
  - BE Rapex Contact Point sends copies of RAPEX notifications
  - *ad hoc contacts*



### Customs

- Selection for controls, based on risk assessment
- Suspension of free circulation of goods
- Contact MSA (checklist, photographs)

### MSA

- Evaluation of compliance product with EU legislation on goods
  - Decision within 3 working days, or
  - Possibility for further assessment -> suspension maintained

### Customs


- Release for free circulation, or
- Not compliant with EU goods legislation
  - > another customs procedure must be chosen by declarant



## 5. Tools (1/2)

- at EU level:
  - Checklists (detailed, more technical)
  
- at national level
  - List of national MSA, per type of goods
  - Simplified checklists
  - Template for communication of decision MSA to Customs

## 5. Tools (2/2)

| Règlement (CE) n° 765/2008 du Parlement européen et du Conseil du 9 juillet 2008<br>fixant les prescriptions relatives à l'accréditation et à la surveillance du marché pour la commercialisation des produits   |   |                           |  |  |
|--|---|---------------------------|--|--|
| <b>Communication de la suspension de la mise en libre pratique</b>   |   |                           |  |  |
| <div style="display: flex; flex-direction: column; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Service Public<br/>Fédéral<br/>FINANCES</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">DOUANES ET ACCÈS</div>  </div>  | Déclarant ou détenteur de la marchandise: | Numéro de Référence       | Date de la suspension de la mainlevée: |  |
|  | Expéditeur:                               | Type:                     | EMT:                                   |  |
|  |   | Date:                     | Mail:                                  |  |
|  |   | Transport                 | Tel:                                   |  |
|  |   | Courrier express          | Grade:                                 |  |
|  | Destinataire:                             | E-commerce                | Nom:                                   |  |
|  |   | N° de conteneur:          | Date de la notification                |  |
|  |   | Marque:                   | N° de référence du service:            |  |
|  |   | Valeur déclarée:          | Remarques :                            |  |
|  |   | Origine:                  |  |  |
|  | Code NC :                                 |                           |  |  |
|  | Quantité:                                 |                           |  |  |
| Categ. Produit:  |   |                           |  |  |
| Description:   |   |                           |  |  |
| <b>Décision</b>  |   |                           |  |  |
| Sur base des informations fournies, la décision suivante est prise concernant les marchandises susmentionnées :  |   |                           |  |  |
| <input type="checkbox"/> La suspension de la mainlevée pour la mise en libre pratique doit être maintenue parce que des contrôles supplémentaires sont nécessaires pour constater la sécurité et la conformité OU<br><input type="checkbox"/> Les marchandises peuvent être mises en libre pratique OU<br><input type="checkbox"/> Les marchandises ne peuvent PAS être mises en libre pratique ET<br><div style="margin-left: 20px;"> <input type="checkbox"/> Les marchandises <b>doivent être détruites</b> car elles constituent un risque sérieux et que sur les factures commerciales qui accompagnent ces marchandises, la mention suivante doit être apposée: "Produit dangereux - la mise en libre pratique n'est pas autorisée - Règlement (CE) n°765/2008" OU<br/> <input type="checkbox"/> Les marchandises <b>doivent être placées sous une autre destination douanière que la mise en libre pratique</b>, étant donné que les marchandises ne satisfont pas à la législation sur l'harmonisation communautaire et la mention suivante doit être apposée sur les factures commerciales qui accompagnent ces marchandises : "Produit non conforme - la mise en libre pratique n'est pas autorisée- Règlement (CE) n°765/2008" </div> |   |                           |  |  |
| Législation d'application :  |   | N° de Réf. SPF Economie : |  |  |
|  |   | Date:                     |  |  |
|  |   | Nom + grade :             |  |  |
|  |   | Service:                  |  |  |
|  |   | Signature:                |  |  |
| Article(s):  |   |                           |  |  |

## 6. Advice for importers (1/2)

- If goods are declared to Customs for release into free circulation, these goods need to be in conformity with the applicable EU goods legislation(s)!
- If importer is not sure that the goods are in conformity -> declare for another customs procedure that foresees a putting in conformity of goods.

