



Council of the European Union
General Secretariat

Brussels, 11 September 2018

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

WK 10415/2018 INIT

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WORKING PAPER

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From:	Presidency
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	Report (PE620.871v02-00) on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council



Plenary sitting

A8-0277/2018

6.9.2018

*****I**

REPORT

on the proposal for a regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council (COM(2017)0795 – C8-0004/2018 – 2017/0353(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Nicola Danti

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act**Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ***■*** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council (COM(2017)0795 – C8-0004/2018 – 2017/0353(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0795),
 - having regard to Article 294(2) and Articles 33, 114 and 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0004/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 23 May 2018¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on the Environment, Public Health and Food Safety (A8-0277/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 1

¹ Not yet published in the Official Journal.

Text proposed by the Commission

(1) In order to guarantee the free movement of products within the Union, it is necessary to ensure that products fulfil requirements providing a high level of protection of public interests such as health and safety in general, health and safety in the workplace, protection of consumers, protection of the environment and public security. Robust enforcement of these requirements is essential to the proper protection of these interests and to create the conditions in which fair competition in the Union market for goods can thrive. Rules are therefore necessary to ensure this enforcement throughout the internal market, **including on** products entering the Union from third countries.

Amendment

(1) In order to guarantee the free movement of products within the Union, it is necessary to ensure that products **are fully compliant with Union harmonisation legislation and therefore** fulfil requirements providing a high level of protection of public interests such as health and safety in general, health and safety in the workplace, protection of consumers, protection of the environment and public security. Robust enforcement of these requirements is essential to the proper protection of these interests and to create the conditions in which fair competition in the Union market for goods can thrive. Rules are therefore necessary to ensure this enforcement throughout the internal market, **regardless of whether** products **are placed on the market via traditional or electronic means and regardless of whether they are produced in the Union or** entering the Union from third countries.

Amendment 2

Proposal for a regulation
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Union product rules cover a large share of manufactured products in the Union. The increasing number of illegal and non-compliant products on the market puts at risks citizens, exposed to potentially dangerous products, often implies violations of other Union legislation, undermines European labour, health and environmental standards and distorts competition. In particular, economic operators selling compliant products face distorted competition from those who are cutting corners or deliberately flout the rules to gain a competitive edge.

Amendment 3

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Strengthening the Single Market for goods through further enhancing efforts to keep non-compliant products from being placed on the Union market was identified as a priority in the Communication from the Commission ‘Upgrading the Single Market: more opportunities for people and businesses’²⁴. This should be achieved by strengthening market surveillance, providing **the right incentives** to economic operators, intensifying compliance controls and promoting closer cross-border cooperation among enforcement authorities, including through cooperation with customs authorities.

²⁴ COM(2015) 550 final of 28 October 2015.

Amendment

(2) Strengthening the Single Market for goods through further enhancing efforts to keep non-compliant products from being placed on the Union market was identified as a priority in the Communication from the Commission ‘Upgrading the Single Market: more opportunities for people and businesses’²⁴. This should be achieved by strengthening market surveillance, providing **clear, transparent and comprehensive rules** to economic operators, intensifying compliance controls and promoting closer cross-border cooperation among enforcement authorities, including through cooperation with customs authorities.

²⁴ COM(2015) 550 final of 28 October 2015.

Amendment 4

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) The framework for market surveillance should be strengthened, with a view to further improving compliance with and enforcement of Union harmonisation legislation on products.

Amendment

(3) **Currently the enforcement of market surveillance rules is insufficient. Therefore** the framework for market surveillance should be strengthened, with a view to further improving compliance with and enforcement of Union harmonisation legislation on products.

Amendment 5

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) Directive 2001/95/EC of the European Parliament and of the Council²⁵ lays down the general safety requirements for all consumer products and provides for specific obligations and powers of the Member States in relation to dangerous products as well as for the exchange of information to that effect through the Union Rapid Alert System for dangerous non-food products (RAPEX). Market surveillance authorities should have the possibility of taking the more specific measures available to them under that Directive. In order to achieve a higher level of safety for consumer products, the mechanisms for exchanges of information and rapid intervention situations provided for in Directive 2001/95/EC and reinforced by Regulation (EC) No 765/2008 of the European Parliament and of the Council²⁶ should be complemented to make them more effective.

²⁵ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4).

²⁶ Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

Amendment

(4) Directive 2001/95/EC of the European Parliament and of the Council²⁵ lays down the general safety requirements for all consumer products and provides for specific obligations and powers of the Member States in relation to dangerous products as well as for the exchange of information to that effect through the Union Rapid Alert System for dangerous non-food products (RAPEX). Market surveillance authorities should have the possibility of taking the more specific measures available to them under that Directive. In order to achieve a higher level of safety, **quality and reliability** for consumer products, the mechanisms for exchanges of information and rapid intervention situations provided for in Directive 2001/95/EC and reinforced by Regulation (EC) No 765/2008 of the European Parliament and of the Council²⁶ should be complemented to make them more effective.

²⁵ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4).

²⁶ Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

Amendment 6

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) This Regulation should cover products that are subject to the Union harmonisation legislation listed in the Annex. The legislation listed in the Annex should cover all Union harmonisation legislation concerning manufactured products other than food, feed, medicinal products for human and veterinary use, living plants and animals, products of human origin and products of plants and animals relating directly to their future reproduction. This will ensure a uniform framework for market surveillance of those products at Union level. Several instruments of Union harmonisation legislation on products need to be amended in consequence, in particular to remove references to certain provisions of Regulation (EC) No 765/2008. If new Union harmonisation legislation is adopted in the future, it will be for that legislation to provide whether this Regulation is also to apply to that legislation.

Amendment

(5) This Regulation should cover products that are subject to the Union harmonisation legislation listed in the Annex. The legislation listed in the Annex should cover all Union harmonisation legislation concerning manufactured products other than food, feed, medicinal products for human and veterinary use, living plants and animals, products of human origin and products of plants and animals relating directly to their future reproduction. This will ensure a uniform framework for market surveillance of those products at Union level ***and will help to increase consumer confidence in products placed on the Union market.*** Several instruments of Union harmonisation legislation on products need to be amended in consequence, in particular to remove references to certain provisions of Regulation (EC) No 765/2008. If new Union harmonisation legislation is adopted in the future, it will be for that legislation to provide whether this Regulation is also to apply to that legislation.

Amendment 7

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) Safety of consumers largely depends on the active enforcement of Union harmonisation legislation on products providing for safety requirements. It is therefore necessary to strengthen enforcement measures. These measures should be continuously improved and increasingly effective with a view to meeting the current challenges of a global market and an increasingly complex supply

Amendment

(7) Safety of consumers largely depends on the active enforcement of Union harmonisation legislation on products providing for safety requirements. It is therefore necessary to strengthen enforcement measures, ***including with regard to the products that are offered for sale online to end-users within the Union.*** These measures should be continuously improved and increasingly effective with a

chain.

view to meeting the current challenges of a global market and an increasingly complex supply chain.

Amendment 8

Proposal for a regulation Recital 9

Text proposed by the Commission

(9) Responsibility for enforcing Union harmonisation legislation should lie with the Member States, whose market surveillance authorities should be required to ensure that the legislation is fully complied with. The Member States should, therefore, establish systematic approaches to ensure effectiveness of market surveillance and other enforcement activities.

Amendment

(9) Responsibility for enforcing Union harmonisation legislation should lie with the Member States, whose market surveillance authorities should be required to ensure that the legislation is fully complied with. The Member States should, therefore, establish **harmonised** systematic approaches to ensure effectiveness of market surveillance and other enforcement activities. ***In this regard, Member States should monitor their national market surveillance authorities in order to ensure that they fulfil the requirements laid down in this Regulation.***

Amendment 9

Proposal for a regulation Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) In order to assist market surveillance authorities in ensuring the uniform application of this Regulation and assess whether they meet the requirements of this Regulation, an effective peer review system should be established.

Amendment 10

Proposal for a regulation Recital 13

(13) The development of e-commerce is also due to a great extent to the proliferation of information society service providers, normally through platforms and for remuneration, which offer intermediary services by storing third party content, but without exercising any control over such content, thus not acting on behalf of an economic operator. Removal of content regarding non-compliant products or where it is not feasible blocking access to non-compliant products offered through their services should be without prejudice to the rules laid down in Directive 2000/31/EC of the European Parliament and of the Council⁵⁵. ***In particular, no general obligation should be imposed on service providers to monitor the information which they transmit or store, nor should a general obligation be imposed upon them to actively seek facts or circumstances indicating illegal activity. Furthermore, hosting service providers should not be held liable as long as they do not have actual knowledge of illegal activity or information and are not aware of the facts or circumstances from which the illegal activity or information is apparent.***

⁵⁵ Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.07.2000, p. 1).

(13) The development of e-commerce is also due to a great extent to the proliferation of information society service providers, normally through platforms and for remuneration, which offer intermediary services by storing third party content, but without exercising any control over such content, thus not acting on behalf of an economic operator. Removal of content regarding non-compliant products or where it is not feasible blocking access to non-compliant products offered through their services should be without prejudice to the rules laid down in Directive 2000/31/EC of the European Parliament and of the Council⁵⁵, ***while also taking into account Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online.***

⁵⁵ Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.07.2000, p. 1).

Amendment 11

Proposal for a regulation Recital 13 a (new)

(13a) While this Regulation does not deal with the protection of intellectual property rights, it should nevertheless be borne in mind that often counterfeit products do not comply with the requirements set out in the Union harmonisation legislation, pose serious risks to health and safety of end-users, distort competition, endanger public interests and support other illegal activities. Therefore Member States should continue taking effective measures in preventing the entry of counterfeit products to the Union's market pursuant to Regulation (EU) 608/2013. In the interest of efficiency, customs authorities should be able to use their expertise and relevant information on risks, related to products infringing an intellectual property rights, also for the purpose of effective market surveillance of products entering the Union's market pursuant to this Regulation.

Amendment 12

Proposal for a regulation Recital 14

(14) A fairer single market should ensure equal conditions for competition to all economic operators and protection against unfair competition. To this purpose, strengthened enforcement of Union harmonisation legislation on products is necessary. Good cooperation between manufacturers and the market surveillance authorities is a key element allowing immediate intervention and corrective action in relation to the product. It is important that there should be a **contact** person established in the Union so that market surveillance authorities have

(14) A fairer single market should ensure equal conditions for competition to all economic operators and protection against unfair competition. To this purpose, strengthened enforcement of Union harmonisation legislation on products is necessary. Good cooperation between manufacturers and the market surveillance authorities is a key element allowing immediate intervention and corrective action in relation to the product. It is important that there should be a **reference** person established in the Union so that market surveillance authorities have

someone to whom questions can be addressed regarding a product's compliance with Union harmonisation legislation. ***The person responsible for providing such compliance information*** should be the manufacturer, ***or*** the importer, ***or another person*** designated by the manufacturer for this purpose, ***for example another economic operator***. ***The role of a person responsible for compliance information established in the Union is essential for providing market surveillance authorities with an interlocutor established in the Union, and for performing specific tasks in a timely manner to ensure that the products comply with the requirements of Union harmonisation legislation, for the benefit of consumers, workers and businesses within the Union. The provisions in this Regulation requiring there to be a person established in the Union responsible for compliance information should not apply where specific requirements set out in certain legal instruments on products achieve the same result in effect, namely Article 4 of Regulation (EC) No 1223/2009, Article 15 of Regulation (EU) 2017/745 and Article 15 of Regulation 2017/746.***

Amendment 13

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

someone to whom questions can be addressed regarding a product's compliance with Union harmonisation legislation ***and who can take action to remedy instances of non-compliance***. ***The reference person*** should be the manufacturer, the importer, ***when the manufacturer is not established in the Union, or an authorised representative*** designated by the manufacturer for this purpose.

Amendment

(14a) The development of e-commerce poses certain challenges for market surveillance authorities with regard to ensuring the compliance of products sold online and effectively enforcing the Union harmonisation legislation. The number of economic operators offering products directly to consumers by electronic means is increasing. Therefore, the role of a reference person is essential for providing

market surveillance authorities with an interlocutor established in the Union, and for performing specific tasks in a timely manner to ensure that the products comply with the requirements of Union harmonisation legislation, for the benefit of consumers, workers and businesses within the Union. In order to fill the existing gap and ensure, that there is always a reference person established in the Union with regard to the product, the manufacturer established outside the Union, when there is no importer, should designate an authorised representative, who would have the obligations of the reference person for market surveillance authorities.

Amendment 14

Proposal for a regulation Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) The obligations of the reference person should be without prejudice to existing obligations and responsibilities of manufacturer, importer and authorised representative under the relevant Union harmonisation legislation. The provisions in this Regulation requiring there to be a reference person established in the Union should not apply where specific requirements set out in certain legal instruments on products achieve the same result in effect, namely Article 4 of Regulation (EC) No 1223/2009, Article 15 of Regulation (EU) 2017/745 and Article 15 of Regulation (EU) 2017/746.

Amendment 15

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) Member States should provide assistance to economic operators either through information on the applicable Union harmonisation legislation by the Product Contact Points established under Regulation (EU) [Reference to new Regulation on mutual recognition to be inserted]⁵⁶, **or through guidance on the applicable Union harmonisation legislation by the market surveillance authority within the framework of compliance partnership arrangements.** Market surveillance authorities should be able to build on the existing cooperation with stakeholders and be permitted to conclude memoranda of understanding with stakeholders, with a view to promoting compliance or identifying non-compliance with regard to categories of product within a given geographical area.

⁵⁶ Regulation (EU) [...] of the European Parliament and of the Council of ... (OJ L, , p.)

Amendment

(15) Member States should provide assistance to economic operators either through information on the applicable Union harmonisation legislation by the Product Contact Points established under Regulation (EU) [Reference to new Regulation on mutual recognition to be inserted]⁵⁶. Market surveillance authorities should be able to build on the existing cooperation with stakeholders and be permitted to conclude memoranda of understanding with stakeholders, with a view to **raising awareness, providing advice and guidance, promoting voluntary actions,** promoting compliance or identifying non-compliance with regard to categories of product within a given geographical area, **including the products that are offered by electronic means.**

⁵⁶ Regulation (EU) [...] of the European Parliament and of the Council of ... (OJ L, , p.)

Amendment 16

Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The development of e-commerce poses certain challenges regarding the protection of the health and safety of end-users from non-compliant products. Therefore, Member States should ensure the effective organisation of their market surveillance activities with regard to the products that are sold online. The activities with regard to these products should be carried out proactively and reactively and take into account different information sources, such as RAPEX, the

global portal on product recalls of the Organisation for Economic Cooperation and Development (OECD), consumer complaints, and information received from other authorities, economic operators and the media.

Amendment 17

Proposal for a regulation Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) While performing market surveillance of products offered online, market surveillance authorities are facing numerous difficulties, such as tracing products offered for sale online, identifying the responsible economic operators, or conducting risk-assessments or safety tests due to the lack of physical access to products. Based on existing collective experiences and better practices, the Commission has published a Notice on the market surveillance of products sold online (2017/C 250/01) with the aim of contributing to a better understanding of Union product legislation and to a more uniform and coherent application of that legislation in terms of products sold online. In addition to the mandatory requirements on the organisation of market surveillance for products sold online, introduced by this Regulation, Member States are encouraged to use this Notice as a complementary guidance document and a reference of good practices for the market surveillance and for communication with businesses and consumers.

Amendment 18

Proposal for a regulation Recital 16 c (new)

Text proposed by the Commission

Amendment

(16c) Special attention should be given to a proliferation of Internet of Things (IoT) and the increasing number of Artificial Intelligence (AI) enabled devices, taking into account that consumers are increasingly using connected devices in their daily lives. The Union regulatory framework should address the current security threats of such devices which can be hacked and therefore present new risks remotely. In the IoT and AI area, both the safety and security of the products are key to ensuring the safety of their users. In this regard, this Regulation should be fully consistent with the ENISA Regulation [2017/0225(COD)] and the Communication on Artificial Intelligence for Europe COM(2018)237.

Amendment 19

Proposal for a regulation Recital 16 d (new)

Text proposed by the Commission

Amendment

(16d) In the age of constant development of digital technologies new market-based solutions that could contribute to the effective market surveillance within the Union shall be explored. In this context, Member States and Commission should be encouraged to consider the potential of the Blockchain technology and new rules on labelling for products, that could replace traditional labelling methods as well as facilitate the work of market surveillance authorities providing easily accessible and structured information with regard to the product in an electronic way.

Amendment 20

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) Market surveillance activities should be thorough and effective, to ensure that Union harmonisation legislation on products is applied correctly. Given that controls may represent a burden for economic operators, market surveillance authorities should organise and conduct inspection activities, taking **their** interests into account and limiting the said burden to what is necessary for the performance of efficient and effective controls. Furthermore, market surveillance activities should be performed with the same level of care by the competent authorities of the Member State irrespective of whether non-compliance of the given product is relevant on the territory of that Member State or is likely to have an impact on the market of another Member State.

Amendment

(18) Market surveillance activities should be thorough and effective, to ensure that Union harmonisation legislation on products is applied correctly. Given that controls may represent a burden for economic operators, market surveillance authorities should organise and conduct inspection activities taking **the** interests **of those operators** into account, and limiting the said burden to what is necessary for the performance of efficient and effective controls. Furthermore, market surveillance activities should be performed with the same level of care by the competent authorities of the Member State irrespective of whether non-compliance of the given product is relevant on the territory of that Member State or is likely to have an impact on the market of another Member State. **Uniform conditions for inspection activities carried out by the market surveillance authorities when a product presents a known or emerging risk should be laid down.**

Amendment 21

Proposal for a regulation Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) The provisions of Regulation (EC) No 765/2008 have been implemented in many different and specific forms at national levels. Differences emerge not only in terms of distribution of competences between market surveillance authorities but also in terms of internal

coordination mechanisms at national level, level of deployed financial resources dedicated to market surveillance, market surveillance strategies and approaches, as well as powers with regard to non-compliant products and level of penalties for infringements, which leads to fragmented enforcement of Union harmonisation legislation. This fragmentation leads to market surveillance being more rigorous in some Member States than in others and might result in a less effective deterrence power, an unequal playing field among businesses in some Member States and also potential imbalances in the level of product safety throughout the Union.

Amendment 22

Proposal for a regulation Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) The implementation and exercise of powers in application of this Regulation should be proportionate and adequate in view of the nature and the overall actual or potential harm of the instance of non-compliance to the public interests protected by the Union harmonisation legislation. Market surveillance authorities should take all facts and circumstances of the case into account and should choose the most appropriate measures which are essential to address the instance of non-compliance. Those measures should be proportionate, effective and dissuasive.

Amendment 23

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) This Regulation should be without prejudice to the freedom of Member States to choose the enforcement system that they deem appropriate. Member States should be free to choose whether their market surveillance authorities can exercise investigation and enforcement directly under their own authority or by application to the competent courts.

Amendment

(20) ***The implementation and exercise of powers in the application of*** this Regulation ***should also comply with other Union and national law, including with applicable procedural safeguards and principles of the fundamental rights and*** should be without prejudice to the freedom of Member States to choose the enforcement system that they deem appropriate. ***Member States should remain free to set out conditions and limits for the exercise of the powers in national law, in accordance with Union law.*** Member States should be free to choose whether their market surveillance authorities can exercise investigation and enforcement directly under their own authority, ***by recourse to other competent public authorities*** or by application to the competent courts.

