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| From:    | SE delegation                                            |
| To:      | Working Party on Technical Harmonisation (Goods package) |
| Subject: | SE comments (following the WP meeting on 21 January)     |

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January 22<sup>nd</sup>, 2019

**SE comments on EP suggestions for the articles 31-33 and 34 and RO PRES proposals for articles 4, 8, 11, 12b, 14 and on counterfeit products (row 13A and row 407A)**

#### **Article 4**

##### **Row 110A**

SE remains hesitant to increasing the obligations on economic operators and in particular for fulfilment service providers. Similar obligations are already in place in the sector specific legislation and this new paragraph also overlaps row 111.

##### **Row 111**

SE would prefer the Council General Approach and not specifying by whom the corrective measures are taken. In (EC) decision 768/2008, distributors shall make sure that corrective measures are taken which is not reflected in the current draft proposal and there is also an obligation to cooperate with the authorities. The current provision risk to cause more unclarity in relation to the lex specialis provision in paragraph 1.

##### **Row 113A**

SE do not see the added value with this new provision and is not in favor of burdensome obligations on operators of online interfaces. In addition, market surveillance authorities can obtain this information by other means. It should be enough that the contact details of the economic operator responsible for compliance shall be indicated on the product, the parcel or an accompanying document (row 113). Finally, this provision might create a disadvantage in terms of competition in comparison to economic operators from third countries.

#### **Article 8**

SE can accept the proposal made by the Presidency.

#### **Article 11**

##### **Row 151**

SE would like to avoid a situation where the SLOs is responsible for the national strategies which in practice would mean all the sector specific strategies drawn up by the different authorities. Therefore, we would propose the following wording in the last sentence, please see in bold/underline:

It shall also be responsible for the **coordination of the national strategies as set out in Article 13.**

**Row 163**

SE has some doubts with point e) in this paragraph and what it actually means in practice. If the market surveillance authorities are to ask whether a EO is an AEO or not in each case that would result in an additional burden. In addition, such information is not useful. The AEO system has no relevance to market surveillance matters since it only states whether the importer is qualified for a simplified procedure in drawing up the customs declaration. Therefore, SE would propose the deletion of **“and the status of an authorized economic operator”** in the last sentence of this paragraph.

**Row 164A**

SE would propose **“may”** in the first line of the presidency proposal for the reasons already expressed in the Council working party.

**Row 164B**

SE does not want to see references to “uniform conditions of checks, criteria for determination of the frequency of checks and amount of samples to be checked” and would therefore ask for the deletion or a substantial redrafting of this paragraph.

**Row 168B**

SE would like to refer to its written comments for this paragraph submitted on January 11<sup>th</sup>:

3b. **Member States** shall establish appropriate and effective communication and cooperation mechanisms **between market surveillance authorities** and other relevant authorities in their territory.

With a view to ensuring communication and coordination with their counterparts in other Member States, **the system referred to in Article 34 can be used**. Market surveillance authorities shall actively participate in administrative coordination groups referred to in Article 32(6).

The addition in the second subparagraph is not a necessity, just a suggestion to help the EP understand the removal of the references to other Member States.

**Row 168C**

SE does not see the added value with the new paragraph a) which is superfluous. There is a risk for duplication in relation to the safeguard procedure already mentioned in paragraph b).

## **Article 12b**

As already expressed at the Council Working Party, we do believe that making peer evaluations optional can be a way to go forward. Market surveillance authorities with the willingness and who feel that they have enough resources to participate and be subject to peer evaluations can choose to do so. Therefore, we would propose the following wording:

1. In order to strengthen their market surveillance activities, national market surveillance authorities **may choose to take part** in peer evaluations done by other market surveillance authorities within their sphere of competence.
2. Peer evaluations under paragraph 1 shall be carried out **by one/two** or more market surveillance authorities of other Member States **which have indicated their availability for such a task.**
3. Peer evaluations shall take place on the basis of an evaluation methodology developed by the Network established under Article 31. [Could be complemented with more declaratory wording from EP position if necessary for them]

[4. The outcome of the peer evaluations shall be reported to the Network established under Article 31.]

## **Article 14**

### **Row 195**

SE is not in favor of adding elements that are not relevant in this context and that goes beyond the EP AM by referring to “other product models”. This is an extension of powers for the MSAs in comparison to the Council general approach (209D) which can be questioned. In addition, this provision might pose an additional administrative burden on the economic operators.

### **Row 209G**

As was mentioned at the WP, SE would like to point out an inconsistency in that the power in row 209G is worded “order” while the reference to the same power in row 209H is worded “request”. Seeing as we would like an escalatory interplay between rows 209G and 209H, our preference for 209G would be “request” or “require” (the latter being used in the general approach).

SE would prefer keeping the use of “operators of online interfaces” in order to avoid widening the power further.

## **Counterfeit products**

### **Row 13A**

SE can show flexibility on the first two subparagraphs of the recital. The last subparagraph will have to be aligned with the corresponding article.

### **Row 407A**

SE is of the strong opinion that it must be underlined to the EP that neither the customs authorities nor the market surveillance authorities have the competence to assess whether a product is counterfeit or not. However, in order to move forward, we will try to submit a draft proposal as soon as possible.

## **Article 31-33 - EP suggestions in WK 683/2019 INIT**

### **Row 347C**

SE is in favor of a qualified majority vote instead of a simple majority vote for the network.

### **347W**

SE is not in favor of an ADCO task analyzing disputes about the implementation of this Regulation. Market surveillance authorities are independent in their decision-making and there are other processes who deal with disagreements (eg. safeguard procedures).

### **Row 347ZL**

SE can't accept that ADCOs shall ensure that the enforcement measures taken by the market surveillance is followed up across the Union. This is not a task for ADCOs and the safeguard procedures in the NLF already addresses this issue. In addition, the proposal is subject to difficulties in enforcement. However, guidelines can be developed to ensure a coherent implementation and interpretation of the legislation.

## **Articles 34 (WK 684/2019 INIT)**

### **Row 378**

This provision is very detailed in comparison with the Council general approach, especially the last part about a public interface with key information on all union languages and where information to end-users on the market surveillance activities and its results are published. It should be for the MS to decide how to inform end-users about their activities, use of ICSMS is not necessary for this purpose (primarily a system for communication between the MSAs).

MS already have national systems and procedures in place for this purpose (eg. national websites, campaigns and public market surveillance programs).

Row 381B

SE is not in favor of “combating fraud”, this provision is far-reaching and not a task for the market surveillance authorities and beyond their competence. There are other competent authorities for this purpose.