## 6. Advice for importers (2/2)

- Basic general requirements to verify
  - CE marking (if applicable)
  - Traceability information
    - Identification of economic operator
    - Product references
  - Language of instructions and warnings
- + Specific requirements of applicable legislation



## Abbreviations

- FPS : Federal Public Service
- MSA : market surveillance authority

## Contact

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# **Customs controls on product compliance in the EU**

**EASTERN PARTNERSHIP meeting**  
Brussels, 23 May 2019





# Legislation in force

*Regulation (EC) 765/2008*

*Article 15 (5): Articles 27, 28 and 29 shall apply to all products covered by Community legislation in so far as other Community legislation does not contain specific provisions relating to the organisation of border controls.*

## Customs controls

*Article 5(3) of Reg. 952/2013 (the Union Customs Code - UCC) defines "customs controls" as:*

*"specific acts performed by the customs authorities in order to ensure compliance with the customs legislation and other legislation governing the entry, exit, transit, movement, storage, and end-use of goods, moved between the customs territory of the Union and countries or territories outside that territory"*

## Legal base

*Article 46(1) UCC empowers Customs Authorities to carry out any customs controls they deem necessary, including documentary checks, physical examination, take samples, perform audits, etc.*

*Article 46(2) UCC: Controls other than random checks should primarily be based on risk analysis*

# Competency

*Risk management and Customs controls are the competence of the Member States (MSs)*

*Cooperation between Customs Authorities and Market Surveillance Authorities (MSAs) is very important*

# Risk Management

*Article 46 (4) UCC: Customs authorities shall undertake risk management to differentiate between the levels of risk associated with goods subject to customs control or supervision and to determine whether the goods will be subject to specific customs controls, and if so, where.*

*Article 46 (8) UCC: Priority control areas shall cover particular customs procedures, types of goods, traffic routes, modes of transport or economic operators which are subject to increased levels of risk analysis and customs controls*



# **Guidelines for Import controls in the area of product safety**

*Non-legally binding Guidelines on import controls, to facilitate the implementation of Regulation (EC) 765/2008:*

*Overview of EU legislation, including clarifications of legal requirements and scope of border controls*

*Principles of cooperation between Customs and MSAs*



## **Main new provisions of the new Regulation on compliance and enforcement**

Tasks for certain economic operators with regard to products subject to Union harmonisation legislation

Possibility of approving pre-export controls in third countries

Information and Communication System to exchange information between Customs and MSAs

Increased cooperation between Customs and MSAs

# Customs risk management and control

The same principles of Regulation (EC) 765/2008:

- will apply only to goods placed under release for free circulation
- controls by Customs will continue to be based on risk analysis (art. 25): in case of suspicion of non-compliance they will suspend the release and notify the MSA (art. 26), which will take the final decision and inform Customs accordingly (art. 27)



## Art. 25(3)

*Products subject to Union law that are to be placed under the customs procedure 'release for free circulation' shall be subject to controls performed by the authorities designated under paragraph 1. They shall perform those controls on the basis of risk analysis in accordance with Articles 46 and 47 of Regulation (EU) No 952/2013 and, where relevant, on the basis of risk-based approach as referred to in the second subparagraph of Article 11(3).*

# Article 11

*3. [...] In deciding on which checks to perform, on which types of products and on what scale, market surveillance authorities shall follow a risk-based approach taking into account the following factors:*

*(d) if relevant, the risk profiling performed by the authorities designated under Article 25(1)*

# Common risk analysis at Union level

*25(8) The Commission, after consulting the Network, may adopt implementing acts laying down benchmarks and techniques for checks on the basis of common risk analysis on the Union level, in order to ensure a consistent enforcement of Union law, to strengthen the controls on products entering the Union market and to ensure an effective and uniform level of such controls.*



# International cooperation on market surveillance

## Eastern Partnership Trade Panel on Reform of Systems of Technical Regulations and Related Infrastructure

**23 and 24 May 2019, Brussels**

**Katja Modric Skrabalo, Policy Officer  
DG GROW B.1**



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[youtube.com/c/EUGrowth](https://youtube.com/c/EUGrowth)

Web sites:

[ec.europa.eu/growth](https://ec.europa.eu/growth)

[ec.europa.eu/bienkowska](https://ec.europa.eu/bienkowska)

## Legal Basis

- Free trade agreements provisions in Technical Barriers to Trade chapters
- Regulatory dialogues
- Administrative arrangements
- *Ad hoc* cooperation

