European materials handling federation

FEM position paper on the revision of the Market Surveillance Regulation (MSR) and the New Legislative Framework (NLF)

Executive summary

The European Materials Handling Federation (FEM) represents European manufacturers of materials-handling, lifting and storage equipment.
FEM supports a targeted revision of the New Legislative Framework (NLF) and the Market Surveillance Regulation (MSR) to ensure legal coherence across product legislations, supporting digitalisation without creating disproportionate burdens for manufacturers and

FEM's main recommendations are:

- Ensure coherence across the NLF provisions while maintaining the current CE marking system:
  The physical CE marking should be maintained, while ensuring stronger enforcement against misuse and non-compliant products.
- Develop a staged approach with sufficient transition periods for the Digital Product Passport (DPP) framework.
  Besides, the DPP should be centralised, limited to essential compliance information to avoid unnecessary complexity, exclude sensitive business information, ensure interoperability, be technology neutral, and support SMEs.
- Strengthen market surveillance enforcement rather than creating additional obligations for manufacturers.

1. Updating the NLF without undermining its core principles

The revision of the New Legislative Framework (NLF) should preserve the core principles that have supported the functioning of the Single Market, while clarifying how they apply in a more digitalised, globalised and circular market.
In particular, FEM considers that further clarification is needed on the concepts of "placing on the market", "making available", "first made available" and "putting into service. Attention should be given to the scope and terminology used in EU legislation, as inconsistencies can make it difficult to understand and apply the requirements (see the Data Act[i][1], which refers

[1] Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of *data*

to the 'making available' of products, while several obligations apply to products at the time of placing them on the market).

This is especially important to distinguish between products manufactured in the EU and products placed on the EU market from outside the EU, including through online marketplaces.
There should be stronger legal obligations for online marketplaces, including:

- verification of EU-representative information
- removal of illegal offers
- exclusion of repeat offenders
- notification of previous purchasers
- support for recalls and, in certain circumstances, the withholding of payments

This clarification should ensure that responsibility is clearly allocated to the appropriate economic operator and that products entering the EU market from third countries are subject to effective controls. Such clarification would also help avoid uncertainty for compliant manufacturers operating within the EU.

2. CE marking should remain physical and better enforced

FEM strongly supports maintaining the physical CE marking. Even if market surveillance authorities and customs authorities increasingly perform checks through digital systems, the CE marking should remain visible on the product as under the current framework.
The main challenge is the CE marking enforcement, rather than its format.
FEM therefore calls for stronger enforcement of CE marking requirements, particularly for products imported from third countries.
Digital tools may support administrative checks, but they should not replace the need for clear physical marking and effective controls at the border and in the EU market.

3. Market surveillance: enforcement first

FEM considers that the main weakness of the current Market Surveillance regulation (MSR) framework lies in the insufficient level of market surveillance activity.
Therefore, the revision of the MSR should prioritise enforcement capacity rather than create new obligations for compliant manufacturers, particularly when they are not safety related.

FEM supports:

a) more checks, particularly on products entering the EU market from third countries;
b) stronger coordination among market surveillance authorities;

c) more financial and human resources for market surveillance authorities;
d) more consistent enforcement across Member States.

In this context, digital tools and AI-based checks may support enforcement, but they cannot replace technical expertise and human assessment.
FEM fears that relying fully on AI checks or instruments of non-compliant products may create false assumptions of compliance.
Moreover, revised proposal should establish a clear and consistent legal framework enabling market-surveillance authorities to receive, assess and use substantiated information supplied by economic operators concerning potentially non-compliant products. Article 9 should facilitate targeted joint activities and cooperation without transferring authorities' enforcement responsibilities to industry.
Therefore, digitalisation should not be presented as a substitute for real enforcement capacity.

4. Digital Product Passport (DPP)

FEM supports a proportionate approach to the Digital Product Passport (DPP) under the NLF. The DPP should not become an overly burdensome repository of compliance, technical or product lifecycle data. Its content should be limited to what is necessary and useful for enforcement purposes.
Also, FEM would like to propose a staged approach to the DPP.
Stage 1 would foresee a **Digital Product Record (DPR)**. The DPR would use a unique product identifier and machine-readable data carrier, such as a QR code, connected to a manufacturer-hosted webpage containing defined compliance documentation.
It should remain structurally compatible with the DPP architecture, using the same identifier and data-carrier logic, so that products can migrate in stage 2 into the full DPP without creating a parallel system.

