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WORKING PAPER

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

Working Party on Technical Harmonisation (Goods package)

1. LU comments on EP suggestions regarding article 9, 13, 31-33

Article 9 - Publication of voluntary measures

We do not see the added value of this provision. It will not be beneficial either to economic operators or to consumers. It will only create a new administrative burden on the economic operator. This portal would risk confusion with existing information portals, such as the GPSD Product Safety Business Alert Gateway.

We would suggest to stick to the general approach.

Article 13 - National market surveillance strategies

Article 13, paragraph 1 (row 176)

Paragraph 1 of article 13 states that “the national strategy shall take into account the priorities set out within the work programme of the Network”. In our view, it should be up to the Member States to establish their own priorities, independently of the Network working programme.

We would therefore prefer to revert to the general approach.

We should avoid using discriminatory language between products sold online and offline, as there is no evidence that products sold online constitute a higher risk for consumers than products sold offline. Specific references relating to online sales should thus be removed from the drafting, as it's not channel neutral.

Given the importance of this provision for the EP, and in order to find a compromise, we would be open to the addition of a recital, recalling the importance of online market surveillance and the fact that market surveillance covers all sales channels, including online sales.

Article 13, paragraph 2, point a (row 178)

There is no need to specifically reference “emerging technologies”. There is no evidence to suggest that they involve higher risks than other existing technologies and products. Given that all risks are relevant, this reference should be removed from the text.

Article 13, paragraph 3 (row 184)

Making sensitive information contained in market surveillance strategies available to the public could endanger the efficiency of these strategies and could help dishonest economic operators to avoid controls.

It should be added that information that could have a negative effect on market surveillance should not be published.

Articles 31-33 (Union Product Compliance Network, Role and tasks of the Network, Role and tasks of administrative coordination groups, Role and tasks of the Commission)

Article 32, paragraph 3, subparagraph 1a (row 345b)

Article 32.3.b now envisages an active role for the Commission in UPCN meetings. In our view, the Commission's role should only be of an administrative nature, as clearly stated in article 33.1 (aa). A reference could be added to this subparagraph, clarifying that the Commission only organizes meetings and provides technical support.

Article 32a, paragraph 2(a) (row 347 NB)

Article 32.a.2(ac) maintains a reference to peer evaluation systems that we prefer to have deleted from this regulation. We would prefer to strengthen the provisions regarding voluntary cooperation and exchange of best practices between national authorities. In spirit of compromise, we could accept Sweden's amendment to transform the "shall" provision (paragraphs 1, 2, 3) into a "may" provision.

Article 32a, paragraph 2p (row 347 ZE)

It is unnecessary to introduce the concept of new technologies (and particularly to identify one technology - block chain). This is not relevant to compliance with existing Union harmonisation legislation.

2. LU comments on the Presidency compromise proposals

3.

Article 4 - Tasks of economic operators regarding compliance of products subject to certain Union harmonisation legislation

Article 4, paragraph 3.(c) (row 111)

Despite some improvements made to article 4, we maintain our fundamental reservations on this article.

We welcome that article 4.3.(c) clarifies that it is the manufacturer or importer that must take corrective action. However, it is still unclear how the person responsible will "make sure" that the manufacturer or importer will take these actions. To avoid this enforcement issue, the responsibility of the responsible person should only consist of providing upstream information to market surveillance authorities or upstream actors.

In this context, it is also unclear if the obligation to mitigate the risks posed by a product refers to the manufacturer and importer or to the responsible person. It should be clarified that this is the role of the manufacturer or importer as the responsible person will not be best placed, to take this action.

Article 4, paragraph 3(ba) (row 110a)

We would prefer to stick to the general approach on this paragraph and avoid extending the obligations of economic operators.

Article 4, paragraph 5(a) (row 113A)

Regarding this paragraph, we would like to maintain the general approach. This provision does not respect channel neutrality as it places additional burdens on online players as opposed to operators selling offline.

Article 8 – Joint activities with stakeholders

We welcome the removal of references relating to agreements with individual operators and to the financing of agreements. In line with our comments on article 4 and 13, we would prefer to remove the reference made to products sold online (article 8.1,1 – row 130) as we are of the opinion that this regulation should be channel neutral. On the other parts of the article, we can show flexibility towards the Parliament's position.

Article 11-12 - Designation of market surveillance authorities and the single liaison office; Activities of market surveillance authorities)

Article 11, paragraph 3 (row 151)

We think that the proposed changes go into the right direction, as the single liaison office will be responsible of representing the coordinated position of market surveillance authorities. However, the single liaison office should not be responsible for national market strategies as stated in the last sentence of paragraph 3. In order to clarify this, it could be added that the single liaison office shall also be “responsible for representing the national strategy”.

Article 12, paragraph 2, subparagraphs 1a and 2a (row 164A + 164B)

Regarding article 12, paragraph 2, subparagraphs 1a and 2a, we would have a preference to maintain the general approach. In order to find a compromise with the Parliament, we would be open to accept non-binding guidelines laying down a methodology and criteria for assessing risks.

Article 12b – Peer evaluation (row 174K)

We would prefer to strengthen the provisions regarding voluntary cooperation and exchange of best practices between national authorities. In spirit of compromise, we could accept Sweden's amendment to transform the “shall” provision (paragraphs 1, 2, 3) into a “may” provision.

EP Amendments on counterfeit products – RO Presidency Proposal

We maintain our fundamental reservations on the inclusion of counterfeit provisions in this regulation. In order to move closer to the Parliament's position, we would be able to accept a recital of a declaratory nature.