



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2017)

## **Opinion**

**Title: Evaluation / Market surveillance**

**Overall opinion: NEGATIVE**

### **(A) Context**

EU harmonisation legislation for industrial products aims to ensure two things. Products should be able to move freely within the Single Market and all products placed on the market should respect high levels of protection for health and safety and the environment.

Regulation (EC) No 765/2008 established a Market Surveillance framework of rules for the control of products and economic operators. These rules define minimum requirements as well as how administrative cooperation between Member States should work. The regulation entered into force in January 2010.

The purpose of this evaluation is to see how this regulation is being applied, and how well its market surveillance provisions have delivered on objectives. Those objectives are to "ensure a level playing field" among economic operators and to reduce the number of non-compliant products on the EU market.

In its Single Market Strategy of 28 October 2015, the European Commission announced an initiative to strengthen product compliance. The initiative requires an impact assessment, to which this evaluation contributes. The market surveillance initiative is part of a larger "Goods Package."

### **(B) Main considerations**

**The Board acknowledges a significant effort to collect evidence on non-compliant products as part of the evaluation work.**

**However, the Board considers that the report contains important shortcomings that need to be addressed, particularly with respect to the following issues:**

- (1) The evaluation report is not a self-standing document.**
- (2) The evaluation fails to deliver evidence-based findings and conclusions.**

**Against this background, the Board gives a negative opinion and considers that in its present form this report does not provide sufficient input for the associated Impact Assessment.**

### **(C) Further considerations and adjustment requirements**

#### **(1) Self-standing evaluation report**

The evaluation report should be a self-standing document. It should include the main findings of the underlying external evaluation study and other available evidence, which are now in the annexes. The report should present evidence in a structured way, following a clear intervention logic and addressing all the evaluation criteria. The report should be clear about limitations of what the available evidence can reasonably demonstrate. As a REFIT exercise, the evaluation should also assess the scope for simplification and reduction of regulatory burden.

#### **(2) Scope**

The report should more clearly present the scope and limitations of the evaluation. It should provide an explanation of the existing legislative framework and how the provisions are implemented in Member States. The report should draw conclusions from the diversity of national practices. It should substantiate the fact that penalties are not high enough. It should explain the links with sectoral legislation and how mutual recognition and customs policy work together. Against this background, it should clarify the scope and benchmarks used for the evaluation. It should add relevant information from previous impact assessments and evaluations.

#### **(3) Conclusion**

The report should align its conclusions with the revisions required for the other sections. They should clearly set out main lessons learned and how far evidence supports them. As such, the conclusions should provide a solid basis for the scope and problem definition of the parallel impact assessment for future policy developments in the area.

*Some more technical comments have been transmitted directly to the author DG.*

### **(D) RSB scrutiny process**

**The lead DG may decide to resubmit this report to the Board, in which case the report should be adjusted in accordance with the above-mentioned requirements prior to its resubmission.**

Full title	REFIT evaluation of the application of the market surveillance provisions of Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93
Reference number	2017/GROW/028
Date of RSB meeting	05/04/2017