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9095/12 ENT 90 MI 336 CONSUM 86 COMPET 241 CODEC 759 UD 118
CHIMIE 27 COMER 71
9096/15 ENT 91 MI 337 CONSUM 87 COMPET 242 CODEC 760 UD 119
CHIMIE 28 COMER 72

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CHIMIE 22 COMER 45
5890/13 ENT 29 MI 65 CONSUM 14 CODEC 190 COMPET 88 UD 46
CHIMIE 21 COMER 44

Subject: Product Safety Package (First reading)

a) Proposal for a Regulation of the European Parliament and of the Council on consumer product safety and repealing Council Directive 87/357/EEC and Directive 2001/95/EC

b) Proposal for a Regulation of the European Parliament and of the Council on market surveillance of products and amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC, 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EU) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council

(Text with EEA relevance)

- *General approach*

Introduction

1. On 13 February 2013, the Commission submitted to the Council and the European Parliament a package consisting of two proposals for Regulations on market surveillance (MSR)¹ and on consumer product safety (CPSR)². The package also includes two communications³, notably on a multi-annual plan for the surveillance of products in the Union⁴, and a report on the implementation of Regulation (EC) No 765/2008 on the requirements for accreditation and market surveillance⁵.
2. These proposals were announced by the Commission in its communication on the "Single Market Act II - Together for new growth" of October 2012⁶.
3. The proposal for a Regulation on market surveillance is examined in the Competitiveness and Growth Working Party while the proposal for a Regulation on product safety is examined in the Working Party on Consumer Protection and Information.
4. The European Parliament voted its first reading on 15 April 2014. In September 2014 the Conference of Committee Chairs of the newly elected European Parliament confirmed the first reading position. The first reading position of the European Parliament for both proposals was examined at Working Party level in September and October 2014.

¹ 5890/13 ENT 29 MI 65 CONSOM 14 CODEC 190 COMPET 88 UD 46 CHIMIE 21
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² 5892/13 ENT 30 MI 66 CONSOM 15 CODEC 191 COMPET 89

³ 5890/13 ADD 4 and 5892/13 ADD 4

⁴ 5890/13 ADD 5 and 5892/13 ADD 5

⁵ 5890/13 ADD 6

⁶ Point 2.4 "Strengthening social entrepreneurship, cohesion and consumer confidence" - key action 11 ("Improve the safety of products circulating in the EU through a revised General Product Safety Directive, a new single Regulation on Market Surveillance and a flanking action plan") of 14536/12 (pages 15, 16 and 19).

Previous work

5. The discussion of this file started straight away and a first examination of both proposals was achieved before mid 2013. Building on these results the Presidency continued the examination at Working Party level in order to obtain a negotiation mandate from COREPER with a view to start informal negotiations with the European Parliament. Despite the great progress - for almost all issues compromise solutions were found - the issue of the mandatory marking of the country of origin ("made in clause" in Article 7 of CPSR) remained controversial.
6. The Presidency put twice the issue of the "made in clause" to COREPER in the second half of 2013 without finding a compromise supported by a majority of delegations. The Competitiveness Council in December 2013 took note of the progress achieved so far and invited the Council's preparatory bodies to continue their examination.
7. Work continued on this issue in 2014 and further ways were explored to overcome the pending issue. Positions of Member States at COREPER remained divided: A number of Member States supported the Commission Proposal on mandatory origin marking by stressing its positive effect on traceability and ultimately consumer protection. However, another group of Member States argued that this provision is not justified for reasons of improved traceability and product safety and will be far too burdensome for economic operators.
8. At the request of Member States the Presidency in September 2014, with the aim of moving forward the negotiations, invited the Commission to present further evidence on the costs and benefits of the proposed mandatory marking of origin. The Commission accepted this request and commissioned a study on this issue. The study's aim was to assess the costs and benefits of mandatory marking of origin for businesses, authorities and consumers.
9. At the COMPET Council on 4 December the Commission informed the Council about the state of play of the aforementioned study and undertook to present it and its finding in spring 2015.

State of play

- 10 The study on the indications of the country of origin on (non-food) consumer products was sent to the Council on 6 May 2015 by the Commission. The scope of the study covers six groups of consumer products, namely toys, domestic appliances, electronic goods (consumer electronics), textiles, footwear and ceramics. While no enhanced product traceability and product safety benefits from mandatory indication of origin were established in the study, the Commission in the accompanying summary of the study concludes "the outcome of the study suggests that costs/benefits need to be appreciated sector-by-sector as differences exist, also in the global trade context. Some sectors emerge from the study as potentially benefiting, either from mandatory labelling according to common criteria or from at least more systematic enforcement of the already existing prohibition of misleading labelling."
- 12 At the joint CONSOM/COMPCRO Working Party on 12 May 2015 the Commission presented the study and its summary thereof, and the Working Party had a preliminary exchange of views on the study and on a Presidency compromise suggestion to limit the application of marking of origin to only a few sectors where the study has shown a potential benefit of mandatory marking of origin.
13. Following this examination, the Presidency presented to COREPER on 20 May a compromise proposal aiming at striking a balance between keeping Article 7 for all sectors as proposed by the Commission in its original Proposal and deleting Article 7 as suggested by a number of delegations. The compromise aims at introducing mandatory marking of origin in the two sectors where the study found a potential net benefit: ceramics and footwear and inserting a review clause where the Commission would re-assess the situation after 3 years after the entry into force of the Regulation, and make proposals for amendments of the Regulation if appropriate.