## Free trade agreements

- ensure the independence of market surveillance functions from conformity assessment functions;
- ensure that there are no conflicts of interest between market surveillance authorities and the persons subject to control, including the manufacturer, the importer and the distributor;
- strengthen cooperation with regard to market surveillance
- develop common views on good regulatory practices, including, but not limited to[...] enforcement of technical regulations and market surveillance activities

# Association Agreements including Deep and Comprehensive Free Trade Area

- gradually achieve conformity with EU technical regulations and EU standardisation, metrology, accreditation, conformity assessment procedures and the **market surveillance system**

# EU Canada Comprehensive Economic and Trade Agreement (CETA), Protocol on conformity assessment - ARTICLE 11

- A Party shall, upon receipt of a written complaint by the other Party, [...], that products assessed by a conformity assessment body that the Party designated do not comply with applicable technical regulations:
  - (a) promptly seek additional information from the designated conformity assessment body, its accreditation body and relevant operators when necessary;**
  - (b) investigate the complaint; and**
  - (c) provide the other Party with a written reply to the complaint.**



## Regulatory Dialogues

- China – State Agency for Market Supervision
- Japan - METI
- Canada – Global Affairs Canada
- Ukraine - MEDT
- (United States) – Consumer Product Safety Commission



# Upcoming Regulation on Market Surveillance and Compliance (Article 35)

the Commission may cooperate with and exchange **market surveillance related information** with regulatory authorities of third countries or international organisations:

- reciprocity,
- confidentiality corresponding to those applicable in the Union,
- any exchange of information shall be in accordance with applicable EU legislation.



## **Upcoming Regulation on Market Surveillance and Compliance (Article 33)**

- joint market surveillance and testing projects
- common training programmes
- facilitate , where appropriate, exchanges of personnel between market surveillance authorities and the market surveillance authorities of third countries or with international organisations
- carry out activities under programmes of technical assistance, cooperation with third countries and the promotion and enhancement of EU market surveillance policies and systems among interested parties at Union and international levels

# ***NEW EU REGULATION ON MARKET SURVEILLANCE AND COMPLIANCE OF PRODUCTS***



#SingleMarket  
#goodspackage

*May 2019*

# INTRODUCTION

## *Evaluation of Regulation (EC) No 765/2008, Chapter III :*

- Aimed to protect consumers and users & eliminate unfair competition
- But too many non-compliant products
- Several problem drivers

## *Objectives for the new Regulation:*

- Improve compliance
- Strengthen market surveillance & controls at external borders
- Modernising the framework to better cover new supply chains and online sales



# SCOPE

- **Market surveillance provisions**

EU legislation harmonising requirements for non-food products: list of legislation (70) in Annex I

- **Controls at the external borders**

Covers all EU legislation on products, unless more specific provisions in that Union legislation

- Specific, more narrow scope for Article 4 containing requirements on economic operators

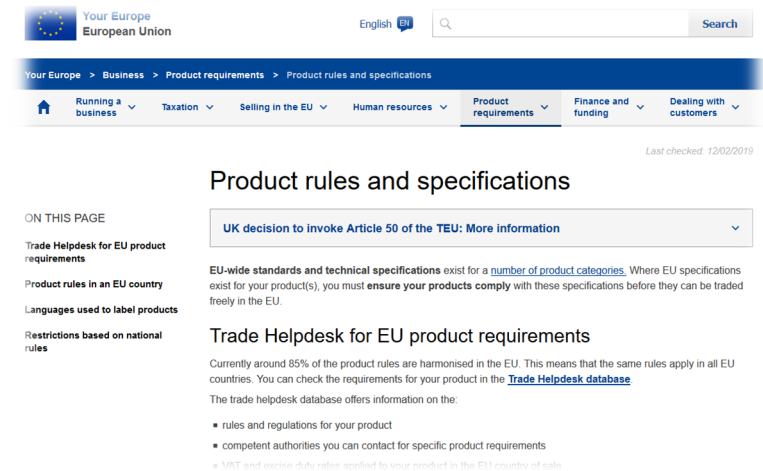
# IMPROVE COMPLIANCE UPFRONT

## Free of charge information to businesses

- Online through YourEurope
- Through national Product Contact Points

## Joint activities market surveillance authorities & business/consumer organisations

- Raising awareness, providing guidance
- Identifying non-compliance: results may be used for investigations