4.1 Scope and content of the DPP

FEM supports the inclusion of information that is necessary for market surveillance and compliance purposes, such as the EU Declaration of Conformity.
The DPP should keep a proportionate approach and avoid expanding the amount of data to be included.
For this reason, FEM does not support the inclusion of notably:

- third-party certificates;
- technical documentation;
- refurbishment or repair history;

- component-level data within the DPP of the final product;

Specifically, **technical documentation should not be included in the DPP.**
As technical files often contain sensitive and confidential information they should only be provided through established procedures when requested by competent authorities.
Including technical documentation in the DPP would increase risks linked to confidentiality, data protection, intellectual property and uncontrolled access to sensitive product information.
It would also create a disproportionate burden without necessarily improving enforcement outcomes.

4.2 DPP architecture: centralised but technology-neutral

FEM supports a centralised DPP system.
It could facilitate access by market surveillance and customs authorities and support a more consistent enforcement framework across the EU.
At the same time, it is important to keep the system technology-neutral while ensuring interoperability in the collection, access, storage and sharing of data.
The NLF should avoid locking economic operators into specific IT solutions. IT infrastructure and technical implementation details could be addressed through standardisation, while the content of the DPP should be defined through the European Product Act.

4.3 Access to the DPP

The access to the DPP information should be granted for:

- Market Surveillance Authorities
- Custom Authorities

Manufacturers may also decide on a voluntary basis which information may be publicly accessible where relevant, for instance environmental information or other information specifically required for a given product category.
FEM stresses the difference between reading access rights and editing rights.
In this sense, Market Surveillance Authorities should only have reading access and therefore not be able to add, for instance, non-compliance notes directly to the DPP.

4.4 The DPP is not a substitute for effective market surveillance

FEM considers that the DPP will have limited impact on the real challenges faced by market surveillance authorities. Digital compliance information may facilitate access to certain administrative data, but it does not solve the core enforcement problem.
The main difficulty for authorities is often the ability to understand and verify the wide variety of product-specific technical requirements. Many non-compliances are not visible on the surface and require in-depth technical assessment, such as verifying whether the performance level of a safety function is lower than the one specified by the applicable standard. Such issues cannot be solved simply through a digital DPP.
Similarly, FEM considers that the DPP will offer little or no meaningful help in addressing non-compliant products sold online, particularly where they come from third countries and lack an EU representative.
In line with this, products manufactured outside the EU should not be permitted to enter the Union market unless validated information concerning the responsible economic operator established in the EU is available before the product reaches the EU border. The information should identify the economic operator, the products covered by its mandate and the means through which competent authorities may obtain the relevant compliance documentation.
Customs authorities may benefit from access to certain compliance data, but FEM stresses that meaningful compliance assessment would require technical documentation. Since technical documentation should not be included in the DPP, expectations regarding the DPP's role in import controls should remain realistic.

5. Circularity concepts must be clarified and responsibility must be determined

Clearer definitions are needed for circularity-related concepts under the NLF.
There is currently lack of clarity in terms of distinction and responsibility on the following concepts:

- Substantial modification
- Refurbishment
- Repair
- Remanufacturing

The revision of the NLF should therefore provide clearer guidance on when a modification affects the legal status of a product and whether it may trigger new compliance obligations.

The framework should clarify the economic operators' obligations following operation regarding product lifecycle.

6. Transition and implementation costs

FEM supports a staged application of DPP-related obligations under the NLF.
A phased approach would allow manufacturers, authorities and other economic operators to adapt to the new system and avoid unnecessary disruption.
Implementation should be designed to avoid disproportionate costs, especially for SMEs and smaller operators.
FEM considers that paper documentation could remain voluntary for manufacturers, rather than imposing duplicative paper and digital obligations.
The overall objective should be to simplify compliance, not to add parallel administrative layers.