Amendment 24

Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) Market surveillance authorities should have access to ***all*** necessary evidence, data ***and*** information relating to the subject matter of an investigation in order to determine whether applicable Union harmonisation legislation has been infringed, and in particular to identify the economic operator responsible, irrespective of who possesses the evidence, information or data in question and regardless of where it is located and of the format in which it is held. Market surveillance authorities should be able to request third parties in the digital value chain to provide all the evidence, data and information necessary.

Amendment

(22) Market surveillance authorities should have access to necessary evidence, data, ***technical specifications and other*** information relating to the subject matter of an investigation in order to determine whether applicable Union harmonisation legislation has been infringed, and in particular to identify the economic operator responsible, irrespective of who possesses the evidence, information or data in question and regardless of where it is located and of the format in which it is held. Market surveillance authorities should be able to request third parties in the digital value chain to provide all the evidence, data and information necessary.

Amendment 25

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) Market surveillance authorities should be able to require **any** representative **or** member of staff of the economic operator concerned to give explanations or provide facts, information or documents relating to the subject matter of the on-site inspection, and to record the answers given by that representative or staff member.

Amendment 26

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) Market surveillance authorities should be able to check the compliance of products to be made available on the market with Union harmonisation legislation **and** to obtain evidence of non-compliance. They should, therefore, have the power to make test purchases and, where the evidence cannot be obtained by other means, to purchase products under a cover identity.

Amendment 27

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) In the digital environment in particular, market surveillance authorities

Amendment

(24) Market surveillance authorities should be able to require **a** representative **of economic operator or a relevant** member of staff of the economic operator concerned to give explanations or provide facts, information or documents relating to the subject matter of the on-site inspection, and to record the answers given by that representative or staff member.

Amendment

(25) Market surveillance authorities should be able to check the compliance of products to be made available on the market with Union harmonisation legislation, **to inspect them and to reverse-engineer them in order** to obtain evidence of non-compliance. They should, therefore, have the power to make test purchases and, where the evidence cannot be obtained by other means, to purchase products under a cover identity.

Amendment

(26) In the digital environment in particular, market surveillance authorities

should be able to bring non-compliance to an end quickly and effectively, notably where the economic operator selling the product conceals his identity or relocates within the Union or to a third country in order to avoid enforcement. In cases where there is a risk of serious and irreparable harm to end-users due to non-compliance, market surveillance authorities should be able to take **temporary** measures, where there are no other means available to prevent or mitigate such harm, including, where necessary, the suspension of a website, service or account, or putting a fully qualified domain name on hold for a specific period of time, in accordance with the principles laid down in Directive 2000/31/EC. Furthermore, market surveillance authorities should have the power to close down or require a third party service provider to close down a website, service or account or a part of it, or to delete a fully qualified domain name.

should be able to bring non-compliance to an end quickly and effectively, notably where the economic operator selling the product conceals his identity or relocates within the Union or to a third country in order to avoid enforcement. In cases where there is a risk of serious and irreparable harm to end-users due to non-compliance, market surveillance authorities should be able to take measures, **where duly justified and proportionate and** where there are no other means available to prevent or mitigate such harm, including, where necessary, the suspension of a website, service or account, or putting a fully qualified domain name on hold for a specific period of time, in accordance with the principles laid down in Directive 2000/31/EC. Furthermore, market surveillance authorities should have the power to close down or require a third party service provider to close down a website, service or account or a part of it, or to delete a fully qualified domain name.

Amendment 28

Proposal for a regulation

Recital 27

Text proposed by the Commission

(27) Market surveillance authorities act in the interest of economic operators, end-users, and of the general public, to ensure that public interests established by Union harmonisation legislation on products are consistently preserved and protected through appropriate enforcement action, and that compliance with such legislation is ensured across the supply chain through appropriate controls. Consequently, market surveillance authorities should account to economic operators, end-users and the general public for the efficiency and effectiveness of the activities they perform. They should provide access to information concerning the organisation and

Amendment

(27) Market surveillance authorities act in the interest of economic operators, end-users, and of the general public, to ensure that public interests established by Union harmonisation legislation on products are consistently preserved and protected through appropriate enforcement action, and that compliance with such legislation is ensured across the supply chain through appropriate controls. Consequently, market surveillance authorities should account to economic operators, end-users and the general public for the efficiency and effectiveness of the activities they perform. They should provide access to information concerning the organisation and

performance of their activities, including controls, and regularly publish information on activities performed and the results of such activities. They should also, subject to certain conditions, be entitled to publish or to make available information about the compliance record of individual economic operators based on the outcome of market surveillance controls.

performance of their activities, including controls, and regularly publish information on activities performed and the results of such activities. They should also, subject to certain conditions, be entitled to publish or to make available information about the compliance record of individual economic operators based on the outcome of market surveillance controls, **while providing the economic operators for a possibility to comment on the information, related to them, prior to its publication.**

Amendment 29

Proposal for a regulation Recital 33

Text proposed by the Commission

(33) To ensure the **reliability** and consistency of testing across the Union in the market surveillance framework, the Commission should designate Union testing facilities. Furthermore, a more comprehensive information system should be developed for sharing test results within the Union in order to avoid unnecessary duplication and to ensure greater consistency at Union level.

Amendment

(33) To ensure the **effectiveness** and consistency of testing across the Union in the market surveillance framework **with regard to specific products or a specific category or group of products or for specific risks related to a category or group of products**, the Commission should designate Union testing facilities. Furthermore, a more comprehensive information system should be developed for sharing test results within the Union in order to avoid unnecessary duplication and to ensure greater consistency at Union level.

Amendment 30

Proposal for a regulation Recital 35

Text proposed by the Commission

(35) Member States should be required to ensure that adequate financial resources are always available in order to staff and equip the market surveillance authorities appropriately. An efficient market surveillance activity is demanding in terms

Amendment

(35) Member States should be required to ensure that adequate financial resources are always available in order to staff and equip the market surveillance authorities appropriately. An efficient market surveillance activity is demanding in terms

of resources, and stable resources should be provided, at a level appropriate to the enforcement needs at any given moment. Public financing should therefore be supplemented by the collection of fees to cover the costs incurred when performing market surveillance activities in relation to products that were found to be non-compliant, and taking due account of the economic operator's compliance record.

Amendment 31

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) An effective way to ensure that unsafe or non-compliant products are not placed on the Union market would be to detect such products before they are released for free circulation. Customs authorities, as authorities in charge of the control on products entering the customs territory of the Union, enjoy a complete overview of trade flows across the external borders, and should therefore be required to carry out adequate controls on a risk assessment basis, to contribute to a safer market place. A uniform enforcement of Union harmonisation legislation on products can only be achieved through systematic cooperation and exchange of information between market surveillance and customs authorities. These authorities should receive well in advance from the market surveillance authorities all the necessary information concerning non-compliant products or information on economic operators where a higher risk of non-compliance has been identified. In turn, customs authorities should inform the market surveillance authorities in a timely

of resources, and stable resources should be provided, at a level appropriate to the enforcement needs at any given moment. ***Administrative and automated checks cannot serve as a substitute to physical checks which guarantee the substantial compliance of a product with the relevant Union legislation.*** Public financing should therefore be supplemented by the collection of fees to cover the costs incurred when performing market surveillance activities in relation to products that were found to be non-compliant, and taking due account of the economic operator's compliance record.

Amendment

(38) An effective way to ensure that unsafe or non-compliant products are not placed on the Union market would be to detect such products before they are released for free circulation. Customs authorities, as authorities in charge of the control on products entering the customs territory of the Union, enjoy a complete overview of trade flows across the external borders, and should therefore be required to carry out adequate controls on a risk assessment basis, to contribute to a safer market place, ***which ensures a high level of protection of public interests.*** A uniform enforcement of Union harmonisation legislation on products can only be achieved through systematic cooperation and exchange of information between market surveillance and customs authorities. These authorities should receive well in advance from the market surveillance authorities all the necessary information concerning non-compliant products or information on economic operators where a higher risk of non-compliance has been identified. In turn,

manner of the release of products for free circulation, and the results of controls, where such information is relevant for the enforcement of Union harmonisation legislation on products. Furthermore, where the Commission becomes aware of a serious risk posed by an imported product, it should inform the Member States about those risks in order to ensure coordinated and more effective compliance and enforcement controls at the first points of entry to the Union.

Amendment 32

Proposal for a regulation Recital 38 a (new)

Text proposed by the Commission

customs authorities should inform the market surveillance authorities in a timely manner of the release of products for free circulation, and the results of controls, where such information is relevant for the enforcement of Union harmonisation legislation on products. Furthermore, where the Commission becomes aware of a serious risk posed by an imported product, it should inform the Member States about those risks in order to ensure coordinated and more effective compliance and enforcement controls at the first points of entry to the Union.

Amendment

(38a) The Commission should monitor the performance of customs authorities and address gaps in performance which might lead to weakening of the level playing field for compliant Union producers vis-à-vis third country producers exporting to the Union. The Commission should also address the practice of third country exporters of choosing points of entry to the Union where controls are less stringent or systematic.

Amendment 33

Proposal for a regulation Recital 39

Text proposed by the Commission

(39) In order to support customs and market surveillance authorities in carrying out tasks related to controls on products entering the customs territory of the Union, a more favourable treatment should be granted for products declared for free

Amendment

(39) In order to support customs and market surveillance authorities in carrying out tasks related to controls on products entering the customs territory of the Union, a more favourable treatment should be granted for products declared for free

circulation by an authorised economic operator, as defined in Article 38(2) of Regulation (EU) No 952/2013, pending the establishment of the procedure for the exchange of information on the status of the authorised economic operators and their record of compliance related to product safety. Such an approach should allow a more targeted control, on a risk basis, of products released for free circulation.

circulation by an authorised economic operator, as defined in Article 38(2) of Regulation (EU) No 952/2013, pending the establishment of the procedure for the exchange of information on the status of the authorised economic operators and their record of compliance related to **compliance with Union harmonisation legislation and** product safety. Such an approach should allow a more targeted control, on a risk basis, of products released for free circulation.

Amendment 34

Proposal for a regulation Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) There should be effective, speedy and accurate exchange of information among the Member States and the Commission. Regulation (EC) No 765/2008 provides for a number of tools, such as Information and Communication System on Market Surveillance (ICSMS) and Rapid Alert System for dangerous non-food products (RAPEX) that enable coordination among market surveillance authorities in the Union. These tools, together with interface permitting data transfer from ICSMS into RAPEX shall be maintained and further developed in order to exploit their full potential and help to increase the level of cooperation and exchange of information between Member States and the Commission.

Amendment 35

Proposal for a regulation Recital 41

Text proposed by the Commission

Amendment

(41) In that context, ***it is necessary to***

(41) In that context, for the purpose of

maintain and further develop the existing Information and Communication System for Market Surveillance (ICSMS). For the purpose of collecting information relating to the enforcement of Union harmonisation legislation on products, ICSMS should be upgraded and be accessible to the Commission, single liaison offices, and market surveillance authorities, as well as to the general public through a public interface. Furthermore, an electronic interface should be developed to allow effective exchange of information between national customs systems and market surveillance authorities.

collecting information relating to the enforcement of Union harmonisation legislation on products, ICSMS should be upgraded and be accessible to the Commission, single liaison offices, and market surveillance authorities, as well as to the general public through a public interface. Furthermore, an electronic interface should be developed to allow effective exchange of information between national customs systems and market surveillance authorities.

Amendment 36

Proposal for a regulation Recital 42

Text proposed by the Commission

(42) The Commission should carry out an evaluation of this Regulation against the objectives it pursues. Pursuant to point 22 of the Interinstitutional Agreement of 13 April 2016 on Better Law Making⁵⁹, the evaluation, based on efficiency, effectiveness, relevance, coherence and value added, should provide the basis for impact assessments of options for further action.

⁵⁹ OJ L 123, 12.5.2016, p. 1.

Amendment

(42) The Commission should carry out an evaluation of this Regulation against the objectives it pursues, ***also taking into consideration new technological, economic, commercial and legal developments, paying special attention to IoT and AI-enabled devices and new innovative market-based solutions.*** Pursuant to point 22 of the Interinstitutional Agreement of 13 April 2016 on Better Law Making⁵⁹, the evaluation, based on efficiency, effectiveness, relevance, coherence and value added, should provide the basis for impact assessments of options for further action, ***including broadening a scope of this Regulation to non-harmonised products.***

⁵⁹ OJ L 123, 12.5.2016, p. 1.

Amendment 37

Proposal for a regulation

Recital 44

Text proposed by the Commission

(44) The diversity of sanctions across the Union is one of the main reasons for inadequate deterrence and uneven protection. Rules on establishing sanctions, including monetary penalties, are a matter of national jurisdiction and should, therefore, be determined by national law. However, common criteria and guidance principles in determining the level of penalties should be established in order to achieve uniform and effective deterrence across the Union. Defining a set of criteria for determining effective, proportionate and dissuasive levels of penalty across the Union, in particular as regards the past behaviour of the economic operators, their cooperation during investigation by market surveillance authorities, and the level of harm, is essential to avoid weak spots that could encourage forum-shopping.

Amendment 38

Proposal for a regulation

Recital 44 a (new)

Text proposed by the Commission

Amendment

(44) The diversity of sanctions across the Union is one of the main reasons for inadequate deterrence and uneven protection. Rules on establishing sanctions, including monetary penalties, are a matter of national jurisdiction and should, therefore, be determined by national law. However, common criteria and guidance principles in determining the level of penalties should be established in order to achieve uniform and effective deterrence across the Union. Defining a set of criteria for determining effective, proportionate and dissuasive levels of penalty across the Union, in particular as regards the past behaviour of the economic operators, ***especially when repeated breaches of Union rules with regard to the compliance of the products were identified***, their cooperation during investigation by market surveillance authorities, and the level ***and severity*** of harm, is essential to avoid weak spots that could encourage forum-shopping.

(44a) In order to ensure effective peer evaluations of national market surveillance authorities in respect of activities which they carry out pursuant to this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of setting out a

plan for the peer evaluations, laying down criteria regarding the composition of the peer evaluation team, the methodology used for the peer evaluation, the schedule, periodicity and the other tasks related to the peer evaluation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Amendment 39

Proposal for a regulation

Recital 47

Text proposed by the Commission

(47) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly this Regulation must be interpreted and applied **respecting** those rights and principles. In particular, this Regulation seeks to ensure full respect for consumer protection, the freedom to conduct a business, the freedom of expression and information, the right to property and the protection of personal data,

Amendment

(47) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union **and present in the constitutional traditions of the Member States**. Accordingly this Regulation must be interpreted and applied **in accordance with** those rights and principles **including those related to the freedom of expression and the freedom and pluralism of the media**. In particular, this Regulation seeks to ensure full respect for consumer protection, the freedom to conduct a business, the freedom of expression and information, the right to property and the protection of personal data.

Amendment 40

Proposal for a regulation Article 1 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. The objective of this Regulation is to improve the functioning of the internal market by strengthening the market surveillance of products with a view to ensure that only compliant products that fulfil requirements providing a high level of protection of public interests such as health and safety in general, health and safety in the workplace, the protection of consumers, protection of the environment and public security, are made available on the Union market.

Amendment 41

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

Amendment

This Regulation lays down rules and procedures for the provision of compliance information about certain products that are the subject of Union acts harmonising the conditions for the marketing of those products. It establishes a framework for cooperation with economic operators in relation to such products.

It also lays down rules and procedures for the provision of compliance information about certain products that are the subject of Union acts harmonising the conditions for the marketing of those products. It establishes a framework for cooperation with economic operators in relation to such products.

Amendment 42

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

Amendment

It also provides a framework for the market surveillance of such products to ensure that those products fulfil

deleted

requirements providing a high level of protection of public interests such as health and safety in general, health and safety in the workplace, the protection of consumers, protection of the environment and security.

Justification

Better specification of the objectives of this regulation.

Amendment 43

Proposal for a regulation

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Articles 26, 27, 28, 29 and 30 of this Regulation shall apply to all products covered by Union legislation in so far as other Union legislation does not contain specific provisions related to the organisation of controls on products entering the Union market.

Amendment 44

Proposal for a regulation

Article 3 – paragraph 1 – point 3

Text proposed by the Commission

Amendment

(3) ‘market surveillance’ means the activities carried out and measures taken by market surveillance authorities to ensure that products comply with the requirements under Union harmonisation legislation and do not endanger health, safety or any other aspect of public interest protection;

(3) ‘market surveillance’ means the activities carried out and measures taken by market surveillance authorities to ensure that products comply with the requirements under Union harmonisation legislation and do not endanger health ***and safety in general, health and safety in the workplace, the protection of consumers, public*** safety or any other aspect of public interest protection;

Justification

Better specification of the objectives of this regulation.

Amendment 45

Proposal for a regulation

Article 3 – paragraph 1 – point 12 – introductory part

Text proposed by the Commission

(12) ‘economic operator’ means the manufacturer, the authorised representative, the importer or the distributor, and including:

Amendment

(12) ‘economic operator’ means the manufacturer, the authorised representative, the importer or the distributor **and any other person subject to obligations in relation to the making available of products on the market in accordance with the relevant Union harmonisation legislation**, and including:

Amendment 46

Proposal for a regulation

Article 3 – paragraph 1 – point 15

Text proposed by the Commission

(15) ‘serious risk’ means any serious risk, including **a serious risk where** the effects are not immediate, requiring rapid intervention by the market surveillance authorities;

Amendment

(15) ‘serious risk’ means any serious risk, including **those** the effects **of which** are not immediate, requiring rapid intervention **and follow-up** by the market surveillance authorities;

Amendment 47

Proposal for a regulation

Article 4 – title

Text proposed by the Commission

Person **responsible for compliance information**

Amendment

Reference person

Amendment 48

Proposal for a regulation

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. A product may be made available on the market only if ***the following conditions are met:***

Amendment

1. A product may be made available on the market only if ***there is a reference person established in the Union with respect to this product.***

Amendment 49

Proposal for a regulation

Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) ***the manufacturer is established in the Union or there is at least one of the following in place with respect to the product:***

(i) ***an importer;***

(ii) ***a natural or legal person established in the Union who has a written mandate from the manufacturer designating him as a person responsible for performing the tasks listed in paragraph 3 and requiring him to perform those tasks on the manufacturer's behalf;***

deleted

Amendment

Amendment 50

Proposal for a regulation

Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) ***the identity and contact details of the manufacturer, importer or other person meeting the requirements of point (a) are publicly available in accordance with paragraph 4 and are indicated or identifiable in accordance with paragraph 5.***

deleted

Amendment

Amendment 51

Proposal for a regulation
Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. For the purpose of paragraph 1, the reference person means any of the following:

(a) the manufacturer established in the Union;

(b) an importer, when the manufacturer is not established in the Union;

(c) an authorised representative, when a manufacturer is not established in the Union and there is no importer, who has a written mandate from the manufacturer requiring him to perform tasks listed in paragraph 3 on the manufacturer's behalf;

The mandate referred to in point (c) shall be signed both by the manufacturer and designated authorised representative.