14. The Presidency at the same time expressed an openness towards examining other compromise ideas and invited delegations to suggest any alternative compromise options, e.g., switching focus on stronger and more systematic enforcement of already existing prohibition of misleading labelling based on uniform set of rules; moving mandatory indication of origin requirements to sectorial legislation or other.
15. The discussion showed that views remained strongly diverging as to the conclusions to be drawn from the Commission study and on the Presidency compromise. Fifteen delegations (AT, BE, CZ, DE, DK, EE, FI, HU, IE, LT, LU, NL, SE, SK and UK) found that the study provided no indication that mandatory marking of origin would benefit consumer safety and product traceability and could therefore not agree even to a partial application of Article 7 limited to certain specific sectors. Ten delegations (BG, CY, EL, ES, HR, IT, MT, PT, RO and SI) agreed largely with the findings of the study that some sectors clearly emerged as potentially benefiting from mandatory labelling according to common criteria. These delegations could generally support the idea to apply Article 7 to some selected sectors: at least those suggested by the Presidency, or ideally to a number of other sectors as well, such as textiles, jewellery and furniture. FR was sceptical to the Presidency proposal pointing out that it changed the balance of the Commission Proposal in a way not supported by industry and did not support its limitation.

PL stressed the importance of the package and its swift adoption and accordingly indicated flexibility and support to the Presidency in the search for a compromise.

16. Other compromise ideas were mentioned during COREPER discussion: deletion of mandatory origin labelling in Article 7 combined with an enforcement of the existing legislation on misleading labelling or a deletion of mandatory origin labelling in Article 7 combined with an invitation to the Commission to present proposals amending the relevant sectorial legislation to introduce mandatory origin-labelling.

Other issues

17. COREPER on 20 May also examined a Presidency compromise proposal on the issue of the comitology rules in Article 16, Article 17 and Article 19 in the CPSR where an amendment was necessary to ensure that there is only one deciding committee. As the examination showed a large measure of support for the Presidency proposal, this has been incorporated into the Presidency compromise text presented to Council.
18. On all other issues, the examination by COREPER showed that no delegation had any outstanding reservations on the remainder of the provisions as elaborated in the Autumn of 2013, set out in documents 16901/13 and 16902/13. These texts are therefore submitted to Council⁷.

Questions to be examined by the Council

19. In the light of the abovementioned history of the package, the Member States` diverging positions on the one hand and the need to allow improved product safety and market surveillance rules to be adopted as soon as possible, the Presidency strongly believes that it is necessary to finally resolve the outstanding issue. Given the availability of additional information brought in by the study there are no arguments for waiting any longer. Delaying discussions and decision on marking of origin deprives us of ensuring better protection for Europe`s consumers and better rules for Europe`s businesses.

⁷ To facilitate translation into all languages new document numbers have been assigned: Document 9096/15, the Presidency compromise text on **Market Surveillance**, is identical to the text set out in document 16902/13. Document 9095/15 sets out the text of the **Consumer Product Safety** Proposal as set out in document 16901/13 amended by the Presidency following the Coreper examination on 20 May 2015.

20. The Presidency is doing its utmost to facilitate discussions and ensure best possible conditions for seeking agreement. Because the outstanding issue of origin marking has been tried to be resolved at different levels and with different options for compromise it is clear that this is a purely political issue that shall be tackled by ministers. Therefore, the Presidency expects ministers to have an open and constructive discussion with a clear goal to resolve the issue of Article 7 and allow the package to be adopted.
21. The Presidency finds that the approach of limiting mandatory origin labelling in Article 7 to certain sectors represents the best way forward and therefore proposes that to be used as basis for seeking compromise and agreement. It balances the positions of the Member States and the Presidency therefore asks all delegations to consider this option in a spirit of compromise.
22. In the interests of finding compromise the Presidency would not rule out the possibility to explore alternative ideas for reaching an agreement on the indication of origin if such would emerge during the discussion.
23. If no agreement is found, this package, which incontestably represents a big step forward for Europe's consumers and industry, will remain un-adopted and an opportunity to improve European legislation to the benefit of all will be missed. In such scenario the Council would need to provide clear guidance as for the next steps on this issue in order to allow for EU's product safety and market surveillance rules to be modernised as soon as possible as intended by the two proposed draft Regulations.

Conclusion

24. The Council is invited to:

- agree the text on the Proposal for a Regulations on market surveillance (MSR), as set out in document 9096/15, and on consumer product safety (CPSR) as set out in documents and 9095/15 as a general approach;
 - mandate the Presidency to start negotiations with the European Parliament on the basis of this general approach, with a view to reaching an agreement at second reading.
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