The screenshot shows the 'Your Europe' website interface. At the top, there's a header with the European Union flag, the text 'Your Europe European Union', a language selector set to 'English', and a search bar. Below this is a navigation menu with categories like 'Running a business', 'Taxation', 'Selling in the EU', 'Human resources', 'Product requirements', 'Finance and funding', and 'Dealing with customers'. The 'Product requirements' category is selected, leading to a page titled 'Product rules and specifications'. On the left side of this page, there's a sidebar with links: 'ON THIS PAGE', 'Trade Helpdesk for EU product requirements', 'Product rules in an EU country', 'Languages used to label products', and 'Restrictions based on national rules'. The main content area features a dropdown menu for 'UK decision to invoke Article 50 of the TEU: More information'. Below this, there's a section titled 'EU-wide standards and technical specifications' explaining that EU specifications exist for various product categories and that businesses must ensure compliance. This is followed by a 'Trade Helpdesk for EU product requirements' section, which states that around 85% of product rules are harmonised in the EU and provides a link to the 'Trade Helpdesk database'. It also lists that the database offers information on rules and regulations, competent authorities, and VAT and excise duty rates.

# STRENGTHEN MARKET SURVEILLANCE

## *At national level*

- **Single Liaison Office:** represents the coordinated position of the authorities of the Member State
- **National Market Surveillance Strategies :** every 4 years; considering all sectors; setting priorities.
- **Powers:** minimum set of powers of investigation, enforcement and penalties
- **Updated risk-based approach and measures:**
  - Targeting products more likely to be non-compliant
  - Requiring economic operators to correct, otherwise restrictive measures



# STRENGTHEN MARKET SURVEILLANCE

*Helping each other*

- **Cross-border mutual assistance**

- Information & enforcement measures
- Requesting authority should first itself attempt to obtain information or resolve the case.
- Refusals of requests only allowed in exceptional cases

- **Peer reviews**

- For authorities wishing to participate
- The 'Network' shall develop the methodology



# STRENGTHEN MARKET SURVEILLANCE

## *EU-wide cooperation*

- **EU Product Compliance Network**
  - Platform for structured cooperation & coordination
  - Single Liaison Offices, ADCOs and Commission
  - General horizontal issues of market surveillance
- **Administrative Cooperation Groups (AdCO):** Sector-specific issues
- **Union testing facilities:** Enhancing laboratory capacity for specific sectors or test
- **Data sharing:** Linking the information & communication system to national market surveillance and customs databases



# STRENGTHEN MARKET SURVEILLANCE

## *International cooperation*

- **Cooperation and exchange of information**

Between authorities of third countries and Commission, on the basis of international agreement



- **Systems of pre-export controls**

- Commission can approve specific systems for some or all products from a third country
- Requires efficient verification system in third country, and audit to demonstrate that products comply
- Result: taken into account in customs and market surveillance risk assessments

# CONTROLS AT THE EXTERNAL BORDERS

- **Risk analysis and information sharing:**

- Customs perform controls based on risk analysis
- Market surveillance authorities indicate product types or operators with higher risk of non-compliance

- **When customs suspect non-compliance:**

- Market surveillance authorities have 4 days to react
- When found non-compliant, labelled to prevent entering EU in different ways; destruction allowed.



# MARKET SURVEILLANCE OF ONLINE SALES

- **To do with same effectiveness**
- **New powers** covering also cooperation by fulfillment centers and information society service providers
- **Offers targeting EU end-users are placing on the EU market**
- **Business in the EU as interlocutor for certain products:**
  - Provide information to and cooperate with market surveillance authorities,
  - Manufacturer/importer/authorised representative/fulfilment service provider
  - Applies to 18 laws: e.g. electric and electronic equipment, machinery, toys
  - Commission to draft guidelines



## NEXT STEPS

- **Text voted by European Parliament on 17 April available:**

[www.europarl.europa.eu/doceo/document/TA-8-2019-0397\\_EN.html?redirect#BKMD-9](http://www.europarl.europa.eu/doceo/document/TA-8-2019-0397_EN.html?redirect#BKMD-9)

- **Formal adoption by Council:** 13 or 14 June
- **Official publication:** mid-2019
- **Application of EU Product Compliance Network and financing:** January 2021
- **Application of other provisions:** mid-2021
- **Funding:** Single Market Programme