Amendment 52

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. For the purposes of this Article, ‘the person responsible for compliance information’ means the person, whether the manufacturer, importer or other person, meeting the requirements of paragraph 1(a) with respect to the product or, if there is more than one such person, any of them.

deleted

Amendment 53

Proposal for a regulation
Article 4 – paragraph 3 – introductory part

Text proposed by the Commission

3. **The person responsible for compliance information** shall perform the following tasks:

Amendment

3. **Without prejudice to any obligations and responsibilities of economic operators under the applicable Union harmonisation legislation, a reference** person shall perform the following tasks:

Amendment 54

Proposal for a regulation

Article 4 – paragraph 3 – point a

Text proposed by the Commission

(a) if the Union harmonisation legislation applicable to the product provides for an EU declaration of conformity and technical documentation, keeping the declaration and technical documentation at the disposal of market surveillance authorities for the period required by that legislation;

Amendment

(a) if the Union harmonisation legislation applicable to the product provides for an EU declaration of conformity and technical documentation, **verifying that EU declaration of conformity and technical documentation have been drawn up and** keeping the declaration **of conformity** and technical documentation at the disposal of market surveillance authorities for the period required by that legislation;

Amendment 55

Proposal for a regulation

Article 4 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) when considering or having reason to believe that a product in question is not in conformity with the applicable Union harmonisation legislation, immediately inform the manufacturer and, where applicable, other economic operators;

Amendment 56

Proposal for a regulation

Article 4 – paragraph 3 – point c

Text proposed by the Commission

(c) cooperating with the market surveillance authorities, ***at their request, on any action taken*** to eliminate or, if that is not possible, mitigate the risks posed by ***the*** product.

Amendment

(c) cooperating with the market surveillance authorities ***and taking immediate*** action to eliminate ***or to remedy any case of non-compliance with the requirements set out in Union harmonisation legislation applicable to the product in question*** or, if that is not possible, mitigate the risks posed by ***that*** product.

Amendment 57

Proposal for a regulation

Article 4 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) informing the relevant market surveillance authorities of the termination of a mandate designating him as an economic operator responsible for compliance pursuant to point (c) of paragraph 1a.

Amendment 58

Proposal for a regulation

Article 4 – paragraph 4

Text proposed by the Commission

Amendment

4. Manufacturers shall make the identity and contacts details of the person responsible for compliance information with respect to the product publicly available either on their website or, in the absence of a website, by any other means that allows the information to be readily accessed by the general public in the

deleted

Union free of charge.

Amendment 59

Proposal for a regulation Article 4 – paragraph 5

Text proposed by the Commission

5. The **identity and** contact details of the person **responsible for compliance information** with respect to the product shall be indicated on **or identifiable from information indicated on** the product, its packaging, the parcel or an accompanying document.

Amendment

5. The **name, registered trade name or registered trade mark and the** contact details, **including the postal address**, of the **reference** person with respect to the product shall be indicated on **the product or, where that is not possible because of the size or physical characteristics of the product, on** its packaging, the parcel or an accompanying document.

Amendment 60

Proposal for a regulation Article 4 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. **Economic operators offering a product for sale online shall indicate with their offer for sale the name, registered trade name or registered trade mark and the contacts details of a reference person with respect to the product. With this regard, online marketplaces shall facilitate the display of abovementioned information for the products sold through them.**

Amendment 61

Proposal for a regulation Article 4 – paragraph 6

Text proposed by the Commission

6. For the purposes of paragraph 1:

(a) manufacturers may designate a person under paragraph 1(a)(ii) whether or not they have a right or obligation to appoint an authorised representative under the Union harmonisation legislation applicable to the product;

(b) where the manufacturer has such a right or obligation under the Union harmonisation legislation, the appointment of an authorised representative under that legislation may count as a designation for the purposes of paragraph 1(a)(ii) provided the appointment meets the requirements of that paragraph.

deleted

Amendment

Amendment 62

**Proposal for a regulation
Article 5 – paragraph 1**

Text proposed by the Commission

Where Union harmonisation legislation provides for the drawing up of an EU declaration of conformity, manufacturers shall make the declaration publicly available on their website or, in the absence of a website, by any other means that allows the declaration to be readily accessed by the general public in the Union free of charge.

Amendment

Where Union harmonisation legislation provides for the drawing up of an EU declaration of conformity, manufacturers shall make the declaration publicly available on their website or, in the absence of a website, by any other means that allows the declaration to be **easily and** readily accessed by the general public in the Union free of charge.

Amendment 63

**Proposal for a regulation
Article 6 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. For the purpose of paragraph 1 of this Article, Article 10 of the [Regulation (EC)

No 764/2008 of the European Parliament and the Council / Article 9 of Regulation (EU).... of the European Parliament and the Council on Mutual Recognition Principle] shall apply with regard to the tasks of the Product Contact Points.

Amendment 64

Proposal for a regulation Article 6 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Member States shall ensure the visibility of Product Contact Points and provide them with sufficient powers and adequate resources for the proper performance of their tasks. Product Contact Points shall deliver their services in accordance with [Regulation on Single Digital Gateway].

Amendment 65

Proposal for a regulation Article 6 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. The Commission shall prepare the general information regarding the product requirements set in the Union harmonisation legislation which the Product Contact Points shall provide to economic operators and publish online in a uniform, transparent, accessible and user-friendly way in order to raise awareness about the Union harmonisation legislation.

Amendment 66

Proposal for a regulation
Article 6 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

1d. The Commission shall provide for and ensure efficient cooperation and exchange of information between the competent authorities and the Product Contact Points of the various Member States.

Amendment 67

Proposal for a regulation
Article 7

Text proposed by the Commission

Amendment

Article 7

deleted

Compliance partnership arrangements

1. A market surveillance authority may enter into a partnership arrangement with an economic operator established in its territory under which the authority agrees to provide the economic operator with advice and guidance in relation to the Union harmonisation legislation applicable to the products for which the economic operator is responsible.

The arrangement shall not cover the provision of conformity assessment activities that are entrusted to notified bodies under the Union harmonisation legislation.

2. If a market surveillance authority enters into a partnership arrangement under paragraph 1, it shall enter that fact in the system referred to in Article 34, along with details of the scope of the arrangement and the names and addresses of itself and of the economic operator.

3. If a market surveillance authority enters into a partnership arrangement

under paragraph 1, other market surveillance authorities shall inform that authority of any temporary measure taken by them against the economic operator, and any corrective action taken by the economic operator, in relation to compliance with the applicable Union harmonisation legislation.

4. A market surveillance authority that enters into a partnership arrangement under paragraph 1 may charge the economic operator fees representing the costs reasonably incurred by the authority in the exercise of its functions under paragraphs 1 and 2.

Amendment 68

Proposal for a regulation Article 8 – title

Text proposed by the Commission

Memoranda of understanding with stakeholders

Amendment

Cooperation between market surveillance authorities and economic operators

Amendment 69

Proposal for a regulation Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Market surveillance authorities may enter into memoranda of understanding with **businesses** or organisations representing **businesses** or end-users for the carrying out, or financing, of joint activities aimed at identifying non-compliance or promoting compliance in specific geographical areas or with respect to specific categories of **product**.

Amendment

Market surveillance authorities may enter into memoranda of understanding with **economic operators** or organisations representing **economic operators, other relevant authorities** or end-users for the carrying out, or financing, of joint activities aimed at **raising awareness, providing advice and guidance in relation to the Union harmonisation legislation, promoting voluntary actions**, identifying non-compliance or promoting compliance in specific geographical areas or with respect to specific **products, including the**

products sold online, or categories of products, in particular the ones that are often found to be presenting a serious risk.

Amendment 70

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where a memorandum of understanding is concluded with economic operators directly, it shall not preclude other economic operators who make available on the market products of the same category to request to join that memorandum.

Amendment 71

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The market surveillance authority in question shall make the memorandum available to the general public and shall enter it in the system referred to in Article 34.

The market surveillance authority in question shall make the memorandum available to the general public, ***the Commission and Member States*** and shall enter it in the system referred to in Article 34, ***along with the details of the scope of the memorandum and the names and the addresses of the parties involved.***

Amendment 72

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The Network established under Article 31 shall, at the request of a Member State, assist in the drawing up and implementation of the memoranda of

understanding.

Amendment 73

Proposal for a regulation

Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

A market surveillance authority and the parties referred to in paragraph 1 entering into memoranda of understanding, shall ensure that such memoranda do not create unfair competition between economic operators and contain provisions so as to safeguard the confidentiality, the objectivity, independence and impartiality of the parties, the information and the activities concerned. Where any of the parties breach any of these provisions, a memorandum of understanding shall be terminated.

Amendment 74

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. Any exchange of information between market surveillance authorities and ***businesses or organisations*** referred to in paragraph 1 for the purposes of preparing or implementing a memorandum of understanding entered into by them under that paragraph shall be deemed not to infringe the requirements of professional secrecy.

3. Any exchange of information between market surveillance authorities and ***the parties*** referred to in paragraph 1 for the purposes of preparing or implementing a memorandum of understanding entered into by them under that paragraph shall be deemed not to infringe the requirements of professional secrecy.

Amendment 75

Proposal for a regulation

Article 9 – paragraph 3 a (new)

3a. Consumers must be informed, through an online portal, of rights relating to non-compliant products which they have acquired, such as the right to obtain a replacement for a product or to receive compensation, the right of recourse and contacts from which all appropriate information can be obtained.

Amendment 76

Proposal for a regulation Article 10

Article 10

deleted

Obligations of market surveillance authorities as regards organisation

- 1. Market surveillance authorities shall establish appropriate communication and coordination mechanisms with other market surveillance authorities.**
- 2. Market surveillance authorities shall establish the following procedures in connection with products subject to the Union harmonisation legislation set out in the Annex:**
 - (a) procedures for following up of complaints or reports on issues relating to risks;**
 - (b) procedures for monitoring any accidents or any harm to the health or safety of end-users which are suspected of having been caused by such products;**
 - (c) procedures for verifying that corrective action to be taken by economic operators has been taken;**
 - (d) procedures for collecting and exploring scientific and technical knowledge concerning safety issues.**

Amendment 77

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

1. Each Member State shall designate one or more market surveillance authorities in its territory. It shall inform the Commission, **through the Network established under Article 31**, and the other Member States of **the** market surveillance authorities **designated by it** and the areas of competence of each of those authorities, using the information and communication system referred to in Article 34.

Amendment 78

Proposal for a regulation Article 11 – paragraph 3

Text proposed by the Commission

3. The single liaison office of a Member State shall be responsible for coordinating the enforcement and market surveillance activities of the market surveillance authorities designated by that Member State.

Amendment 79

Proposal for a regulation Article 11 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that their market surveillance authorities and

Amendment

1. Each Member State shall designate one or more market surveillance authorities in its territory. It shall inform the Commission and the other Member States of **its** market surveillance authorities and the areas of competence of each of those authorities, using the information and communication system referred to in Article 34.

Amendment

3. The single liaison office of a Member State shall be responsible for coordinating the enforcement and market surveillance activities of the market surveillance authorities **and other authorities, in particular, with customs authorities responsible for the control of products entering the Union market** designated by that Member State.

Amendment

4. Member States shall ensure that their market surveillance authorities and

single liaison office have the necessary resources, including sufficient budgetary and other resources, expertise, procedures and other arrangements for the proper performance of their duties.

single liaison office have the necessary resources, including sufficient budgetary and other resources, expertise, procedures and other arrangements **as well as a sufficient number of competent personnel at its disposal** for the proper performance of their duties.

Amendment 80

Proposal for a regulation Article 11 – paragraph 5

Text proposed by the Commission

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 those authorities collaborate closely **so that they can discharge** their duties effectively.

Amendment

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 mechanism are established to enable** those authorities **to** collaborate closely **and exercise** their duties effectively.

Amendment 81

Proposal for a regulation Article 12 – paragraph 1 – point b

Text proposed by the Commission

(b) the taking by them of appropriate and proportionate **temporary** measures and the taking by economic operators of appropriate and proportionate corrective action in relation to compliance with that legislation and this Regulation.

Amendment

(b) the taking by them of appropriate and proportionate measures and the taking by economic operators of appropriate and proportionate corrective action in relation to compliance with that legislation and this Regulation.

Amendment 82

Proposal for a regulation Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Market surveillance authorities shall exercise their powers and carry out their duties independently, impartially and without bias.

Amendment 83

Proposal for a regulation

Article 12 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Market surveillance authorities shall establish appropriate and effective communication and cooperation mechanisms with other market surveillance authorities and other relevant authorities within the Union.

With this regard, market surveillance authorities shall also develop appropriate and effective communication and cooperation mechanisms with customs authorities for the identification and examination of potential risks related to counterfeit products and withdrawal of such products from the market.

Amendment 84

Proposal for a regulation

Article 12 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. Market surveillance authorities shall perform controls as part of their activities set out in paragraph 1, on a risk-based approach, taking into account, as a minimum, the following factors:

2. Market surveillance authorities shall perform controls as part of their activities set out in paragraph 1, on a risk-based approach, **prioritising their resources and actions to ensure the effective surveillance of the market and** taking into account as a minimum, the following factors:

Amendment 85

Proposal for a regulation

Article 12 – paragraph 2 – point a – introductory part

Text proposed by the Commission

- (a) the identified risks associated with:

Amendment

- (a) the identified risks, ***which have the potential to affect adversely health and safety of persons in general, health and safety in the workplace, consumer protection, the environment and public security,*** associated with:

Amendment 86

Proposal for a regulation

Article 12 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The methodology and criteria for assessing risks shall be harmonised in all Member States in order to ensure a level playing field for all economic operators.

Amendment 87

Proposal for a regulation

Article 12 – paragraph 3

Text proposed by the Commission

Amendment

3. Market surveillance authorities shall ensure that a product is withdrawn or recalled from the market or that the making available of the product on the market is prohibited or restricted if, when it is being used either in accordance with its intended purpose or under conditions that can be reasonably foreseen and it is properly installed and maintained, either

deleted

of the following conditions would be met:

- (a) the product is liable to compromise the health or safety of end-users;*
- (b) the product does not conform to applicable requirements under Union harmonisation legislation.*

Where the products are withdrawn, recalled, prohibited or restricted, the market surveillance authority shall ensure that the Commission through the Network established under Article 31, the other Member States and end-users are informed accordingly.

Amendment 88

Proposal for a regulation Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In connection with products subject to the Union harmonisation legislation set out in the Annex, market surveillance authorities shall establish the following procedures:

(a) procedures for following up of complaints or reports on issues relating to non-compliance and risks arising in connection with products subject to Union harmonisation legislation;

(b) procedures for monitoring and collecting the information on accidents or harm to the health or safety of end-users, which are suspected of having been caused by the products, and making this information available to the general public via the centralised database for the collection of the information on the accidents and injuries or by other means;

(c) procedures for verifying that corrective action to be taken by economic operators has been taken;

(d) procedures for following up scientific and technical knowledge concerning

safety issues;

(e) procedures for cooperation with online platforms and marketplaces.

Amendment 89

Proposal for a regulation

Article 12 – paragraph 4 – introductory part

Text proposed by the Commission

4. Market surveillance authorities shall perform their activities with a high level of transparency and shall make available to the general public any information that they deem relevant for the general public. **They** shall also ensure that the following information is entered in the system referred to in Article 34:

Amendment

4. Market surveillance authorities shall perform their activities with a high level of transparency and shall make available to the general public any information that they deem relevant for the general public, **while respecting the principle of confidentiality in order to protect professional and commercial secrets or to preserve personal data.**

Market surveillance authorities shall also ensure that the following information is entered in the system referred to in Article 34:

Amendment 90

Proposal for a regulation

Article 12 – paragraph 4 – point c

Text proposed by the Commission

(c) the **nature** of the **temporary** measures taken by them against economic operators **and** of the corrective action taken by economic operators;

Amendment

(c) the **details** of the measures taken by them against economic operators, **commitments given to them by economic operators and the details** of the corrective action taken by economic operators;

Amendment 91

Proposal for a regulation

Article 12 – paragraph 5

Text proposed by the Commission

5. Market surveillance authorities shall exercise their powers and carry out their duties independently, impartially and without bias.

Amendment 92

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

deleted

Amendment

Article 12a

**Activities of market surveillance
authorities with regard to products sold
online**

1. Without prejudice to Article 12, Member States shall ensure the effective organisation of market surveillance activities with regard to the products offered for sale online to end-users within the Union.

2. For the purpose of paragraph 1, Member State shall allocate the resources accordingly and ensure, that there is an appropriate number of inspectors, dealing with products sold online (“online inspectors”), within their national market surveillance authorities, having a specific knowledge and awareness of the online environment and investigations in order to detect non-compliant products sold online.

3. Member States shall ensure that their national market surveillance authorities carry out their activities with regard to the products offered for sale online in following ways:

(a) proactively, by controlling certain categories of products or certain economic operators, based on risk-related criteria and priorities set in a national

strategy, referred to in Article 13; and
(b) reactively, by monitoring information on potential non-compliance of products sold online, taking into account consumer complaints, information received from other authorities, economic operators and the media, as well as other information sources.

Amendment 93

Proposal for a regulation Article 12 b (new)

Text proposed by the Commission

Amendment

Article 12b

Monitoring and evaluation of the market surveillance authorities

- 1. Member States shall monitor their national market surveillance authorities at regular intervals in order to ensure that they fulfil the requirements laid down in this Regulation on a continuing basis.***
- 2. Where a national market surveillance authority does not meet the requirements of this Regulation or fails to fulfil its obligations, the Member State concerned shall take appropriate actions or shall ensure that proper actions are taken.***
- 3. National market surveillance authorities shall be subject to peer evaluation in respect of activities of market surveillance of products which they carry out pursuant to this Regulation in order to assess whether these market surveillance authorities meet the requirements of this Regulation, assist them and provide guidance in order to strengthen their activities and ensure the uniform application of this Regulation.***
- 4. Peer evaluations shall cover the assessments of the procedures put in place by market surveillance authorities, in particular the procedures for checking the***

compliance of the products that are subject to Union harmonisation legislation, communication and cooperation mechanisms with other market surveillance authorities and other relevant authorities, the competence of the personnel, the correctness of the checks and the inspection methodology as well as the correctness of the results. Peer evaluation shall also assess whether market surveillance authorities in question have sufficient recourses for the proper performance of their duties as required by Article 11(4).

5. Peer evaluation of a market surveillance authority shall be carried out by two market surveillance authorities of other Member States and the Commission and shall be carried out at least once every five years.

6. Taking duly into account the considerations of the Network established under Article 31, the Commission shall adopt delegated acts in accordance with Article 62a concerning setting out a plan for the peer evaluations covering a period of at least five years, laying down criteria regarding the composition of the peer evaluation team, the methodology used for the peer evaluation, the schedule, periodicity and the other tasks related to the peer evaluation.

7. The outcome of the peer evaluations shall be examined by the Network. The Commission shall draw up a summary of the outcome and make it public.

8. Member States shall report to the Commission and the Network on how they address the recommendations included in the outcome of the assessment.

Amendment 94

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

1. Each Member State shall draw up a national market surveillance strategy, as a minimum, every 3 years. The strategy shall promote a consistent, comprehensive and integrated approach to market surveillance and enforcement of Union harmonisation legislation within the territory of the Member State and shall include all sectors and stages of the product supply chain, including imports and digital supply chains.

Amendment

1. Each Member State shall draw up a national market surveillance strategy, as a minimum, every 3 years. The **national** strategy shall **take into account the priorities set out within the work programme of the Network established under Article 31 and** promote a consistent, comprehensive and integrated approach to market surveillance and enforcement of Union harmonisation legislation within the territory of the Member State, **including the market surveillance of products sold online**, and shall include all sectors and stages of the product supply chain, including imports and digital supply chains.

