

# The Antwerp Declaration for a European Industrial Deal

## Antwerp Dialogue on enforcement at EU borders

Brussels, 12 December 2024

*The meeting took place at the invitation of Sylvie Lemoine (Cefic), Emma Trogen (Cosmetics Europe), Olivier de Matos (CropLife Europe) and was chaired by Jacki Davis (Meade Davis Communications).*

### Context

Europe has among the highest safety and sustainability standards worldwide and is striving to be leading on that front. Despite European businesses investing in compliance, they frequently encounter unfair competition from non-compliant imports, especially when these products are sold on certain online platforms. This situation affects Europe's competitiveness and poses a risk to human health and the environment.

There is persistent evidence showing that significant amounts of goods containing banned or restricted substances come from outside the EU<sup>1,2</sup>. From the illegal trade of HFCs refrigerants, alcohol, pharmaceuticals, and pesticides, to consumer goods (such as clothing, toys, cosmetics) – the list is endless. Adding to the complexity, is the continued rapid growth of the digital world and online sales. Non-compliant, counterfeit and unsafe products can easily find their way to the EU without any checks<sup>3</sup>. So far we do not have all the solutions to reinforce market surveillance and enforcement in these situations and in some cases these solutions are difficult to implement.

With enforcement and e-commerce high on the EU political agenda, the Antwerp Dialogue on enforcement brought together relevant stakeholders to discuss potential solutions for strengthening market surveillance and enforcement of imports at borders and online sales of non-compliant goods.

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<sup>1</sup> Cefic's analysis from 2021 shows that almost 77 % of products identified to be non-compliant with EU chemical legislation are imported from outside the EU: <https://cefic.org/media-corner/newsroom/data-confirms-an-urgent-need-to-step-up-enforcement-of-chemicals-legislation-for-imported-goods-and-online-sales/>; preliminary results from 2023 show similar patterns (to be published soon).

<sup>2</sup> See EuroCommerce dedicated website [www.eurocommerce.eu/compliance4all](http://www.eurocommerce.eu/compliance4all)

<sup>3</sup> As an example, ECHA Enforcement Forum recently conducted a project on online sales where they found that the majority of inspected products sold online breach EU chemical laws: <https://echa.europa.eu/-/majority-of-inspected-products-sold-online-breach-eu-chemicals-laws>




There was a common understanding among participants that:

- Protection of the EU Single Market is a key priority of the European Commission, in combination with restoring the competitiveness of European businesses and simplification.
- Ensuring a level playing field between EU and non-EU manufacturers selling in the EU is equally important for Europe's competitiveness.
- Member States are not prioritising enforcement, mostly due to lack of human and financial resources (example given that at one large port less than 1% of containers is being opened for controls, which could be representative for other entry points to the EU).
- There is a mix of agencies both at national and EU level dealing with different enforcement topics<sup>4</sup>. The European Commission has several Directorates dealing with enforcement in one way or another. This makes it challenging to coordinate and keep track of who is doing what.
- Enforcement of current rules is still an issue and that enforceability needs to be considered when making new rules.
- In practice, the following is needed to make enforcement work at the borders without disrupting trade:
  - good data collection and information sharing among those authorities involved in enforcement (for instance customs, market surveillance, police), and with private actors (for instance carrier, online platform, payment service provider, IP rights holders)<sup>5</sup>, in order to effectively prioritise enforcement;
  - public-private partnerships, including in the area of counterfeiting; and
  - accountability: currently, there are no mechanisms to deter free-riding behaviours. For instance, if a non-compliant shipment is the reason for a container being blocked at the border/in ports, who is held accountable? Operators selling in the EU should be registered or have a representative at the EU territory that could respond to enforcement authorities.
- For some private actors involved in transportation of counterfeit goods, sanctions applied today are not deterrent and differ significantly between different EU countries.
- Prevention is important – to avoid that illegal goods are put for sale online – and awareness-raising towards consumers buying online.
- At the level of online platforms, it is important to know your business customer. Some participants highlighted that the “know your business customer” obligations only cover online market places, but not other online intermediaries.

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<sup>4</sup> An example is the EUIPO Observatory on Infringement of Intellectual Property Rights which produces studies and other evidence, develops tools and resources for law enforcement – such as the IP Enforcement Portal – supports cooperation between law enforcement authorities and the judiciary, and promotes awareness about counterfeits. See [Observatory EUIPO](#).


<sup>5</sup> The IP Enforcement Portal managed by EUIPO could serve as a good practice.



A problem highlighted by several participants is that when the seller is unknown or when fake addresses are used and there is no one in the EU liable for compliance with safety rules (e.g. because there is no fulfillment service provider or responsible person who can be traced), rules cannot be enforced. It was pointed out that Europe has spent 5 years of legislative activity establishing a regulatory system built upon the concept of a responsible person, with fulfillment service providers as the appropriate supply chain actor at the backstop. However, there was a call for online platforms to be held accountable, as a last resort. The absence of this possibility creates a loophole in the current law and allows for unsafe products to enter the Single Market. What adds to the issue is the fact that customs cannot test each item since their controls are limited to verifying documents and declarations. This is particularly relevant when there is no fulfillment service provider or responsible person who can be traced.

#### Recommendations:

- **Political leaders need to make enforcement a priority**, in line with the political guidelines of the new European Commission – enforcement of EU rules at the European Union’s borders is a fundamental prerequisite to a level-playing field for EU-based companies, as well as a matter of protecting human health and the environment. Smart enforcement should be one of the key elements of the Single Market Strategy which the European Commission plans to present mid-2025. The European Commission should also reflect on the cost of having no actions on enforcement and the impact illegal imports would have on EU’s competitiveness and the protection of human health and the environment.
- **Harmonise and coordinate Member States’ enforcement and controls**, building on the Market Surveillance Regulation and the ongoing reform of the Union Customs Code:
  - Consider a central office at the European Commission acting as a reference and contact point for all enforcement matters. The office would help to coordinate actions on enforcement across the Member States (without taking away Member States’ rights to perform enforcement). It would also help to share knowledge and best practices that would lead to improved harmonisation in priority areas to control, methods to perform checks etc.
  - More data sharing and use of digital tools to facilitate cooperation and knowledge sharing across different EU and national bodies, promoting the use of simple scanning tools that authorities can use.
- **Enforceability as part of law making.** It is about identifying and closing enforceability gaps such as lack of harmonised analytical methods to verify compliance. The European Commission could implement an enforceability check across all legislation as a part of the stress-test mentioned in the EU Political Guidelines.
- **Additional human and financial capacity for enforcers:** reallocate customs duties collected at the border towards financing Member States’ enforcement. This could be part of the Single Market Strategy that the European Commission is planning to present mid-2025.

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- **More proactive approach for e-commerce:** ensure there is always an EU representative who can be held accountable/liable when it comes to online sales. This representative should be “meaningful” and steps to professionalise this role could be included the upcoming sectorial legislation<sup>6</sup>. As a last resort, this should be the online platform. The European Commission can shut down an online platform in case of repetitive breaches of EU law.

**Endorsing organisations:**

AIM, Amazon, Applia, Cefic, CosmeticsEurope, CropLife Europe, EURATEX, EuroCommerce, FESI, TIE

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<sup>6</sup> The European Commission should ensure that the EU representative actually exists and is competent/capable of performing the functions assigned to them. Otherwise there is a risk of confidence in the system being undermined by having a superficial name plate/address with nobody to contact/no knowledge on the content.