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WORKING PAPER

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WORKING DOCUMENT

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

Proposal of the Regulation of the European Parliament and of the Council on market surveillance and compliance of products and amending Council Directive 2004/42/EC, Regulations (EC) No 765/2008 and (EU) No 305/2011 of the European Parliament and of the Council

Comments CZ **to the working documents from 21 January 2019**

WK 859/2019 INIT

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

Following the proposed compromise text we would like to state:

ad row 110A - the obligation to inform market surveillance authorities has already been included and there is no reason to regulate legally communication among economic operators. We believe that the obligation in this provision is already covered by the paragraph 3(c). Nevertheless, we can be flexible and accept the text, however, it must be clear that market surveillance authorities are informed only in case of a serious risk, e.g. *“when having reason to believe that a product in question poses a serious risk, immediately informing the market surveillance authorities”*;

ad row 111 – we can agree with the revised text with the exception of *„by the manufacturer or importer“* since the obligation defined in this provision should apply in general to all economic operators;

ad row 111A – we support Council General Approach („CGA“) since the EP amendment is covered by other provisions;

ad row 113 - we support CGA;

ad row 113A - we cannot accept the proposed compromised text and we support CGA. Firstly, there is no specific reason to differentiate between online and offline sale and secondly, the obligation set in this provision will be, in fact, applicable only for EU economic operators and only EU economic operators can be controlled which will lead to their unnecessary burdens. It is not possible to control the economic operators outside the EU.

WK 860/2019 INIT

Article 8 Task of economic operators regarding compliance of products subject to certain Union harmonisation legislation

We prefer CGA, however, we can be flexible under the following conditions:

ad row 129 – we support the title of the Article as in CGA and do not agree with the proposed change;

ad row 130 – we insist on keeping the words *“..., in compliance with national legislation,...”* at the beginning of the paragraph 1 (*“Market surveillance authorities may, in compliance with national legislation, agree...”*) since in this case other legal rules have to be followed, not only this Regulation. We prefer to delete the words *“..., including the products sold online”* at the of the paragraph 1 since there is no reason to differentiate between online and offline sale, but in the interest of compromise we can accept it in this case. We cannot support the addition at the paragraph 5 *“The Network established under Article 31 shall, at the request of a Member State, assist in the drawing up of the agreement on joint activities”* since the conclusion of an agreement under Article 8 is voluntary and

it is up to a Member State whether it concludes such an agreement, and there is no reason for the Network to deal with it. This text is considered to be superfluous since similar text is included in the Article 32a Role and tasks of the Network.

WK 861/2019 INIT

Article 11 Designation of market surveillance authorities and the single liaison office

ad row 149 – we can support the proposed compromised text

ad row 151 – we can support the revised text of the paragraph 3 with the exception of the last sentence “*It shall also be responsible for the national strategy*”. SLO can only be responsible for its coordination, however, in a system of several market surveillance authorities SLO cannot be in general responsible for a market surveillance strategy which will be, in fact, a compilation of several partial strategies;

Article 12 Activities of market surveillance authorities

ad row 163 - we disagree with the proposal of the new provision (2) e) (*„if relevant, the risk profiling performed by the authorities designated under article 26(1) and the status of an authorised economic operator“*). The requirement on „*profiling*“ was in the text submitted by the EC and was refused by the Member States. Moreover, there is the reference to the „*authorised economic operator*“ and this status has already been deleted from the text as irrelevant for market surveillance.