Amendment 95

Proposal for a regulation

Article 13 – paragraph 2 – introductory part

Text proposed by the Commission

2. The national market surveillance strategy shall include, **as a minimum**, the following elements:

Amendment

2. The national market surveillance strategy shall include, **at least**, the following elements:

Amendment 96

Proposal for a regulation

Article 13 – paragraph 2 – point a

Text proposed by the Commission

(a) an assessment of the occurrence of non-compliant products, in particular taking into account the risk-based controls referred to in Articles 12(2) and 26(3), and market trends that may affect non-compliance rates in the categories of product;

Amendment

(a) an assessment of the occurrence of non-compliant products, in particular taking into account the risk-based controls referred to in Articles 12(2) and 26(3), **products that were subject to an emergency decision under Article 13 of Directive 2001/95/EC**, and market trends that may affect non-compliance rates in the categories of product, **including, in particular, threats and risks related to**

Amendment 97

Proposal for a regulation

Article 13 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the areas identified as a priority for the surveillance activities of products offered for sale online, taking into account proactive and reactive market surveillance actions;

Amendment 98

Proposal for a regulation

Article 13 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the enforcement actions planned in order to reduce the occurrence of non-compliance in those areas identified as a priority, including, where relevant, the minimum control levels envisaged for categories of product which have significant levels of non-compliance;

(c) the ***specific*** enforcement actions planned in order to reduce the occurrence of non-compliance in those areas identified as a priority ***under points (b) and (ba)***, including, where relevant, the minimum control levels envisaged for categories of product which have significant levels of non-compliance;

Amendment 99

Proposal for a regulation

Article 13 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall communicate their national market surveillance strategy through the system referred to under Article 34.

3. Member States shall communicate their national market surveillance strategy ***to the Commission and other Member States*** through the system referred to under

Article 34. **Member States shall make the information contained in their national market surveillance strategies public at the full extent or partially, in accordance with Article 16 of this Regulation.**

Amendment 100

Proposal for a regulation Article 14 – paragraph 1

Text proposed by the Commission

1. Member States shall confer on their market surveillance authorities the powers of market surveillance, investigation and enforcement necessary for the application of this Regulation and for the application of the Union harmonisation legislation set out in the Annex to this Regulation.

Amendment

1. Member States shall confer on their market surveillance authorities the powers of market surveillance, **including the market surveillance of counterfeit products and products sold online**, investigation and enforcement necessary for the application of this Regulation and for the application of the Union harmonisation legislation set out in the Annex to this Regulation **and shall provide them with the necessary resources in that regard.**

Amendment 101

Proposal for a regulation Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Market surveillance authorities shall exercise the powers set out in this Article in accordance with the principle of proportionality, to the extent that relates to the subject matter, the purpose of the actions and the nature and the overall actual or potential harm of the instance of non-compliance, efficiently and effectively and in accordance with Union and national law, including the principles of the Charter of Fundamental Rights of the European Union, applicable

Amendment 102

Proposal for a regulation

Article 14 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Notwithstanding paragraph 1, Member States may decide not to confer all the powers on every competent authority, provided that each of those powers can be exercised effectively in accordance with paragraph 2.

Amendment 103

Proposal for a regulation

Article 14 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. When conferring powers under paragraph 1, including a power required by paragraph 3, Member States may provide for the power to be exercisable in one of the following ways as appropriate:

2. Member States may provide for the power to be exercisable in one of the following ways as appropriate:

Amendment 104

Proposal for a regulation

Article 14 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) by recourse to other public authorities;

(b) where appropriate, upon recourse to other public authorities, **in accordance with the division of powers and the institutional and administrative organisation of the Member State in**

question;

Amendment 105

Proposal for a regulation

Article 14 – paragraph 2 – point c

Text proposed by the Commission

(c) by application to courts competent to grant the necessary decision to approve the exercise of that power.

Amendment

(c) by application to courts competent to grant the necessary decision to approve the exercise of that power, **including, where appropriate, by appeal, if the application to grant the necessary decision is not successful.**

Amendment 106

Proposal for a regulation

Article 14 – paragraph 3 – introductory part

Text proposed by the Commission

3. The powers conferred on market surveillance authorities under paragraph 1 shall include the following powers **as a minimum**:

Amendment

3. The powers conferred on market surveillance authorities under paragraph 1 shall include **at least** the following powers:

Amendment 107

Proposal for a regulation

Article 14 – paragraph 3 – point b

Text proposed by the Commission

(b) the power to perform system audits of economic operators' organisations, including audits of any procedures that they have in place to ensure compliance with this Regulation and with applicable Union harmonisation legislation;

Amendment

deleted

Amendment 108

Proposal for a regulation
Article 14 – paragraph 3 – point c

Text proposed by the Commission

(c) the power to have access to **any** relevant **document**, data or information related to an instance of non-compliance, in any form or format and irrespective of its storage medium or the place where it is stored;

Amendment

(c) the power to have access to relevant **documents, technical specifications**, data or information related to an instance of non-compliance, **including access to software and algorithms that control the product, insofar as necessary to assess compliance of the product with applicable Union product harmonisation legislation** in any form or format and irrespective of its storage medium or the place where it is stored;

Amendment 109

Proposal for a regulation
Article 14 – paragraph 3 – point d

Text proposed by the Commission

(d) the power to require any public authority, body or agency within the market surveillance authority's Member State, or any natural or legal person, to provide **any** information, data or document, in any form or format and irrespective of its storage medium or the place where it is stored, for the purposes of enabling the market surveillance authority to investigate whether any non-compliance has occurred or is occurring and to establish the details of that non-compliance, including in particular information, data or documents required for the purposes of identifying and tracing financial and data flows, ascertaining the identity and contact details of persons involved in financial and data flows and ascertaining bank account information and the ownership of websites;

Amendment

(d) the power to require any public authority, body or agency within the market surveillance authority's Member State, or any natural or legal person, to provide **relevant** information, data or document, in any form or format and irrespective of its storage medium or the place where it is stored, for the purposes of enabling the market surveillance authority to investigate whether any non-compliance has occurred or is occurring and to establish the details of that non-compliance, including in particular information, data or documents required for the purposes of identifying and tracing financial and data flows, ascertaining the identity and contact details of persons involved in financial and data flows and ascertaining bank account information and the ownership of websites, **when the information, data or document in question is related to the subject matter of**

the investigation;

Amendment 110

Proposal for a regulation

Article 14 – paragraph 3 – point e – point 3

Text proposed by the Commission

(3) to request **any** representative **or** member of staff of the economic operator to give explanations **of** facts, information or documents relating to the subject-matter of the inspection and to record their answers;

Amendment

(3) to request **a** representative **of economic operator or a relevant** member of staff of the economic operator to give explanations **or provide** facts, information or documents relating to the subject-matter of the inspection and to record their answers;

Amendment 111

Proposal for a regulation

Article 14 – paragraph 3 – point f

Text proposed by the Commission

(f) the power to take samples of products free of charge in order to detect non-compliance and obtain evidence;

Amendment

(f) the power to take samples of products free of charge in order to detect non-compliance and obtain evidence **to the extent that this is proportionate with regard to the value of the product and the severity of non-compliance;**

Amendment 112

Proposal for a regulation

Article 14 – paragraph 3 – point g

Text proposed by the Commission

(g) the power to purchase products as test purchases, including under a cover identity, in order to detect non-compliance and obtain evidence;

Amendment

(g) the power to purchase products, **also the ones sold online,** as test purchases, including under a cover identity, **to inspect them and to reverse-engineer them** in order to detect non-compliance

under this Regulation and obtain evidence;

Amendment 113

Proposal for a regulation

Article 14 – paragraph 3 – point h

Text proposed by the Commission

(h) the power to **take temporary** measures, where there are no other effective means available to prevent a serious risk, including in particular **temporary** measures requiring hosting service providers to remove, disable or restrict access to content or to suspend or restrict access to a website, service or account or requiring domain registries or registrars to put a fully qualified domain name on hold for a specific period of time;

Amendment

(h) the power to **adopt** measures, **when duly justified and proportionate and** where there are no other effective means available to prevent a serious risk, including in particular measures requiring hosting service providers to remove, disable or restrict **fully or partially** access to content or to suspend or restrict access to a website, service or account or requiring domain registries or registrars to put a fully qualified domain name on hold for a specific period of time;

Amendment 114

Proposal for a regulation

Article 14 – paragraph 3 – point j

Text proposed by the Commission

(j) the power to seek to obtain a commitment from an economic operator to bring an instance of non-compliance to an end;

Amendment

(j) the power to seek to obtain, **or to accept**, a commitment from an economic operator **responsible for non-compliance** to bring an instance of non-compliance to an end;

Amendment 115

Proposal for a regulation

Article 14 – paragraph 3 – point l

Text proposed by the Commission

(l) the power to impose penalties on an

Amendment

(l) the power to impose penalties on an

economic operator, including fines or periodic penalty payments, for non-compliance or for failure to comply with any decision, order, **temporary measure or other** measure taken by the market surveillance authority;

Amendment 116

Proposal for a regulation

Article 14 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

economic operator, including fines or periodic penalty payments, for non-compliance or for failure to comply with any decision, order, measure taken by the market surveillance authority;

Amendment

The powers set out in point (h) of this paragraph shall be exercised by the application to courts in accordance with point (c) of paragraph 2 of this Article.

Amendment 117

Proposal for a regulation

Article 14 – paragraph 4

Text proposed by the Commission

4. Market surveillance authorities shall publish any commitments given to them by economic operators, details of any corrective action taken by economic operators in their territory, and details of any **temporary** measures taken by the relevant market surveillance authority pursuant to this Regulation.

Amendment

4. Market surveillance authorities shall publish, ***when they deem it relevant for the general public***, any commitments given to them by economic operators, details of any corrective action taken by economic operators in their territory, and details of any measures taken by the relevant market surveillance authority pursuant to ***first subparagraph of Article 12(4) of this Regulation, ensuring the economic operators a possibility to comment the information, related to them, prior to its publication.***

Amendment 118

Proposal for a regulation

Article 14 – paragraph 5

Text proposed by the Commission

5. **Market surveillance authorities shall exercise their powers in accordance with the principle of proportionality.**

Amendment 119

Proposal for a regulation

Article 15 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Market surveillance authorities shall perform appropriate checks on the characteristics of products on an adequate scale, by means of documentary checks and, where appropriate, physical and laboratory controls on the basis of **a** representative **sample**.

Amendment 120

Proposal for a regulation

Article 15 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In deciding what checks to perform and on what scale, market surveillance authorities shall take into account, in particular, established principles of risk assessment **and** complaints.

Amendment 121

Proposal for a regulation

Article 15 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Where economic operators present test

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Amendment

deleted

Amendment

Market surveillance authorities shall perform appropriate checks on the characteristics of products on an adequate scale **and with adequate frequency**, by means of documentary checks and, where appropriate, **sufficient** physical and laboratory controls on the basis of **sufficient** representative **samples**.

Amendment

In deciding what checks to perform, **on what types of products** and on what scale, market surveillance authorities shall take into account, in particular, established principles of risk assessment, complaints **and other relevant information**.

Amendment

Where economic operators present test

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reports or certificates attesting conformity of their products with Union harmonisation legislation issued by **an accredited** conformity assessment body, market surveillance authorities shall take due account of such reports or certificates.

Amendment 122

Proposal for a regulation

Article 15 – paragraph 1 a (new)

Text proposed by the Commission

reports or certificates attesting conformity of their products with Union harmonisation legislation issued by **a** conformity assessment body, **accredited pursuant to Regulation 765/2008**, market surveillance authorities shall take due account of such reports or certificates.

Amendment

1a. For the purpose of paragraph 1, in the context of evaluation of the product, market surveillance authorities shall take into account the extent to which the product complies with the following:

(a) any requirements laid down in or pursuant to Union harmonisation legislation that apply to the product and relate to the potential risk under consideration;

(b) any relevant European standards or other technical specifications the references to which have been published in the Official Journal of the European Union.

Compliance with the requirements referred to in points (a) and (b) shall raise a presumption that the product adequately safeguards the public interests to which those requirements relate. However, this shall not prevent market surveillance authorities from taking action under this Regulation where there is evidence that, despite such compliance, the product presents a risk.

The feasibility of obtaining higher level of protection of the public interests concerned or the availability of other products providing higher level of protection shall not be a reason, in itself,

to consider that a product presents a risk.

Amendment 123

Proposal for a regulation

Article 15 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. For certain products or category of 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, taking duly into account the considerations of the Network established under Article 31, shall adopt delegated acts in accordance with Article 62a 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.

Amendment 124

Proposal for a regulation

Article 15 – paragraph 3

Text proposed by the Commission

Amendment

3. Where the market surveillance authorities of one Member State decide to withdraw a product manufactured in another Member State, they shall inform the economic operator concerned without delay.

3. Where the market surveillance authorities of one Member State decide to withdraw a product manufactured in another Member State, **or placed on the market in another Member State**, they shall inform the economic operator concerned without delay.

Amendment 125

Proposal for a regulation
Article 16 – paragraph 1

Text proposed by the Commission

Market surveillance authorities shall **observe the principle** of confidentiality **where necessary in order to protect** professional and commercial **secrets or to** preserve personal data pursuant to national legislation, subject to the requirement that information be made public to the fullest extent possible in order to protect the interests of end-users in the Union.

Amendment

Market surveillance authorities shall **ensure the strictest guarantees** of confidentiality **and of** professional and commercial **secrecy and shall** preserve personal data pursuant to national legislation, subject to the requirement that information be made public to the fullest extent possible in order to protect the interests of end-users in the Union.

Amendment 126

Proposal for a regulation
Article 17 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Market surveillance authorities shall take appropriate measures, including ensuring that the making available of the product on the market is prohibited or restricted or that a product is withdrawn or recalled from the market if, when it is being used either in accordance with its intended purpose or under conditions that can be reasonably foreseen and it is properly installed and maintained, either of the following conditions would be met:

(a) the product is liable to compromise the health or safety of end-users;

(b) the product does not conform to applicable requirements under Union harmonisation legislation;

(c) the product is a counterfeit.

For the purpose of this paragraph, market surveillance authorities may ask economic operator to provide information on which other product models have the same technical characteristics as a

product in question that are relevant for compliance with the applicable requirements under Union harmonisation legislation.

Amendment 127

Proposal for a regulation

Article 17 – paragraph -1 a (new)

Text proposed by the Commission

Amendment

-1a. Without prejudice to paragraph -1, market surveillance authorities shall require the relevant economic operator to put an end to the formal non-compliance with the administrative requirements set out in the applicable Union harmonisation legislation that does not lead to the breach of the essential requirements set out in this legislation. However, where this formal non-compliance persists, the Member State concerned shall take all appropriate measures to restrict or prohibit the product being made available on the market or ensure that it is recalled or withdrawn from the market.

Amendment 128

Proposal for a regulation

Article 17 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

Before a measure, decision or order referred to in paragraph 1 is taken or made, the economic operator concerned shall be given the opportunity to be heard within an appropriate period of not less than 10 days, unless it is not possible to give him that opportunity because of the urgency of the measure, decision or order, based on health or safety requirements or other grounds relating to the public interests covered by

Before a measure, decision or order referred to in paragraph 1 is taken or made, the economic operator concerned shall be given the opportunity to be heard within an appropriate period of not less than 10 **working** days, unless it is not possible to give him that opportunity because of the urgency of the measure, decision or order, based on health or safety requirements or other grounds relating to the public

the relevant Union harmonisation legislation.

interests covered by the relevant Union harmonisation legislation.

Amendment 129

Proposal for a regulation

Article 17 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Without prejudice to Article 18(1), where the products are withdrawn, recalled, prohibited or restricted, the market surveillance authority shall ensure that the Commission, the other Member States and end-users are informed accordingly, also through the system referred to in Article 34.

Amendment 130

Proposal for a regulation

Article 18 – paragraph 1

Text proposed by the Commission

Amendment

1. Market surveillance authorities shall take measures to recall or withdraw products which present a serious risk or to prohibit the making available of them on the market. They shall inform the Commission of such measures without delay, in accordance with Article 19.

1. Market surveillance authorities shall **immediately** take measures to recall or withdraw products which present a serious risk **to safety or health of persons, or other public interests protected by the relevant Union harmonisation legislation with regard to these products**, or to prohibit the making available of them on the market. They shall inform the Commission of such measures without delay, in accordance with Article 19.

Amendment 131

Proposal for a regulation

Article 19 – paragraph 2

Text proposed by the Commission

Amendment

2. If a product presenting a serious

2. If a product presenting a serious

risk has been made available on the market, market surveillance authorities shall notify the Commission of any voluntary measures taken and communicated by an economic operator.

risk has been made available on the market, market surveillance authorities shall **immediately** notify the Commission of any voluntary measures taken and communicated by an economic operator.

Amendment 132

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

1. The Commission may designate Union testing facilities for specific products or a specific category or group of products or for specific risks related to a category or group of products which are made available on the market.

Amendment

1. The Commission, ***after consulting the Network established under Article 31,*** may designate Union testing facilities for specific products or a specific category or group of products or for specific risks related to a category or group of products which are made available on the market, ***including for which Member States do not have facilities to perform testing within their territory.***

Amendment 133

Proposal for a regulation Article 20 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Union testing facilities shall serve the purpose of ensuring sufficient laboratory capacity, reliability and consistency of testing for the purposes of market surveillance within the Union.

Amendment 134

Proposal for a regulation Article 20 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The establishment of Union testing facilities shall not affect the freedom of the market surveillance authorities to choose testing facilities for the purpose of their market surveillance activities.

Amendment 135

Proposal for a regulation

Article 20 – paragraph 4 – introductory part

Text proposed by the Commission

4. Union testing facilities shall, within the area of their competence, perform the following tasks **as a minimum**:

Amendment

4. Union testing facilities shall, within the area of their competence, perform **at least** the following tasks:

Amendment 136

Proposal for a regulation

Article 20 – paragraph 4 – point a

Text proposed by the Commission

(a) carry out **product-testing** in relation to market surveillance activities and investigations;

Amendment

(a) carry out **testing of specific products or a specific category or group of products or specific risks related to a category or group of products** in relation to market surveillance activities and investigations **at the request of the Commission, the Network established under Article 31 or market surveillance authorities**;

Amendment 137

Proposal for a regulation

Article 20 – paragraph 4 – point b

Text proposed by the Commission

(b) contribute to the resolution of disputes between the market surveillance authorities of Member States, economic operators and conformity assessment bodies;

Amendment 138

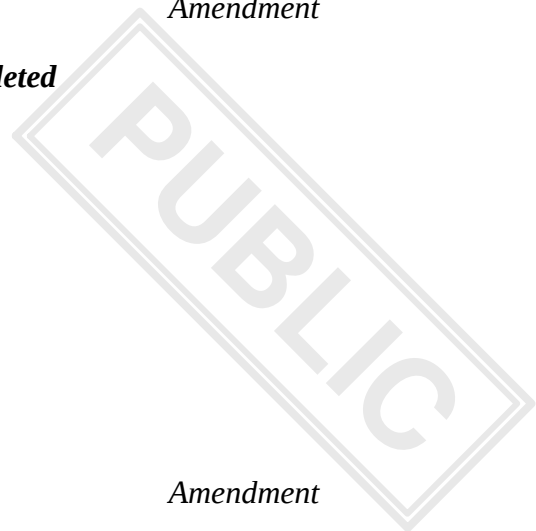
Proposal for a regulation

Article 20 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

deleted



Amendment

4a. Market surveillance authorities shall accept, in accordance with Article 11(2) of Regulation (EC) 765/2008, the test reports issued by the Union testing facilities.

