



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
2017/0353(COD)**

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**Brussels, 23 January 2019**

**WK 1026/2019 INIT**

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### **WORKING PAPER**

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### **WORKING DOCUMENT**

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

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Proposal for a 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

**ES written comments on the RO PCY proposals and EP suggestions on articles 4, 8, 9, 11, 12, 12b, 13, 14, 14a, 31, 32, 33, 34, 35 .and modifications about counterfeit products**

**Art.4. Tasks of economic operators regarding compliance of products subject to certain Union harmonisation legislation WK 859/2019**

Generally speaking ES supports the RO PCY proposal on this article.

100, 103, 104, 106A, 111A - ES supports RO PCY proposal on maintaining Council Mandate.

109, 110A, 111, 113 - ES is flexible on the RO PCY proposal

113A - ES is flexible on this proposal. It's aligned with footnote 64 of the Blue Guide and it equals the rights of consumers to know this information before making a purchase decision regardless of the means of sale.

**Art. 8 Joint Activities with Stakeholders WK 860/2019**

As expressed during the meeting, ES welcomes the latest modifications on this article and is flexible on the RO PCY proposal.

**Art. 9 Publication of voluntary measures WK 681/2019 (suggestions of EP)**

134-138A - ES supports the GA. Publishing voluntary measures taken by EO in a Commission's digital interface can lead to more confusion for end users. A public platform of this type could suggest that the risk and the measures published by the EO are the correct ones, and this is not always the case. Besides it does not provide an added value to what currently exists. We have the public system of RAPEX where it can be specified whether the measures taken have been taken voluntarily by the EO, and this information is checked by Authorities before being published.

**Art. 11 Designation of market surveillance authorities and the single liaison office WK 861/2019**

149 – ES is flexible to the RO PCY proposal

151 – ES welcomes the latest proposal and can support the proposed text.

#### **Art. 12 Activities of market surveillance authorities WK 861/2019**

154 – ES supports the RO PCY proposal

164A – ES is flexible and could accept RO PCY and agrees on putting “may” instead of “shall”.

#### **Art. 12b Peer evaluation WK 862/2019 INIT**

ES prefers the GA. However the latest modifications are welcomed positively. Still this is going to be a burden for MSA and agrees to change “shall” for “may” in line 174K and eliminating “each MS” as proposed by the Commission.

#### **Art. 13 National Market Surveillance Strategies WK 682/2019 (suggestions of EP)**

176 – ES is flexible on the EP proposal. Including the online reference once again is not so negative and could be of use when negotiating counterfeit products

177- ES prefer the GA in order to keep the last sentence “...when this information does not compromise market surveillance activities:”

178, 180, 182, 183 – ES is flexible on the EP suggestions.

181 – This line could be covered by peer evaluations if they are finally included.

184 - ES is flexible on the first sentence of this line. With regards to the second sentence about publishing strategies, ES agrees with what was said during the meeting. Publishing these plans can undermine the effectiveness of market surveillance.

#### **Art. 14 Powers and duties of MSA WK 864/2019**

ES is flexible on RO PCY proposal.

#### **Art. 14a Recovery of costs by market surveillance authorities**

Row (211E, 211F) - ES is flexible to both options: GA and Draft agreement

#### **Art. 31 Union Product Compliance Network WK 683/2019 (suggestions of EP)**

341 – ES is flexible on the EP suggestion

#### **Art. 32 Composition and functioning of the Union Product Compliance Network WK 683/2019 (suggestions of EP)**

347NA – ES does not support the EP suggestion, It's too prescriptive.

347O – ES would keep this power for both Network and ADCO's, but specifying that Network will use this power in case it affects to more than one ADCO.

347R & 347T – ES can agree with the EP suggestion of leaving the identification of the needs to the Network and the power to organise to the Commission.

347W – ES strongly supports GA. Does not agree with the EP suggestion highlighted in yellow. Situations described in paragraph 3c of Article 12 are more related to specific products and not to diverging issues with this Regulation. ES also think that is should be an ADCO task to prepare sectorial guidelines for checks on the characteristic of products subject to this Regulation and creating a common methodology for defining and setting penalties.

347Z & 347ZA – ES supports the GA

347 – ES has a question here. Is it necessary for the Network to have this task if the Commission shall adopt implementing acts for the data processing (according to article 34 line 304)?.

347ZD – The same as above. Is it necessary for the Network to have this task if the Commission shall adopt implementing acts for this issue (article 35 line 414A)?

347ZH – ES prefers to keep the GA.

347ZT – As said for 347O, ES would keep this power for sectorial issues related to ADCO.

For the rest of the article ES is flexible to EP suggestions.

### **Art. 33 Role and tasks of the Commission WK 683/2019 (suggestions of EP)**

ES is flexible to EP suggestions

### **Art. 34 Information and communication system WK 684/2019 (suggestions of EP)**

ES is flexible on the EP suggestions on this article.

### **Art. 35 International cooperation WK 685/2019 (suggestions of EP)**

410, 410A – ES supports GA

For the rest of the article ES is flexible to EP suggestions.

### **EP Amendments on counterfeit products – RO Presidency Proposal 21.01.2019 WK 884/2019**

ES can see this is an important topic for the EP, however as we are being flexible on almost every EP proposal with regards to the inclusion of the “online” references all along the Regulation, we may have the chance to negotiate in this counterfeit additions and stick to the GA as much as possible.

22A – ES could accept this recital in order to be constructive.

159, 168B– ES agrees with the elimination proposed by RO PCY.

407A – ES agrees with other Member States on their concerns about how this information is going to be used and by whom. ES supports the GA.