ad row 164 – we cannot support the proposal of new (2) f) (*„consumer complaints and other information received from other authorities, economic operators, media and other sources that might indicate non-compliance“*) since it might lead to the unjustified burdens of market surveillance authorities;

ad row 164A – we believe that the text should be reworded in line with the common legal language;

ad row 164B - we cannot support the text in this row as proposed. For the sake of possible compromise we can consider the text without “shall”, any reference to “delegated acts” and without any criteria, e.g. “*For certain products, where specific risks or serious breaches with applicable Union harmonisation legislation have been continuously identified, and in order to ensure high level of protection of health and safety or other public interests protected by that legislation, the Commission may shall adopt delegated acts implementing acts in accordance with the examination procedure referred to in Article 63(2) in accordance with Article 62a in order to eliminate such risks or breaches. determining the uniform conditions of checks, criteria for determination of the frequency of checks and amount of samples to be checked in relation to these products or category of products on the Union level.*” Anyway, the proposed provision is unnecessary, since there is the introduced methodology in the Commission Implementing Decision on RAPEX, and this Decision is generally applicable to all products;

ad row 164C – we cannot support the proposal on the new paragraph (2b), namely with fact that it is defined as the obligation for market surveillance authorities to take into account reports or certificates submitted by economic operators. We insist on replacing the word “shall” by “may”, or to add “where relevant”;

ad row 168A - we do not see any sense in addition of the provisions, namely the new paragraph (3a) c) since there is no reason to differentiate among communication with online platforms and marketplaces and other economic subjects.

WK 862/2019 INIT

Article 12b – Monitoring and evaluation of the market surveillance authorities

The EP has proposed the new Article 12b Monitoring and evaluation of the market surveillance authorities. We strongly disagree with the EP amendment and we cannot support the compromised text as proposed in the document WK 862/2019 INIT. This Article interferes in the competences of Member States since the area of market surveillance is under their exclusive competences and this

requirement create unjustifiable and useless burdens on market surveillance authorities and central administration. Even if the proposal on replacing the word “shall” by “may” will be accepted the obligation still remains since in line with the revised paragraph 3 the Network is preparing an evaluation methodology and a rolling plan and a Member state, or a market surveillance authority, do not have any possibility to refuse such a peer review.

WK 864/2019 INIT

Article 14 – Powers and duties of market surveillance authorities

Even if we prefer the CGA we can be flexible and accept the proposed changes in the Article 14 (WK 864/2019 INIT). We would like to support the insertion of a new paragraph 1b) in the row 187B due to easier implementation at the national level.

WK 884/2019 INIT

Amendments on counterfeited products

ad row 22A – we have concerns about the Recital 13a. The issue of counterfeit products is more complex than it arises from it. The Recital refers only to counterfeit products entering the EU market, but counterfeit products might also be produced in the EU, and this situation is unsolved at all. Further, the legal base of the Regulation should be taken into account and then it is difficult to accept any reference to “*distort competition*” and “*other illegal activities*”. We are afraid that the proposed text of the Recital 13a is not in line with legal text.

ad row 159 – Article 12(2)(a) – we can accept the proposed text (“*possible hazards and non-compliances associated with the product and when available, its occurrence on the market*”);

ad row 168B – a new Article 12(3b) – we have doubts about the sense on the addition of this new provision. The first subparagraph is in principle included in the Article 11(5) (“*where there is more than one market surveillance authority in their territory, Member States shall ensure that the respective duties of those authorities are clearly defined and that appropriate communication and coordination mechanisms are established to enable those authorities to collaborate closely and exercise their duties effectively*”) and thus there is no reason to oblige each market surveillance authority to establish a separate system of communication at the national level. As regards communication among market surveillance authorities and other competent authorities there will be established a communication and information system according to the Article 34, and it relates the customs authorities as well. We do not see the sense of the first part of the second subparagraph (“*With a view to ensuring communication and coordination with their counterparts in other Member States,*”) since there are more reasons for participation at ADCO groups. We agree with the deletion for the third subparagraph since there is no reason to have any separate mechanisms for communication on counterfeit products;

ad row 187 – Article 14(1) – we support the text of CGA;

ad row 221A – we agree that these requirements have already been covered by other provisions;

ad row 311A – we support CGA;

ad row 407A – we do not see any sense in the addition of the text “*..., including identification and examination of potential risks related to counterfeit products,...*” since if there is any risk related to a counterfeit product such information will be shared anyway. If it should lead to a compromise, in principle we can accept this text.