Amendment 139

Proposal for a regulation

Article 20 – paragraph 5

Text proposed by the Commission

5. The Commission shall adopt implementing acts specifying the procedures for **designating** Union testing facilities. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.

Amendment

5. The Commission shall adopt implementing acts specifying the procedures for **the designation, functioning and financing of** Union testing facilities, **and establishing the appropriate appeal procedure with regard to their tasks pursuant to paragraph 4.** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.

Amendment 140

Proposal for a regulation

Article 21 – paragraph 2

Text proposed by the Commission

2. Market surveillance authorities may charge economic operators administrative fees in relation to instances of non-compliance by that economic operator in order to enable the authorities to recover the costs of their activities with respect to these instances of non-compliance. Those costs may include the costs of carrying out testing for the purposes of a risk assessment, the costs of taking measures in accordance with Article 30(1) and (2) and the costs of their activities relating to products that are found to be non-compliant and subject to corrective action prior to their release for free circulation.

Amendment

2. Market surveillance authorities may charge economic operators administrative fees in relation to instances of non-compliance by that economic operator in order to enable the authorities to recover **totality of** the costs of their activities with respect to these instances of non-compliance. **Where the market surveillance authority considers this to be disproportionate, it may decide that the costs shall be borne only partially by the economic operator.** Those costs **shall be proportionate in relation to the non-compliance and** may include the costs of carrying out testing for the purposes of a risk assessment, the costs of taking measures in accordance with Article 30(1) and (2) and the costs of their activities relating to products that are found to be non-compliant and subject to corrective action prior to their release for free circulation.

Amendment 141

Proposal for a regulation

Article 21 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that administrative fees referred to in paragraph 2, charged by the market surveillance authorities, are used for financing further market surveillance activities of these authorities.

Amendment 142

Proposal for a regulation

Article 22 – paragraph -1 (new)

- 1. There shall be efficient cooperation and exchange of information among the market surveillance authorities within the Member States and the Union, and between market surveillance authorities and the Commission.**

Amendment 143

Proposal for a regulation Article 22 – paragraph 1

Text proposed by the Commission

1. At the request of an applicant authority, the requested authority shall supply any information that the requested authority deems relevant to establish whether a product is non-compliant and to ensure that the non-compliance can be brought to an end.

Amendment

1. At the **duly motivated** request of an applicant authority, the requested authority shall supply **to the applicant authority without delay, and in any event within 30 days**, any information that the requested authority deems relevant to establish whether a product is non-compliant and to ensure that the non-compliance can be brought to an end.

Amendment 144

Proposal for a regulation Article 22 – paragraph 2

Text proposed by the Commission

2. The requested authority shall undertake appropriate investigations or take any other measures that are appropriate in order to gather the required information. Where necessary, those investigations shall be carried out with the assistance of other market surveillance authorities.

Amendment

2. The requested authority shall undertake appropriate investigations or take any other measures that are appropriate in order to gather the required information. Where necessary, those investigations shall be carried out with the assistance of other market surveillance authorities. **The requested authority shall keep the applicant authority informed about the actions undertaken with regard to its request.**

Amendment 145

Proposal for a regulation Article 22 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. While supplying the information to the applicant authority pursuant to paragraph 1, the requested authority shall observe the principle of confidentiality in order to protect professional and commercial secrets or to preserve personal data pursuant to national legislation.

Amendment 146

Proposal for a regulation Article 22 – paragraph 4

Text proposed by the Commission

Amendment

4. The requested authority shall reply to the request under paragraph 1 using the procedure and within the time limits specified by the Commission under paragraph 5.

deleted

Amendment 147

Proposal for a regulation Article 22 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall adopt implementing acts specifying the time limits, standard forms and further details of the procedure to be used for making and responding to requests for information under paragraph 1. Those implementing acts shall be adopted in accordance with the examination

deleted

procedure referred to in Article 63.

Amendment 148

Proposal for a regulation Article 23 – paragraph 1

Text proposed by the Commission

1. ***At the*** request ***of*** an applicant authority, the requested authority shall without delay take all necessary enforcement measures using the powers conferred on it under this Regulation in order to bring an instance of non-compliance to an end.

Amendment

1. ***In case where bringing a non-compliance with regard to the product to an end requires measures within the jurisdiction of another Member State, a duly motivated request for enforcement measures may be made by an applicant authority to a requested authority in that Member State. In this case*** the requested authority shall without delay take all necessary enforcement measures using the powers conferred on it under this Regulation in order to bring an instance of non-compliance to an end ***by exercising the powers laid down in Article 14 and any additional powers granted to it under the national law, including the imposition of penalties.***

Amendment 149

Proposal for a regulation Article 23 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The requested authority shall ***regularly and without undue delay*** inform ***and consult*** the applicant authority about the measures referred to in paragraph 2 that have been taken or which are intended to be taken.

Amendment

The requested authority shall inform the applicant authority about the measures referred to in paragraph 2 that have been taken or which are intended to be taken. ***The requested authority may consult the applicant authority on these measures when considers it necessary.***

Amendment 150

Proposal for a regulation

Article 23 – paragraph 3 – subparagraph 2 – introductory part

Text proposed by the Commission

The requested authority shall ***without delay*** notify the applicant authority, the market surveillance authorities of other Member States, and the Commission of the measures taken by it and of their effect on the non-compliance in question. The notification shall be made using the system referred to in Article 34 ***and shall include the following information as a minimum:***

Amendment

The requested authority shall notify the applicant authority, the market surveillance authorities of other Member States, and the Commission of the measures taken by it and of their effect on the non-compliance in question. The notification shall be made using the system referred to in Article 34.

Amendment 151

Proposal for a regulation

Article 23 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

(a) whether temporary measures have been imposed;

deleted

Amendment

Amendment 152

Proposal for a regulation

Article 23 – paragraph 3 – subparagraph 2 – point b

Text proposed by the Commission

(b) whether the non-compliance has ceased;

deleted

Amendment

Amendment 153

Proposal for a regulation

Article 23 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

(c) whether penalties have been

deleted

Amendment

imposed and, if so, what;

Amendment 154

Proposal for a regulation

Article 23 – paragraph 3 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(d) *whether other measures taken by the requested authority or the economic operator have been implemented.* **deleted**

Amendment 155

Proposal for a regulation

Article 23 – paragraph 4

Text proposed by the Commission

Amendment

4. *The requested authority shall reply to the request under paragraph 1 using the procedure and within the time limits specified by the Commission under paragraph 5.* **deleted**

Amendment 156

Proposal for a regulation

Article 23 – paragraph 5

Text proposed by the Commission

Amendment

5. *The Commission shall adopt implementing acts specifying the time limits, standard forms and further details of the procedures to be used for making and responding to requests for enforcement measures under paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.* **deleted**

Amendment 157

Proposal for a regulation Article 24 – paragraph 1

Text proposed by the Commission

1. The applicant authority shall provide **sufficient** information, in the case of requests for mutual assistance under Article 22 or 23, to enable the requested authority to fulfill the request, including any necessary evidence obtainable only in the Member State of the applicant authority.

Amendment

1. The applicant authority shall provide **all available** information, in the case of requests for mutual assistance under Article 22 or 23, to enable the requested authority to fulfill the request, including any necessary evidence obtainable only in the Member State of the applicant authority.

Amendment 158

Proposal for a regulation Article 24 – paragraph 2

Text proposed by the Commission

2. Requests for mutual assistance under Article 22 or 23 shall be sent by the applicant authority to the **single liaison office of the Member State of the** requested authority and also to the single liaison **office** of the Member **State of** the applicant authority for information purposes. **The single liaison office of the Member State of the requested authority shall pass the requests on to the appropriate competent authority, without undue delay.**

Amendment

2. Requests for mutual assistance under Article 22 or 23 shall be sent by the applicant authority to the requested authority and also to the single liaison **offices** of the Member **States of both** the applicant **authority and the requested** authority for information purposes.

Amendment 159

Proposal for a regulation Article 25 – paragraph 3

Text proposed by the Commission

3. Products deemed to be non-compliant on the basis of a decision of a market surveillance authority in one Member State, shall be presumed to be

Amendment

3. **Without prejudice to any Union safeguard procedure pursuant to the applicable Union harmonisation legislation,** products deemed to be non-

non-compliant by market surveillance authorities in another Member State, unless ***economic operators can provide*** evidence to the contrary.

compliant on the basis of a decision of a market surveillance authority in one Member State, shall be presumed to be non-compliant by market surveillance authorities in another Member State, unless ***a relevant market surveillance authority in another Member State has clear evidence to the contrary obtained from its own investigation or provided by an economic operator. The Network, established under Article 31, shall discuss, without delay, diverging interpretations of the different Member States with regard to the same product.***

Amendment 160

Proposal for a regulation

Article 26 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Where, in relation to products subject to Union harmonisation legislation that are either in temporary storage or placed under a customs procedure other than release for free circulation, customs authorities at the first point of entry have reason to believe that those products present a risk, they shall transmit all relevant information to the competent customs office of destination.

Amendment

Where, in relation to products subject to Union harmonisation legislation that are either in temporary storage or placed under a customs procedure other than release for free circulation, customs authorities at the first point of entry have reason to believe that those products ***are not compliant with applicable Union legislation or*** present a risk, they shall transmit all relevant information to the competent customs office of destination.

Amendment 161

Proposal for a regulation

Article 26 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Where customs authorities of one Member State have reason to believe that potentially non-compliant product might be entering Union's market in another

Member State, they shall transmit, without delay, all relevant information to the competent customs offices of other Member States.

Amendment 162

Proposal for a regulation

Article 26 – paragraph 7 – subparagraph 1 – introductory part

Text proposed by the Commission

By 31 March each year, Member States shall submit to the Commission statistical data covering controls performed by the authorities designated under paragraph 1 with respect to products subject to Union harmonisation legislation during the previous calendar year, including data covering:

Amendment

By 31 March each year, Member States shall submit to the Commission **detailed** statistical data covering controls performed by the authorities designated under paragraph 1 with respect to products subject to Union harmonisation legislation during the previous calendar year, including data covering:

Amendment 163

Proposal for a regulation

Article 26 – paragraph 7 – subparagraph 1 – point a

Text proposed by the Commission

(a) the number of interventions in the field of controls on such products, including product safety and compliance;

Amendment

(a) the number **and types** of interventions in the field of controls on such products, including product safety and compliance;

Amendment 164

Proposal for a regulation

Article 26 – paragraph 7 – subparagraph 1 – point d

Text proposed by the Commission

(d) the characteristics of any product found to be non-compliant.

Amendment

(d) the **types and** characteristics of any product found to be non-compliant.

Amendment 165

Proposal for a regulation

Article 26 – paragraph 7 – subparagraph 2

Text proposed by the Commission

The Commission shall draw up a report each year by 30 June, containing the information submitted by the Member States for the previous calendar year. The report shall be published in the system referred to in Article 34.

Amendment

The Commission shall draw up a report each year by 30 June, containing the information submitted by the Member States for the previous calendar year ***including an analysis of customs operations and enforcement procedures in force in the Member States***. The report shall be published in the system referred to in Article 34.

Amendment 166

Proposal for a regulation

Article 26 – paragraph 8

Text proposed by the Commission

8. Where the Commission becomes aware of a serious risk posed in a Member State by products subject to Union harmonisation legislation that are imported from a third country, it shall ***recommend to*** the Member State concerned ***that it takes*** appropriate market surveillance measures.

Amendment

8. Where the Commission becomes aware of a serious risk posed in a Member State by products subject to Union harmonisation legislation that are imported from a third country, it shall ***request*** the Member State concerned ***to take*** appropriate market surveillance measures.

Amendment 167

Proposal for a regulation

Article 26 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. In order to ensure a consistent enforcement of Union harmonisation legislation, to strengthen the controls on products entering the Union market and

to ensure an effective and uniform level of such controls, the Commission, taking duly into account the considerations of the Network established under Article 31, shall adopt delegated acts in accordance with Article 62a determining common objectives, benchmarks and techniques for checks on the basis of common risk analysis on the Union level.

Amendment 168

Proposal for a regulation

Article 27 – paragraph 1 – point d

Text proposed by the Commission

(d) the ***identity*** and contact details of a person ***responsible for compliance information*** with respect to the product is not indicated or identifiable in accordance with Article 4(5);

Amendment

(d) the ***name, registered trade name or registered trade mark and the contact details, including the postal address,*** and contact details of a ***reference*** person with respect to the product is not indicated or identifiable in accordance with Article 4(5);

Amendment 169

Proposal for a regulation

Article 27 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the product is a counterfeit and is subject to the procedures pursuant to Regulation (EU) 608/2013;

Amendment 170

Proposal for a regulation

Article 27 – paragraph 1 – point e

Text proposed by the Commission

(e) for any other reason, there **is cause** to believe that the product **will** not comply with the requirements set out in the Union harmonisation legislation applicable to it when it is placed on the market or that it **will pose a serious** risk.

Amendment

(e) for any other reason, **when** there **are reasonable grounds** to believe that the product **does** not comply with the requirements set out in the Union harmonisation legislation applicable to it when it is placed on the market or that it **poses a** risk.

Amendment 171

Proposal for a regulation
Article 27 – paragraph 3

Text proposed by the Commission

3. Where the market surveillance authorities have **reason** to believe that a product will not comply with the Union harmonisation legislation applicable to it or will pose a serious risk, they shall require the authorities designated under Article 26(1) to suspend the process for its release for free circulation.

Amendment

3. Where the market surveillance authorities have **reasonable grounds** to believe that a product will not comply with the Union harmonisation legislation applicable to it or will pose a serious risk, they shall require the authorities designated under Article 26(1) to suspend the process for its release for free circulation.

Amendment 172

Proposal for a regulation
Article 29 – paragraph 3

Text proposed by the Commission

3. Market surveillance authorities and the customs authorities shall exchange information on the status of the authorised economic operators and their record of compliance related to product safety.

Amendment

3. Market surveillance authorities and the customs authorities shall exchange information on the status of the authorised economic operators and their record of compliance related to **Union harmonisation legislation and** product safety. **The information exchanged shall also be communicated, where appropriate, to the European Anti-Fraud Office (OLAF).**

Amendment 173

Proposal for a regulation Article 29 – paragraph 4

Text proposed by the Commission

4. Where any non-compliance is identified in the course of controls described in the second subparagraph of paragraph 2, the market surveillance authorities shall suspend the favourable treatment provided for in paragraph 1 and the first subparagraph of paragraph 2 and shall enter details of the non-compliance in the system referred to in Article 34.

Amendment

4. Where any non-compliance is identified in the course of controls described in the second subparagraph of paragraph 2, the market surveillance authorities shall suspend the favourable treatment provided for in paragraph 1 and the first subparagraph of paragraph 2. ***They shall inform the relevant customs authorities about the identified non-compliance*** and shall enter details of the non-compliance in the system referred to in Article 34.

Amendment 174

Proposal for a regulation Article 31 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The purpose of the Network is to serve as a platform for structured cooperation between authorities of the Member States and the Commission and to streamline the practices of market surveillance within the Union making market surveillance activities more effective.

Amendment 175

Proposal for a regulation Article 32 – paragraph 1

Text proposed by the Commission

Amendment

1. The Network shall be composed of ***a Union Product Compliance Board ('EUPC Board')***, administrative

1. The Network shall be composed of ***one representative from each of the single liaison offices referred to in Article 11, two representatives from the Commission,***

coordination groups and a secretariat.

and their respective alternates,
administrative coordination groups and a
secretariat.

Amendment 176

Proposal for a regulation Article 32 – paragraph 2

Text proposed by the Commission

Amendment

2. The EUPC Board shall consist of one representative from each of the single liaison offices referred to in Article 11, and two representatives from the Commission, and their respective alternates.

deleted

Justification

The structure of the Union Product Compliance Network has been re-organised with the aim to ensure more dynamic interaction among different players of the Network. In order to strengthen the cooperation among market surveillance authorities and Commission, new common task and powers have been foreseen for the Network and the Commission.

Amendment 177

Proposal for a regulation Article 32 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall establish separate or joint administrative coordination groups for all the instruments of Union harmonisation legislation listed in the Annex to this Regulation. Each administrative coordination group shall be composed of representatives of the competent national market surveillance authorities and, if appropriate, representatives of the single liaison offices, and representatives of the relevant business associations and of consumer associations.

**3. The Commission shall establish separate or joint administrative coordination groups for all the instruments of Union harmonisation legislation listed in the Annex to this Regulation. Each administrative coordination group shall be composed of representatives of the competent national market surveillance authorities and, if appropriate, representatives of the single liaison offices, and representatives of the relevant business associations and of consumer associations.
*The Commission shall organise and***

attend the meetings of the administrative coordination groups as an observer.

Amendment 178

Proposal for a regulation

Article 32 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

In the meetings of the Network, the administrative coordination groups shall be represented on the basis of the particular knowledge and experience required in accordance with the subject matter in question.

Amendment 179

Proposal for a regulation

Article 32 – paragraph 4

Text proposed by the Commission

Amendment

4. The secretariat shall be composed of Commission staff.

4. The secretariat shall be composed of Commission staff. ***It shall organise the meetings of the Network and provide it with technical and logistical support.***

Amendment 180

Proposal for a regulation

Article 32 – paragraph 5

Text proposed by the Commission

Amendment

5. ***The Commission may attend the meetings of the administrative coordination groups.***

deleted

Amendment 181

Proposal for a regulation

Article 32 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Network shall meet at regular intervals and, where necessary, at the duly justified request of the Commission or a Member State.

Amendment 182

Proposal for a regulation

Article 32 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. The Network may establish standing or temporary sub-groups dealing with specific questions and tasks.

Amendment 183

Proposal for a regulation

Article 32 – paragraph 5 c (new)

Text proposed by the Commission

Amendment

5c. The Network shall use its best endeavours to reach decisions by consensus. If consensus cannot be reached, the Network shall adopt its position by a simple majority of its members.

Amendment 184

Proposal for a regulation

Article 32 – paragraph 5 d (new)

Text proposed by the Commission

Amendment

5d. The Network may invite experts

and other third parties, including the organisations representing the interests of industry, small and medium enterprises, consumers, laboratories and conformity assessment bodies at Union level, to attend meetings as observers or provide written contributions.

Amendment 185

Proposal for a regulation

Article 32 – paragraph 5 e (new)

Text proposed by the Commission

Amendment

5e. The meeting of the Network as well as the meetings of the administrative coordination groups shall be held in a transparent manner.

Amendment 186

Proposal for a regulation

Article 33 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. The Network shall have the following tasks:

(a) to adopt its biennial work programme, which, inter alia, defines the priorities for common market surveillance actions, including the common actions with regard to the online market surveillance, and priority areas or categories of products;

(b) to adopt rules of procedure for itself and for the functioning of the administrative coordination groups;

(c) to regularly review and discuss a general risk assessment methodology with a view to ensuring a uniformity of its application;

(d) to prepare sectorial guidelines for checks on the characteristic of products subject to this Regulation;

(e) to discuss the uniform conditions of checks, criteria for determination of the frequency of checks or amount of samples to be checked in relation to certain products, as referred to in Article 15(1), in accordance with the priorities laid down in paragraph -1(a), as well as the common objectives, benchmarks and techniques for checks with regard to control of products entering the Union market in accordance with Article 26(8a);

(f) to facilitate the exchange of information on non-compliant products, recent scientific developments and new technologies, emerging risks and other aspects relevant to control activities and on the implementation of market surveillance strategies and activities;

(g) to ensure the coordination and monitoring of the administrative coordination groups and their activities;

(h) to assist, by request of a Member State, in the drawing up and implementation of the memoranda of understanding referred to in Article 8;

(i) to facilitate an effective functioning of a peer evaluation system between market surveillance authorities and the Commission, as referred to in Article 12b, and to examine and monitor the results of those evaluations;

(j) to analyse disputes between market surveillance authorities on the application of this Regulation, examine any other question in this regard and adopt guidelines, recommendations and best practices in order to encourage consistent application and uniform interpretation of this Regulation, including by creating a common methodology for defining and setting penalties;

(k) to discuss how to ensure adequate ways of financing and recovery of costs of

market surveillance in the Union and to propose the financing of activities provided for in Article 36;

(l) to promote and facilitate collaboration with other relevant networks and groups, notably EU blockchain Observatory and Forum, with a view to explore possibilities on using new technologies, especially blockchain, for the purposes of market surveillance and traceability of products;

(m) to provide advice and assist the Commission with issues related to the further development of RAPEX and ICSMS.

Amendment 187

Proposal for a regulation

Article 33 – paragraph 1 – point a

Text proposed by the Commission

(a) to ***adopt and*** monitor the implementation of the work programme of the Network ***on the basis of a proposal from the Secretariat***;

Amendment

(a) to monitor the implementation of the work programme of the Network ***and to inform the Network about the conclusion of that monitoring***;

Amendment 188

Proposal for a regulation

Article 33 – paragraph 1 – point f

Text proposed by the Commission

(f) to organise cooperation and the effective exchange of information and best practices between market surveillance authorities;

Amendment

(f) to organise cooperation and the effective exchange of information and best practices between market surveillance authorities ***as well as with customs authorities***;

Amendment 189

Proposal for a regulation

Article 33 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) to facilitate the organisation of joint market surveillance and joint testing projects, including joint projects with regard to the products sold online;

Amendment 190

Proposal for a regulation

Article 33 – paragraph 1 – point f b (new)

Text proposed by the Commission

Amendment

(fb) to facilitate the organisation of common training programmes and exchanges of personnel between market surveillance authorities and, where appropriate, with the market surveillance authorities of third countries or with international organisations;

Amendment 191

Proposal for a regulation

Article 33 – paragraph 1 – point j

Text proposed by the Commission

Amendment

(j) to organise peer reviews, common training programmes and facilitate exchanges of personnel between market surveillance authorities and, where appropriate, with the market surveillance authorities of third countries or with international organisations;

deleted

Amendment 192

Proposal for a regulation

Article 33 – paragraph 1 – point m

Text proposed by the Commission

(m) to examine, on its own initiative or at the request of the EUPC Board, any question covering the application of this Regulation and issue guidelines, recommendations and best practices in order to encourage consistent application of this Regulation, including by setting standards for minimum penalties.

Amendment

deleted

Amendment 193

Proposal for a regulation

Article 33 – paragraph 1 – point m a (new)

Text proposed by the Commission

Amendment

(ma) to facilitate cooperation between market surveillance authorities, customs authorities and, where appropriate, with the market surveillance authorities of third countries or with international organisations on investigations linked to the compliance of products offered for sale online to end-users within the Union.

Amendment 194

Proposal for a regulation

Article 33 – paragraph 2

Text proposed by the Commission

Amendment

2. The EUPC Board shall have the following tasks:

deleted

(a) to define the priorities for common market surveillance actions;

(b) to ensure the coordination and monitoring of the administrative coordination groups and their activities;

(c) to assist in the drawing up and implementation of the memoranda of understanding referred to in Article 8;

(d) to adopt rules of procedure for itself and for the functioning of the administrative coordination groups.

Amendment 195

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

1. The Commission shall develop and maintain an information and communication system for the collection and storage of information, in a structured form, on issues relating to the enforcement of Union harmonisation legislation. The Commission, single liaison offices, and authorities designated in accordance with Article 26(1) shall have access to that system.

Amendment

1. The Commission shall develop and maintain an information and communication system for the collection, **processing** and storage of information, in a structured form, on issues relating to the enforcement of Union harmonisation legislation **with the aim of sharing this data among Member States and allow the Commission to monitor market surveillance activities.**

This system shall have a public interface with key information in all Union languages and inform end-users about market surveillance activities and their results.

The Commission, single liaison offices, **market surveillance authorities** and authorities designated in accordance with Article 26(1) shall have access to that system.

Amendment 196

Proposal for a regulation Article 34 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the national market surveillance strategy drawn up by their Member State pursuant to Article 13.

Amendment 197

Proposal for a regulation

Article 34 – paragraph 3 – point b

Text proposed by the Commission

(b) any partnership arrangements entered into by them under Article 7;

deleted

Amendment

Amendment 198

Proposal for a regulation

Article 34 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The information system shall allow file transmission between market surveillance authorities, and shall be the preferred instrument for requests for information referred to in Article 22.

Amendment 199

Proposal for a regulation

Article 35 – paragraph 1

Text proposed by the Commission

Amendment

1. The Commission may exchange confidential market surveillance related information with regulatory authorities of third countries or international organisations where it has concluded confidentiality arrangements based on reciprocity with those authorities or organisations.

1. In order to improve the efficiency of market surveillance in the Union, the Commission may exchange confidential market surveillance related information with regulatory authorities of third countries or international organisations where it has concluded confidentiality arrangements based on reciprocity with those authorities or organisations.

Amendment 200

Proposal for a regulation

Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall ensure that any exchange of information under paragraph 1 is in accordance with applicable Union legislation.

Amendment 201

Proposal for a regulation

Article 35 – paragraph 5 – introductory part

Text proposed by the Commission

Amendment

5. Approval may only be granted to a third country under paragraph 3 following **an audit** within **the** Union demonstrating that the following conditions are satisfied:

5. Approval may only be granted to a third country under paragraph 3 following **audits** within **relevant third country and** Union demonstrating that the following conditions are satisfied:

Amendment 202

Proposal for a regulation

Article 35 – paragraph 5 – point -a (new)

Text proposed by the Commission

Amendment

(-a) the third country possesses an efficient verification system of the compliance of the products exported to the Union;

Amendment 203

Proposal for a regulation

Article 35 – paragraph 9

Text proposed by the Commission

Amendment

9. The Commission shall withdraw an approval granted under paragraph 3 where it is revealed that the products entering the Union market do not comply with Union harmonisation legislation in a significant

9. The Commission **shall regularly monitor the correct functioning of the approval and** shall withdraw an approval granted under paragraph 3 where it is revealed that the products entering the

number of instances.

Union market do not comply with Union harmonisation legislation in a significant number of instances. ***The Commission shall immediately inform Member States and the affected third country.***

Amendment 204

Proposal for a regulation Article 38 – title

Text proposed by the Commission

Applicability of Regulation (EC) 765/2008 ***and amendments to Union harmonisation legislation***

Amendment

Amendments to Regulation (EC) 765/2008

Amendment 205

Proposal for a regulation Article 38 – paragraph 1

Text proposed by the Commission

Articles 15 to 29 of Regulation (EC) 765/2008 ***shall not apply to Union harmonisation legislation set out in the Annex.***

Amendment

Articles 15 to 29 of Regulation (EC) 765/2008 ***are deleted.***

Amendment 206

Proposal for a regulation Article 61 – paragraph 2 – point a

Text proposed by the Commission

(a) the financial situation of small and medium-sized enterprises;

Amendment

deleted

Amendment 207

Proposal for a regulation Article 61 – paragraph 2 – point b

Text proposed by the Commission

(b) the nature, gravity and duration of the non-compliance taking into account the harm caused to end-users;

Amendment

(b) the nature, gravity and duration of the non-compliance taking into account the harm caused to end-users **or to public interests protected by the relevant Union harmonisation legislation;**

Amendment 208

Proposal for a regulation

Article 61 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the financial situation of small and medium-sized enterprises.

Amendment 209

Proposal for a regulation

Article 61 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall ensure, **in particular**, that penalties can be imposed where the economic operator fails or refuses to cooperate during market surveillance controls and activities.

5. **Member States shall have the possibility not to apply any penalties in cases of minor formal infringements and where the non-compliance is corrected by the economic operator in a timely manner. However,** Member States shall ensure that penalties can be imposed where the economic operator fails or refuses to cooperate during market surveillance controls and activities.

Amendment 210

Proposal for a regulation

Article 61 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall ensure, that

financial penalties imposed for infringements of Union harmonisation legislation are used for financing further market surveillance activities.

Amendment 211

Proposal for a regulation Article 62 – paragraph 1

Text proposed by the Commission

By [31 December 2024] and every five years thereafter, the Commission **shall** shall carry out an evaluation of this Regulation against the objectives it pursues and present a report on the main findings to the European Parliament, to the Council and to the European Economic and Social Committee..

Amendment

By [31 December 2024] and every five years thereafter, the Commission shall carry out an evaluation of this Regulation against the objectives it pursues and present a report on the main findings to the European Parliament, to the Council and to the European Economic and Social Committee.

Amendment 212

Proposal for a regulation Article 62 – paragraph 2

Text proposed by the Commission

The report shall assess whether this Regulation achieved its objectives, in particular with regard to reducing the number of non-compliant products on the Union market, ensuring effective and efficient enforcement of Union harmonisation legislation within the Union, improving cooperation between competent authorities and strengthening the controls on products entering the Union market, whilst taking into account the impact on business and in particular on small and medium-sized enterprises. **In addition**, the evaluation should also assess the effectiveness of the market surveillance activities that receive Union financing in the light of the requirements of Union policies and legislation.

Amendment

The report shall assess whether this Regulation achieved its objectives, in particular with regard to reducing the number of non-compliant products on the Union market, ensuring effective and efficient enforcement of Union harmonisation legislation within the Union, improving cooperation between competent authorities and strengthening the controls on products entering the Union market, whilst taking into account the impact on business and in particular on small and medium-sized enterprises.

The evaluation shall be carried out, in particular, with a view to assessing the scope of this Regulation, as well as the effectiveness of the provisions of this Regulation with regard to Internet of Things and Artificial Intelligence enabled devices and in light of technological, economic and legal developments.

The evaluation should also assess the effectiveness of the market surveillance activities that receive Union financing in the light of the requirements of Union policies and legislation ***as well as explore and propose new market-based solutions that could effectively complement the market surveillance actions.***

Amendment 213
Proposal for a regulation
Article 62 a (new)

Text proposed by the Commission

Amendment

Article 62a

Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
- 2. The power to adopt delegated acts referred to in Articles 12b(6), 15(1b) and 26(8a) shall be conferred on the Commission for a period of five years from ... [date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***
- 3. The delegation of power referred to in***

Articles 12b(6), 15(1b) and 26(8a) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 12b(6), 15(1b) and 26(8a) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

EXPLANATORY STATEMENT

Free movement of goods is the most developed of all the four fundamental freedoms. This pillar rests on the consumers' trust: European consumers must be able to trust that the products they buy are safe and compliant, irrespective who the manufacturer is, in which Member State they may buy it, and by which means (traditional or online sale).

Many recent scandals such as the “dieselgate” show that unsafe and non-compliant products are still a reality in the EU market, highlighting the need of a more effective and coordinated market surveillance in the Union. The presence on the market of products that do not comply with Union harmonisation legislation undermines consumers' trust in the quality, the safety, the security and the environmental friendliness of the products present in the market, jeopardising the well-functioning of the single market. This endangers consumers and other public interests and puts businesses which comply with the rules at a competitive disadvantage.

Growing imports to the EU, the increasing complexity of the value chains, the increased number of products circulating within the single market, and the increase of e-commerce activities, as well as the new technologies pose new challenges for Member States' market surveillance authorities and for the EU institutions. There is a clear evidence that only proper, effective and coordinated market surveillance in the EU could respond to these challenges and ensure that only safe and compliant products are reaching the final consumers.

Overall, the Rapporteur very much welcomes the new “Goods Package” presented by the Commission and more specifically the proposal laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation.

Being that the 2013 “Product safety and Market surveillance Package” is unfortunately still blocked in the Council, it becomes more and more urgent for the European Union to count on an effective and updated legislative framework on market surveillance and the respect of compliance of products in the single market.

In this perspective, the draft report proposed by the Rapporteur supports and strengthens the main provisions of the Commission's proposal and tries to clarify a number of issues.

The Rapporteur's main goal is to introduce a more harmonised European approach on market surveillance and ensure a higher level of cooperation among national market surveillance authorities and other relevant authorities.

1. Ensuring compliant products and a level playing field among economic operators

The Rapporteur strongly believes that the strengthening of market surveillance will be essential to ensure that only compliant and safe products are available in the EU market, contributing to the improvement of its functioning. This should be the aim of this Regulation.

The Rapporteur recognizes that an effective market surveillance as established in this Regulation could be essential to safeguard public interests such as health and safety but also, health and safety in the workplace, the protection of consumers, the protection of environment and the public security.

In the Rapporteur's view, it is also of utmost importance to ensure fair competition and a level playing field among economic operators. Aside from putting a considerable effort into ensuring that they comply with Union requirements, honest market players collectively suffer the damage from the manufacturing or import of non-compliant or unsafe goods. Weak

market surveillance fail to protect honest companies and threaten to destroy jobs. Market surveillance authorities should thus make sure that non-compliant as well as unsafe products are identified and kept or taken off the market. This is in the interest of consumers as well as trustworthy manufacturers, importers and distributors.

2. Introducing a harmonised European approach to market surveillance

- **Reinforcing the cooperation between Member States' surveillance authorities**

The Regulation provides for a set of powers for market surveillance authorities, defined with the view to ensure effective enforcement of Union harmonising legislation on products is enforced effectively across borders. The Rapporteur welcomes the enforcement of the market surveillance authorities' powers, but insists on the fact that these measures should be used in a proportionate manner and with a risk-based approach.

One of the key focus points of the Rapporteur is to guarantee that the same rules are applied in the same manner by the different market surveillance authorities in the different Member States.

In order to do so, the Rapporteur proposes a harmonisation of the methodology and criteria for assessing risks and a harmonisation of the checks in order to ensure a level playing field for all economic operators and a fair competition in the market.

The harmonised approach to market surveillance goes hand in hand with the introduction of an effective peer-to-peer evaluation of market surveillance authorities, in order to ensure that the relevant rules are implemented and enforced rigorously and homogeneously across the EU.

- **Adding a European dimension to the Union Product Compliance Network (EUPC)**

The Rapporteur welcomes the establishment of a Union Product Compliance Network, aiming at fostering better cooperation between market surveillance authorities, the European institutions and the economic operators. However, the Rapporteur believes that the different players of the Network as defined by the Commission do not interact sufficiently one with each other. Therefore, the Rapporteur wishes to add a true European dimension to the Network and strengthen its role, by among others giving it the power to jointly define priorities for common market surveillance actions, to set up uniform conditions of checks in relation to certain products, and to facilitate the exchange of information on non-compliant products.

3. Reinforcing the measures to fight non-compliance

- **Person responsible for compliance**

The Commission introduces the idea of a person responsible for compliance information as a necessary condition for making the products available on the market. The main objectives are to enforce Union harmonisation legislation on products by ensuring good contacts between manufacturers or their designated representatives and the market surveillance authorities, and to create fair trading conditions on the Union market.

The Rapporteur strongly supports this idea and proposes an extension of duties of the person responsible for compliance information to the compliance itself. In this sense, a product may be available on the market only if there is a person responsible for compliance with respect to this product. The Rapporteur extends the responsibilities of the person responsible for

compliance, making him/her responsible for contacting the manufacturer in case of non-compliance. At his/her own initiative or at the request of the market surveillance authority, the person responsible for the compliance will have to take actions in order to remedy the non-compliance detected.

- **Conformity database**

The Rapporteur introduces also a new idea of an online “conformity database” containing the contact details of the person responsible for compliance and the EU declaration of conformity of manufacturers. This database will be fed by manufactures and other economic operators, and will be accessible for market surveillance authorities and the general public in the European Union free of charge. The advantages of such a database are twofold: economic operators can upload the declaration of conformity and other relevant information into one dedicated database, and authorities and the general public will have access to see this information in one place, instead of searching through different sources and websites of economic operators.

- **Compliance partnership agreements and memoranda of understanding**

The Commission sets up the possibility for a market surveillance authority to enter into partnership agreement with an economic operator established in its territory. The Rapporteur is against harmonised provisions on compliance partnership agreements. In the Rapporteur’s view, these partnership agreements can go against the requirement of public authorities’ independence. The tasks of economic operators being mixed, there is an evident risk of conflict of interests when a market surveillance authority needs to check a product of a company for which it previously provided advice. Furthermore, entering into a compliance partnership agreement will distract market surveillance authorities from their main task, which is to ensure that only compliant products are placed on the market. For the same reasons, also the provisions on the memoranda of understanding foreseen in article 8 of the Commission’s proposal have been redrafted.

4. Addressing new challenges: e-commerce and the Internet of Things

The increase of e-commerce activities poses certain challenges to the protection of health and safety of consumers and other end-users from dangerous non-food products and non-compliant products. Market surveillance authorities are facing numerous difficulties such as tracing products offered for sale online, identifying the responsible economic operators, or conducting risk-assessments or safety tests due to the lack of physical access to the products. The Commission failed to address this issue in its proposal. Based on the Commission’s guidelines on e-commerce, the Rapporteur suggests that each Member State provide for the effective organisation of market surveillance activities with regard to the products sold online and ensure there is an appropriate number of inspectors dealing with products sold online within their national market surveillance authorities.

Furthermore, the Commission didn’t took into account the proliferation of Internet of Things (IoT) and the increasing number of connected devices. In the Rapporteur’s view, the EU regulatory framework should address the current security threats of IoT devices which can be hacked and therefore create new risks from a distance. Therefore, it is the perspective of the Rapporteur that it is of utmost importance to assess the new risks for consumers related to products that can connect to the Internet.

ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPOREUR HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
ALIBABA
AMAZON
AMFORI
ANEC
ANIMA
APPLE
ASSOGIOCATTOI
BEUC
BIC
BUSINESSEUROPE
CECE
CECED
CONFCOMMERCE
CONFINDUSTRIA
DIE DEUTSCHE BAUINDUSTRIE
DIGITAL EUROPE
E-BAY
EGMF - European Garden Machinery Industry Federation
ELECTRICAL SAFETY FIRST
EMOTA
EUROCOMMERCE
FEDERATION FRANCAISE DU COMMERCE ET DISTRIBUTION
FEDERUNACOMA
FESI – Federation of the European Sporting Goods Industry
GERMAN RETAIL FEDERATION – HDE
IBM
INDICAM
INDUSTRIALL
LIDL STIFTUNG
LVMH
MARKENVERBAND – GERMAN BRANDS ASSOCIATION
ORGALIME
PROSAFE
RINA Consulting
SCHNEIDER ELECTRIC
TIE - TOY INDUSTRIES OF EUROPE
UNIFAB - Union des fabricants
VDMA

EUROPEAN COMMISSION
AUSTRIAN PERMANENT REPRESENTATION TO THE EU
GERMAN PERMANENT REPRESENTATION TO THE EU
DANISH PERMANENT REPRESENTATION TO THE EU
FRENCH PERMANENT REPRESENTATION TO THE EU
ITALIAN CUSTOMS AGENCY
ITALIAN MINISTRY OF THE ECONOMIC DEVELOPMENT
ITALIAN PERMANENT REPRESENTATION TO THE EU
ROMANIAN PERMANENT REPRESENTATION TO THE EU
SWEDISH PERMANENT REPRESENTATION TO THE EU

12.7.2018

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on the Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council
(COM(2017)0795 – C8-0004/2018 – 2017/0353(COD))

Rapporteur for opinion: Miroslav Mikolášik

SHORT JUSTIFICATION

Consumer safety and environmental protection are the cornerstones of the single market for goods, which is one of Europe's greatest achievements designed to allow free movement.

Across the EU, there are common safety and environmental rules to protect the citizens against safety hazards, pollution and environmental damage. Nevertheless, there are still too many products sold on the EU market that do not meet these rules foreseen in EU legislation. The existence of non-compliant products exposes consumers to potentially dangerous products, puts the environment at risk and distorts competition.

The proposal for the Regulation is a part of a "goods package" that addresses certain weaknesses for a better functioning single market for goods. The Rapporteur welcomes the proposal for the Regulation which aims to strengthen compliance and enforcement of Union harmonisation legislation on products. Nevertheless, the Rapporteur notes the limited scope of the Regulation, which applies only to the harmonised products that are listed in the Annex. In relation to the legislation in the Annex, a 'lex generalis provision' is designed to avoid any possible risk of overlapping or contradictory provisions with "lex specialis provisions" with the same objective, nature or effect in other existing or future rules of Union harmonisation legislation.

The Rapporteur recognises that enforcement of Union harmonisation legislation is the responsibility of Member States that are constrained by jurisdictional boundaries. Therefore, coordination of activities is necessary to ensure consistent enforcement across the EU and efficiently tackle non-compliance.

Compliance with EU legislation is considered the best way of making sure products are safe. For example, EU legislation in areas like toys and chemicals is among the strictest in the world. However, large amounts of unsafe and non-compliant product are sold in the EU every day. According to the RAPEX annual report 2017 the most dangerous product categories within the EU are: toys (29%), motor vehicles (20%), clothing, textiles and fashion items (12%), and the risk most often notified was injury (28%), followed by chemical risk (22%).

To improve the current state of play, more cooperation between the authorities and the economic operators is needed. This goes hand in hand with consistency in market surveillance practices across the EU and at its external borders in order to ensure the same high level of compliance everywhere. In this context, the Rapporteur welcomes obligations for mutual assistance and legal presumption that products found to be non-compliant in one Member State are non-compliant throughout the EU.

The Rapporteur agrees that the proposal should improve enforcement cooperation and compliance without imposing a disproportionate or excessive burden on Member States' authorities and economic operators. Therefore, the proposal should not go beyond what is necessary to attain its objectives. The Rapporteur reminds that the objective possibilities of SMEs need to be kept in mind.

To ensure the reliability and consistency of testing across the Union in the market surveillance framework, the Commission proposes to designate Union testing facilities. Laboratories designated as Union testing facilities should possess the expertise, equipment, infrastructure and staff to carry out tasks to the highest standards. Therefore, the Rapporteur advises that they should also act as knowledge centres on risks and emerging risks (for example in relation to harmful chemicals.) The Rapporteur wishes to ensure that a notified body or any other conformity assessment body have the possibility of becoming a Union testing facility provided they satisfy prescribed conditions.

The Rapporteur welcomes that the Regulation establishes a Union Product Compliance Network aimed at coordinating and facilitating the implementation of joint enforcement activities by Member States. In addition, the Rapporteur suggests setting up a Pan-European harmonised database for the collection of accident and injury data to ensure consistency in monitoring across the EU and to serve as a tool for development of new health and safety legislation and standards and improvement of enforcement.

The Rapporteur particularly welcomes that the Regulation provides for a strengthened framework for controls on products entering the Union market (almost 30% of goods in EU), because once the products enter, they can circulate freely across the Union. At the same time, the Rapporteur highlights the importance that the requirements related to the environmental, health and safety protection apply to products entering the Union market and only safe and compliant products enter the Single market. In order to ensure that unsafe or non-compliant products are not placed on the Union market, the Customs authorities shall carry out adequate checks before they are released for free circulation. According to the Rapporteur, the practice of choosing points of entry by the third country exporters where controls are less systematic

or stringent, needs to be duly addressed and gaps in the performance of customs authorities strengthened.

Overall, the rapporteur focuses in his proposed amendments on strengthening the health, safety and environment protection and believes that Regulation on Compliance and Enforcement will help to create a fairer internal market for goods.

AMENDMENTS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) In order to guarantee the free movement of products within the Union, it is necessary to ensure that products fulfil requirements providing a high level of protection of public interests such as health and safety in general, health and safety in the workplace, protection of consumers, protection of the environment and public security. Robust enforcement of these requirements is essential to the proper protection of these interests and to create the conditions in which fair competition in the Union market for goods can thrive. Rules are therefore necessary to ensure this enforcement throughout the internal market, including on products entering the Union from third countries.

Amendment

(1) In order to guarantee the free movement of products within the Union, it is necessary to ensure that products fulfil requirements providing a high level of protection of public interests such as health and safety in general, health and safety in the workplace, protection of consumers, protection of the environment and public security. Robust enforcement of these requirements is essential to the proper protection of these interests and to create the conditions in which fair competition in the Union market for goods can thrive. Rules are therefore necessary to ensure this enforcement throughout the internal market, including on products entering the Union from third countries. ***In order to facilitate compliance by economic actors with Union law and to empower market surveillance authorities in their enforcement operations, those requirements should strike the right balance between simplicity, and effectiveness. The requirements of this Regulation and their application are***

designed so as to prioritise surveillance of those products which might pose a serious risk.

Amendment 2

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) This Regulation should cover products that are subject to the Union harmonisation legislation listed in the Annex. The legislation listed in the Annex should cover all Union harmonisation legislation concerning manufactured products other than food, feed, medicinal products for human and veterinary use, living plants and animals, products of human origin and products of plants and animals relating directly to their future reproduction. This will ensure a uniform framework for market surveillance of those products at Union level. Several instruments of Union harmonisation legislation on products need to be amended in consequence, in particular to remove references to certain provisions of Regulation (EC) No 765/2008. If new Union harmonisation legislation is adopted in the future, it will be for that legislation to provide whether this Regulation is also to apply to that legislation.

Amendment

(5) This Regulation should cover products that are subject to **Directive 2001/95/EC or** the Union harmonisation legislation listed in the Annex. The legislation listed in the Annex should cover all Union harmonisation legislation concerning manufactured products other than food, feed, medicinal products for human and veterinary use, living plants and animals, products of human origin and products of plants and animals relating directly to their future reproduction. This will ensure a uniform framework for market surveillance of those products at Union level. Several instruments of Union harmonisation legislation on products need to be amended in consequence, in particular to remove references to certain provisions of Regulation (EC) No 765/2008. If new Union harmonisation legislation is adopted in the future, it will be for that legislation to provide whether this Regulation is also to apply to that legislation.

Justification

It is essential for effective consumer protection that the Directive is included in the legislation. A number of products under the Directive are particularly important to the general public, such as toys, and should be protected.

Amendment 3

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) Safety of consumers largely depends on the active enforcement of Union **harmonisation** legislation on products providing for safety requirements. It is therefore necessary to strengthen enforcement measures. These measures should be continuously improved and increasingly effective with a view to meeting the current challenges of a global market and an increasingly complex supply chain.

Amendment

(7) Safety of consumers largely depends on the active enforcement of Union legislation on products providing for safety requirements. It is therefore necessary to strengthen enforcement measures, ***including with regard to the products that are offered for sale online to end-users within the Union.*** These measures should be continuously improved and increasingly effective with a view to meeting the current challenges of a global market and an increasingly complex supply chain.

Amendment 4

**Proposal for a regulation
Recital 7 a (new)**

Text proposed by the Commission

Amendment

(7a) Special attention should be given to the Internet of Things and the increasing number of Artificial Intelligence enabled devices, taking into account that consumers are increasingly using connected devices in their daily lives without knowing the security threats that those devices can represent and the remote risks that exist. The Union regulatory framework should therefore address those issues to ensure a better protection of consumers.

Amendment 5

**Proposal for a regulation
Recital 9**

Text proposed by the Commission

Amendment

(9) Responsibility for enforcing Union harmonisation legislation should lie with the Member States, whose market surveillance authorities should be required

(9) Responsibility for enforcing Union harmonisation legislation should lie with the Member States, whose market surveillance authorities should be required

to ensure that the legislation is fully complied with. The Member States should, therefore, establish systematic approaches to ensure effectiveness of market surveillance and other enforcement activities.

Amendment 6

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) A fairer single market should ensure equal conditions for competition to all economic operators and protection against unfair competition. To this purpose, strengthened enforcement of Union harmonisation legislation on products is necessary. Good cooperation between manufacturers and the market surveillance authorities is a key element allowing immediate intervention and corrective action in relation to the product. It is important that there should be a contact person established in the Union so that market surveillance authorities have someone to whom questions can be addressed regarding a product's compliance with Union harmonisation legislation. The person responsible for providing such compliance information should be the manufacturer, or the importer, or **another person** designated by the manufacturer **for this purpose, for example another economic operator**. The role of a person responsible for compliance information established in the Union is essential for providing market surveillance authorities with an interlocutor established in the Union, and for performing specific tasks in a timely manner to ensure that the products comply with the requirements of Union harmonisation legislation, for the

to ensure that the legislation is fully complied with. The Member States should, therefore, establish systematic approaches to ensure effectiveness of market surveillance and other enforcement activities, **subject to the monitoring, by the Commission, of the proper enforcement of Union harmonisation legislation.**

Amendment

(14) A fairer single market should ensure equal conditions for competition to all economic operators and protection against unfair competition. To this purpose, strengthened enforcement of Union harmonisation legislation on products is necessary. Good cooperation between manufacturers, **distributors, wholesalers, retailers** and the market surveillance authorities is a key element allowing immediate intervention and corrective action in relation to the product. It is important that there should be a contact person established in the Union so that market surveillance authorities have someone to whom questions can be addressed regarding a product's compliance with Union harmonisation legislation. The person responsible for providing such compliance information should be the manufacturer or **its authorised representative** designated for this purpose. **When the manufacturer is not established in the Union and it has no authorised representative, the person responsible for providing such compliance information should be the importer or the distributor.** The role of a person responsible for compliance information established in the Union is essential for providing market surveillance

benefit of consumers, workers and businesses within the Union. The provisions in this Regulation requiring there to be a person established in the Union responsible for compliance information should not apply where specific requirements set out in certain legal instruments on products achieve the same result in effect, namely Article 4 of Regulation (EC) No 1223/2009, Article 15 of Regulation (EU) 2017/745 and Article 15 of Regulation 2017/746.

authorities with an interlocutor established in the Union, and for performing specific tasks in a timely manner to ensure that the products comply with the requirements of Union harmonisation legislation, for the benefit of consumers, workers and businesses within the Union. The provisions in this Regulation requiring there to be a person established in the Union responsible for compliance information should not apply where specific requirements set out in certain legal instruments on products achieve the same result in effect, namely Article 4 of Regulation (EC) No 1223/2009, Article 15 of Regulation (EU) 2017/745 and Article 15 of Regulation 2017/746.

Amendment 7

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) Market surveillance activities should be thorough and effective, to ensure that Union harmonisation legislation on products is applied correctly. Given that controls may represent a burden for economic operators, market surveillance authorities should organise and conduct inspection activities, taking **their** interests into account and limiting the said burden to what is necessary for the performance of efficient and effective controls. Furthermore, market surveillance activities should be performed with the same level of care by the competent authorities of the Member State irrespective of whether non-compliance of the given product is relevant on the territory of that Member State or is likely to have an impact on the market of another Member State.

Amendment

(18) Market surveillance activities should be thorough and effective, to ensure that Union harmonisation legislation on products is applied correctly. Given that controls may represent a burden for economic operators, market surveillance authorities should organise and conduct inspection activities taking **the** interests **of those operators** into account, and limiting the said burden to what is necessary for the performance of efficient and effective controls. Furthermore, market surveillance activities should be performed with the same level of care by the competent authorities of the Member State irrespective of whether non-compliance of the given product is relevant on the territory of that Member State or is likely to have an impact on the market of another Member State. **Uniform conditions for inspection activities carried out by the market surveillance authorities when a**

product presents a known or emerging risk should be laid down.

Amendment 8

Proposal for a regulation Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) Market surveillance authorities should be able to advise on packaging and order that changes be made where they find situations in conflict with Union legislation.

Amendment 9

Proposal for a regulation Recital 33

Text proposed by the Commission

Amendment

(33) To ensure the reliability and consistency of testing across the Union in the market surveillance framework, the Commission should designate Union testing facilities. Furthermore, a more comprehensive information system should be developed for sharing test results within the Union in order to avoid unnecessary duplication and to ensure greater consistency at Union level.

(33) To ensure the reliability and consistency of testing across the Union in the market surveillance framework, the Commission should designate Union testing facilities. **The market surveillance authorities should take full account of the results of tests carried out by those Union testing facilities.** Furthermore, a more comprehensive information system should be developed for sharing test results within the Union in order to avoid unnecessary duplication and to ensure greater consistency at Union level. **Union testing facilities should act as knowledge centres in respect of known and emerging risks and also assist the Union and Member States to develop common state of the art testing methodologies.**

Amendment 10

Proposal for a regulation Recital 35

Text proposed by the Commission

(35) Member States should be required to ensure that adequate financial resources are always available in order to staff and equip the market surveillance authorities appropriately. An efficient market surveillance activity is demanding in terms of resources, and stable resources should be provided, at a level appropriate to the enforcement needs at any given moment. Public financing should therefore be supplemented by the collection of fees to cover the costs incurred when performing market surveillance activities in relation to products that were found to be non-compliant, and taking due account of the economic operator's compliance record.

Amendment

(35) Member States should be required to ensure that adequate financial resources are always available in order to staff and equip the market surveillance authorities appropriately. An efficient market surveillance activity is demanding in terms of resources, and stable resources should be provided, at a level appropriate to the enforcement needs at any given moment. ***Administrative and automated checks cannot serve as a substitute to physical checks which guarantee the substantial compliance of a product with the relevant Union legislation.*** Public financing should therefore be supplemented by the collection of fees to cover the costs incurred when performing market surveillance activities in relation to products that were found to be non-compliant, and taking due account of the economic operator's compliance record.

Amendment 11

**Proposal for a regulation
Recital 36 a (new)**

Text proposed by the Commission

Amendment

(36a) The level of penalties applicable to infringements of those provisions of this Regulation that impose obligations on economic operators and to infringements of provisions of any Union and Member States' legislation on products that impose obligations on economic operators should be stepped up in order to efficiently deter the placement of non-compliant products on the market.

Amendment 12

**Proposal for a regulation
Recital 38 a (new)**

Text proposed by the Commission

Amendment

(38a) The Commission should monitor the performance of customs authorities and address gaps in performance which might lead to weakening of the level playing field for compliant Union producers vis-à-vis third country producers exporting to the Union. The Commission should also address the practice of third country exporters of choosing points of entry to the Union where controls are less stringent or systematic.

Amendment 13

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

This Regulation **lays down rules and** procedures **for the provision of compliance information about certain** products that are **the subject of** Union **acts harmonising the conditions for the marketing of those** products. It establishes a framework for cooperation with economic operators in relation to such products.

Amendment

This Regulation **aims to protect the health, safety and security of European consumers, as well as the environment, and provides** procedures **to ensure that only safe and compliant products shall be made available to European consumers.**

Amendment 14

Proposal for a regulation Article 2 – paragraph 1

Text proposed by the Commission

1. This Regulation applies to all products that are subject to the Union harmonisation legislation set out in the Annex to this Regulation ('Union harmonisation legislation').

Amendment

1. This Regulation applies to all products that are subject to **Directive 2001/95/EC or** the Union harmonisation legislation set out in the Annex to this Regulation ('Union harmonisation legislation').

Amendment 15

Proposal for a regulation

Article 2 – paragraph 3

Text proposed by the Commission

3. The application of this Regulation shall not prevent market surveillance authorities from taking more specific measures as provided for in Directive 2001/95/EC.

Amendment

3. The application of this Regulation shall not prevent market surveillance authorities from taking more specific measures as provided for in Directive 2001/95/EC. **Market surveillance authorities are to always act on the basis of the precautionary principle, in particular when it comes to health and the environment.**

Amendment 16

Proposal for a regulation

Article 3 – paragraph 1 – point 3

Text proposed by the Commission

(3) ‘market surveillance’ means the activities carried out and measures taken by market surveillance authorities to ensure that products comply with the requirements under Union **harmonisation** legislation and do not endanger health, safety or any other aspect of public interest protection;

Amendment

(3) ‘market surveillance’ means the activities carried out and measures taken by market surveillance authorities to ensure that products comply with the requirements under Union legislation and do not endanger health **and safety in general, health and safety in the workplace, the protection of consumers, public** safety or any other aspect of public interest protection;

Amendment 17

Proposal for a regulation

Article 3 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

Amendment

(7a) ‘formal non-compliance’ means any administrative non-compliance that does not lead to a breach of the essential requirements, including, but not limited to, the instances of non-compliance

referred to in Article R34 of Annex I to Decision No 768/2008/EC the European Parliament and of the Council^{1a};

^{1a} Decision No 768/2008/EC of the European Parliament and of the Council on a common framework for the marketing of products and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82).

Amendment 18

Proposal for a regulation

Article 3 – paragraph 1 – point 15

Text proposed by the Commission

(15) ‘serious risk’ means any ***serious risk, including a serious risk where the effects are not immediate***, requiring rapid intervention by the ***market surveillance authorities***;

Amendment

(15) ‘serious risk’ means any ***risk*** requiring rapid intervention ***and follow-up, including cases where the effects may not be immediate***; any product that does not meet an essential requirement defined in Union harmonisation legislation, or any product that does not meet the general product safety criteria on the basis of Directive 2001/95/EC shall be considered as presenting a serious risk;

Amendment 19

Proposal for a regulation

Article 3 – paragraph 1 – point 22 a (new)

Text proposed by the Commission

Amendment

(22a) ‘voluntary measures’ means measures whereby the operator has voluntarily undertaken to eliminate the non-compliance on the basis of the market surveillance authority’s findings or on the basis of its own findings;

Amendment 20

Proposal for a regulation

Article 3 – paragraph 1 – point 22 b (new)

Text proposed by the Commission

Amendment

(22b) “reasoned request” means a request from a market surveillance authority based on a suspected non-compliance;

Amendment 21

Proposal for a regulation

Article 3 – paragraph 1 – point 22 c (new)

Text proposed by the Commission

Amendment

(22c) ‘distinct models’ means all products with different characteristics, even when those differences are minor or even non-existent.

Amendment 22

Proposal for a regulation

Article 4 – paragraph 1 – point a – introductory part

Text proposed by the Commission

Amendment

(a) the manufacturer is established in the Union or there is at least one of the following in place with respect to the product:

(a) the manufacturer, **or its authorised representative**, is established in the Union or there is at least one of the following in place with respect to the product:

Amendment 23

Proposal for a regulation

Article 4 – paragraph 1 – point a – point i

Text proposed by the Commission

Amendment

(i) an importer;

(i) an importer, **when the manufacturer is not established in the Union and there is no authorised representative**;

Amendment 24

Proposal for a regulation

Article 4 – paragraph 1 – point a – point i a (new)

Text proposed by the Commission

Amendment

(ia) **a distributor;**

Amendment 25

Proposal for a regulation

Article 4 – paragraph 1 – point a – point ii

Text proposed by the Commission

Amendment

(ii) a natural or legal person established in the Union who has a written mandate from the manufacturer designating him as a person responsible for performing the tasks listed in paragraph 3 **and requiring him to perform those tasks** on the manufacturer's behalf;

(ii) **in cases where there is no manufacturer or importer established in the Union**, a natural or legal person established in the Union who has a written mandate from the manufacturer designating him as a person responsible for **ensuring compliance and** performing the tasks listed in paragraph 3 on the manufacturer's behalf;

Amendment 26

Proposal for a regulation

Article 4 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the identity and contact details of the manufacturer, importer or other person meeting the requirements of point (a) are publicly available in accordance with paragraph 4 and are indicated or identifiable in accordance with paragraph 5.

(b) the identity and contact details of the manufacturer, importer, **distributor** or other person meeting the requirements of point (a) are publicly available in accordance with paragraph 4 and are indicated or identifiable in accordance with paragraph 5.

Amendment 27

Proposal for a regulation

Article 4 – paragraph 3 – point b

Text proposed by the Commission

(b) further to a reasoned request from a market surveillance authority, providing that authority with all the information and documentation necessary to demonstrate the conformity of the product in an official Union language determined by the Member State concerned;

Amendment

(b) further to a reasoned request from a market surveillance authority, providing that authority with all the information and documentation necessary to demonstrate the conformity of the product in an official Union language determined by the Member State concerned **and to demonstrate the existence of different essential characteristics between its distinct models as defined in point 22c of Article 3;**

Amendment 28

Proposal for a regulation

Article 4 – paragraph 3 – point c

Text proposed by the Commission

(c) cooperating with the market surveillance authorities, **at** their request, **on any action taken** to eliminate or, if that is not possible, mitigate the risks posed by **the** product.

Amendment

(c) cooperating with the market surveillance authorities, **and taking immediate** action - **on their own initiative or at the request of those authorities** - to eliminate, or, if that is not possible, mitigate the risks posed by **a** product **or remedying its non-compliance with the requirements set out in Union harmonisation legislation or in Directive 2001/95/EC;**

Amendment 29

Proposal for a regulation

Article 4 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) when considering or having reason to believe that a product in question presents a risk or is not in conformity with the applicable Union harmonisation legislation or harmonised standard, immediately inform the manufacturer and, where applicable,

other economic operators.

Amendment 30

Proposal for a regulation Article 4 – paragraph 4

Text proposed by the Commission

4. Manufacturers shall make the identity and contact details of the person responsible for compliance information with respect to the product publicly available either on their website or, in the absence of a website, by any other means that allows the information to be readily accessed by the general public in the Union free of charge.

deleted

Amendment

Amendment 31

Proposal for a regulation Article 4 – paragraph 5

Text proposed by the Commission

5. The identity and contact details of the person responsible for compliance information with respect to the product shall be indicated on or identifiable from information indicated on the product, its packaging, the parcel or an accompanying document.

Amendment

5. The identity and *contact details of the manufacturer and the* contact details of the person responsible for compliance information with respect to the product shall be indicated on or identifiable from information indicated on the product, its packaging, the parcel or an accompanying document.

Justification

A product can only be placed on the market if it is compliant and safe for consumers and the environment. This is the primary responsibility of the manufacturer.

Amendment 32

Proposal for a regulation Article 4 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The manufacturer, importer and any other person meeting the requirements of point (a) of paragraph 1 of this Article, shall make available to the public and to other economic operators, by any appropriate means, lists of their product models, accompanied by a picture, in particular for products that are or have been the subject of a decision by the Commission under Article 13 of Directive 2001/95/CE and for products that are the subject of widespread distribution.

Amendment 33

Proposal for a regulation Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Obligations of distributors

1. Before making a product available on the market, distributors shall take all reasonable steps to ensure that the manufacturer and the importer have complied with the requirements set out in the applicable harmonisation legislation, harmonised standards or the Directive 2001/95/EC.

2. Further to a reasoned request from a market surveillance authority, the person responsible for compliance information shall provide that authority with all the information and documentation necessary to demonstrate the conformity of the product in an official Union language determined by the Member State concerned, and to demonstrate the existence of different essential characteristics between its distinct models as defined in point 22c of Article 3.

Justification

Retailers are consistently allowing the sale and consumption of illegal or non-compliant goods. This amendment will oblige distributors to take a more proactive role in interdicting illegal goods.

Amendment 34

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

Where Union harmonisation legislation provides for the drawing up of an EU declaration of conformity, manufacturers shall make the declaration publicly available ***on their website or, in the absence of a website, by any other means that allows the declaration to be readily accessed by the general public in the Union*** free of charge.

Amendment

Where Union harmonisation legislation provides for the drawing up of an EU declaration of conformity, manufacturers ***including those from third countries, or importers***, shall make the declaration publicly available free of charge.

Amendment 35

Proposal for a regulation Article 7

Text proposed by the Commission

Article 7

Compliance partnership arrangements

1. A market surveillance authority may enter into a partnership arrangement with an economic operator established in its territory under which the authority agrees to provide the economic operator with advice and guidance in relation to the Union harmonisation legislation applicable to the products for which the economic operator is responsible.

The arrangement shall not cover the provision of conformity assessment activities that are entrusted to notified bodies under the Union harmonisation

Amendment

deleted

legislation.

2. *If a market surveillance authority enters into a partnership arrangement under paragraph 1, it shall enter that fact in the system referred to in Article 34, along with details of the scope of the arrangement and the names and addresses of itself and of the economic operator.*

3. *If a market surveillance authority enters into a partnership arrangement under paragraph 1, other market surveillance authorities shall inform that authority of any temporary measure taken by them against the economic operator, and any corrective action taken by the economic operator, in relation to compliance with the applicable Union harmonisation legislation.*

4. *A market surveillance authority that enters into a partnership arrangement under paragraph 1 may charge the economic operator fees representing the costs reasonably incurred by the authority in the exercise of its functions under paragraphs 1 and 2.*

Justification

Market surveillance authorities shall remain independent and impartial in the exercise of their functions.

Amendment 36

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Market surveillance authorities may enter into memoranda of understanding with businesses or organisations representing businesses or end-users for the carrying out, or financing, of joint activities aimed at identifying non-compliance or promoting compliance in specific geographical areas or with respect to

Amendment

Market surveillance authorities may enter into memoranda of understanding with **custom authorities, port and airport authorities, manufactures or importers**, businesses or organisations representing businesses or end-users for the carrying out, or financing, of joint activities aimed at identifying non-compliance or

specific categories of **product**.

promoting compliance in specific geographical areas or with respect to specific categories of **products to address, inter alia, issues of specific concern for consumers in that area. The market surveillance authority shall provide the draft memorandum of understanding to the Commission before its adoption. The Commission shall provide an opinion to the market surveillance authorities on the draft memorandum and the implementation report.**

Amendment 37

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

2. A market surveillance authority may use any information resulting from activities carried out or financed by other parties to a memorandum of understanding entered into by it under paragraph 1 as part of any investigation undertaken by it into non-compliance, but only if the activity in question was carried out independently, impartially and without bias.

Amendment

2. A market surveillance authority may use any information resulting from activities carried out or financed by other parties to a memorandum of understanding entered into by it under paragraph 1 as part of any investigation undertaken by it into non-compliance, but only if the activity in question was carried out independently, impartially and without bias. **Information on how products have been tested and the results of such tests shall be made publicly available.**

Justification

More transparency is necessary in relation to testing methods and testing criteria as well as results of testing.

Amendment 38

Proposal for a regulation Article 8 – paragraph 3

Text proposed by the Commission

3. Any exchange of information between market surveillance authorities and businesses or organisations referred to

Amendment

3. Any exchange of information between market surveillance authorities, **the Commission or the EU Product**

in paragraph 1 for the purposes of preparing or implementing a memorandum of understanding entered into by them under that paragraph shall be **deemed not to infringe** the requirements of professional secrecy.

Compliance Board, and businesses or organisations referred to in paragraph 1 for the purposes of preparing or implementing a memorandum of understanding entered into by them under that paragraph shall be **treated in accordance with** the requirements of professional secrecy. **Any further use of that information shall be subject to the strictest guarantees of confidentiality and of professional and commercial secrecy.**

Amendment 39

Proposal for a regulation

Article 10 – paragraph 2 – point b

Text proposed by the Commission

(b) procedures for monitoring any accidents or any harm to the health **or** safety of end-users which are suspected of having been caused by such products;

Amendment

(b) procedures for monitoring any accidents or any harm to the health safety **or security** of end-users which are suspected of having been caused by such products;

Amendment 40

Proposal for a regulation

Article 10 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) procedures for collecting and exploring scientific and technical knowledge concerning safety issues, impacting in particular health and environmental protection;

Amendment 41

Proposal for a regulation

Article 10 – paragraph 2 – point d b (new)

Text proposed by the Commission

Amendment

(db) procedures for establishing cooperation and the exchange of information and experience between market surveillance authorities and scientific or research institutions.

Justification

Sharing knowledge, information and experience between market surveillance authorities and scientific and research institutions appears to benefit both parties, especially in areas where there is rapid scientific development and innovation.

Amendment 42

Proposal for a regulation

Article 12 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. Market surveillance authorities shall perform controls as part of their activities set out in paragraph 1, on a risk-based approach, taking into account, as a minimum, the following factors:

2. Market surveillance authorities shall perform controls as part of their activities set out in paragraph 1, on a risk-based approach **and in accordance with the precautionary principle**, taking into account, as a minimum, the following factors:

Amendment 43

Proposal for a regulation

Article 12 – paragraph 2 – point a – point i

Text proposed by the Commission

Amendment

(i) the product, such as the number of products on the market and any hazards associated with that product;

(i) the product, such as the number of products on the market and any hazards associated with that product, **paying particular attention to the health dimension of the potential risk;**

Amendment 44

Proposal for a regulation

Article 12 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) the product is liable to compromise the health or safety of end-users;

Amendment

(a) the product is liable to compromise the health, and endanger the safety **or security** of end-users **or cause environmental damage**;

Amendment 45

Proposal for a regulation

Article 12 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) the product does not conform to applicable requirements under Union harmonisation legislation.

Amendment

(b) the product does not conform to applicable requirements under Union harmonisation legislation **or under Directive 2001/95/EC and therefore could endanger health and safety of end-users.**

Amendment 46

Proposal for a regulation

Article 12 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Where the products are withdrawn, recalled, prohibited or restricted, the market surveillance authority shall ensure that the Commission through the Network established under Article 31, the other Member States and end-users are informed accordingly.

Amendment

Where the products are withdrawn, recalled, prohibited or restricted, the market surveillance authority shall ensure that the Commission through the Network established under Article 31, the **Union testing facilities**, other Member States and end-users are informed accordingly.

Amendment 47

Proposal for a regulation

Article 12 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. In order to settle any disputes arising out of a divergent risk assessment among the authorities of the Member

States, the economic operators and the conformity assessment bodies, the Commission may, on its own initiative or at the request of a market surveillance authority, commission a risk assessment from a reference laboratory of the European Union referred to in Article 28. That risk assessment shall be binding on all of the stakeholders.

Amendment 48

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

1. Each Member State shall draw up a national market surveillance strategy, as a minimum, every **3** years. The strategy shall promote a consistent, comprehensive and integrated approach to market surveillance and enforcement of Union harmonisation legislation within the territory of the Member State and shall include all sectors and stages of the product supply chain, including imports and digital supply chains.

Amendment

1. Each Member State shall draw up a national market surveillance strategy, as a minimum, every **4** years, ***in view of the rapid market evolutions and new emerging risks***. The strategy shall promote a consistent, comprehensive and integrated approach to market surveillance and enforcement of Union harmonisation legislation within the territory of the Member State and shall include all sectors and stages of the product supply chain, including imports and digital supply chains. ***In establishing their national market surveillance strategies, the Member States shall consult stakeholders and make their comments available to the general public.***

Amendment 49

Proposal for a regulation Article 13 – paragraph 2 – point b

Text proposed by the Commission

(b) the areas identified as a priority for the enforcement of Union harmonisation legislation;

Amendment

(b) the areas identified as a priority for the enforcement of Union harmonisation legislation; ***member States shall consider products that are or have been subject to an emergency decision based on Article 13 of Directive 2001/95/EC as priority***

areas;

Amendment 50

Proposal for a regulation

Article 13 – paragraph 2 – point c

Text proposed by the Commission

(c) the enforcement actions planned in order to reduce the occurrence of non-compliance in those areas identified as a priority, including, where relevant, the minimum control levels envisaged for categories of product which have significant levels of non-compliance;

Amendment

(c) the enforcement actions planned in order to reduce the occurrence of non-compliance in those areas identified as a priority, including, where relevant, the minimum control levels envisaged for categories of product which have significant levels of non-compliance **and which might pose a serious risk**;

Amendment 51

Proposal for a regulation

Article 13 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) an assessment of new risks for consumers related to products which can connect to the internet and endanger consumers security;

Amendment 52

Proposal for a regulation

Article 13 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall communicate their national market surveillance strategy through the system referred to under Article 34.

3. Member States shall communicate their national market surveillance strategy through the system referred to under Article 34, **and shall make it available to the general public.**

Justification

Increased transparency.

Amendment 53

Proposal for a regulation

Article 14 – paragraph 3 – point b

Text proposed by the Commission

(b) **the power to perform system audits of economic operators' organisations, including audits of any procedures that they have in place to ensure compliance with this Regulation and with applicable Union harmonisation legislation;**

deleted

Amendment

Amendment 54

Proposal for a regulation

Article 14 – paragraph 3 – point e – point 2

Text proposed by the Commission

(2) to seal **any** premises or seize any information, data or documents of an economic operator during the inspection for a necessary period and to the extent necessary for the purposes of the investigation;

Amendment

(2) to seal **relevant** premises or seize any information, data or documents of an economic operator during the inspection for a necessary period and to the extent necessary for the purposes of the investigation;

Amendment 55

Proposal for a regulation

Article 14 – paragraph 3 – point h

Text proposed by the Commission

(h) the power to take temporary measures, where there are no other effective means available to prevent a serious risk, including in particular **temporary** measures requiring hosting service providers to remove, disable or restrict access to content or to suspend or restrict access to a website, service or account or requiring domain registries or registrars to put a fully qualified domain

Amendment

(h) the power to take temporary **or final** measures **regarding unsafe or non-compliant products**, where there are no other effective means available to prevent a serious risk, including in particular measures requiring hosting service providers to remove, disable or restrict access to content or to suspend or restrict access to a website, service or account or requiring domain registries or registrars to

name on hold for a specific period of time;

put a fully qualified domain name on hold for a specific period of time;

Amendment 56

Proposal for a regulation

Article 14 – paragraph 3 – point m

Text proposed by the Commission

(m) the power to order the restitution of profits obtained as a result of an instance of non-compliance;

Amendment

(m) the power to order the restitution of profits obtained as a result of an instance of non-compliance **and to require that companies refund affected consumers**;

Amendment 57

Proposal for a regulation

Article 14 – paragraph 3 – point n

Text proposed by the Commission

(n) the power to publish any final decisions, final measures, commitments given by the economic operator or decisions taken or made pursuant to this Regulation, including the publication of the identity of the economic operator who was responsible for the non-compliance.

Amendment

(n) the power to publish any final decisions, final measures, commitments given by the economic operator or decisions taken or made pursuant to this Regulation, including the publication of the identity of the economic operator who was responsible for the non-compliance, **subject to the strictest guarantees of confidentiality and of professional and commercial secrecy and the terms stating how the economic operator are to compensate the loss or damage endured by consumers.**

Amendment 58

Proposal for a regulation

Article 14 – paragraph 4

Text proposed by the Commission

4. Market surveillance authorities shall publish any commitments given to them by economic operators, details of any

Amendment

4. Market surveillance authorities shall publish any commitments given to them by economic operators, details of any

corrective action taken by economic operators in their territory, and details of any temporary measures taken by the relevant market surveillance authority pursuant to this Regulation.

corrective action taken by economic operators in their territory, and details of any temporary measures taken by the relevant market surveillance authority pursuant to this Regulation, ***subject to the strictest guarantees of confidentiality and of professional and commercial secrecy.***

Amendment 59

Proposal for a regulation Article 14 – paragraph 5

Text proposed by the Commission

5. Market surveillance authorities shall exercise their powers in accordance with the principle of proportionality.

Amendment

5. Market surveillance authorities shall exercise their powers in accordance with the ***precautionary principle and the*** principle of proportionality.

Amendment 60

Proposal for a regulation Article 15 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Market surveillance authorities shall perform appropriate checks on the characteristics of products on an adequate scale, by means of documentary checks and, where appropriate, physical and laboratory controls on the basis of a representative sample.

Amendment

Market surveillance authorities shall perform appropriate checks on the characteristics of products on an adequate scale, ***in accordance with the common methodology defined by the Commission,*** by means of documentary checks and, where appropriate, physical and laboratory controls on the basis of a representative sample. ***The Commission is empowered to adopt delegated acts, laying down minimum percentages for the number of checks that market surveillance authorities are to perform on products of different product categories in accordance with priorities determined by the Union Product Compliance Network.***

Amendment 61

Proposal for a regulation
Article 16 – paragraph 1

Text proposed by the Commission

Market surveillance authorities shall **observe the principle** of confidentiality **where necessary in order to protect** professional and commercial **secrets or to** preserve personal data pursuant to national legislation, subject to the requirement that information be made public to the fullest extent possible in order to protect the interests of end-users in the Union.

Amendment

Market surveillance authorities shall **ensure the strictest guarantees** of confidentiality **and of** professional and commercial **secrecy and shall** preserve personal data pursuant to national legislation, subject to the requirement that information be made public to the fullest extent possible in order to protect the interests of end-users in the Union.

Amendment 62

Proposal for a regulation
Article 18 – paragraph 2

Text proposed by the Commission

2. The decision whether or not a product presents a serious risk shall be based on an appropriate risk assessment which takes account of the nature of the hazard **and** the likelihood of its occurrence. The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering that a product presents a serious risk.

Amendment

2. The decision whether or not a product presents a serious risk shall be based on an appropriate risk assessment which takes account of the nature of the hazard, the likelihood of its occurrence **and the precautionary principle. That decision shall take particular account of the health dimension of the risk.** The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering that a product presents a serious risk.

Amendment 63

Proposal for a regulation
Article 20 – paragraph 4 – point c

Text proposed by the Commission

(c) provide independent technical or scientific advice to the Commission including, the Network established under

Amendment

(c) provide independent technical or scientific advice to the Commission including, the Network established under Article 31, and to the Member States, **and**

Article 31, and to the Member States;

signal new emerging risks based on latest scientific findings;

Amendment 64

Proposal for a regulation

Article 20 – paragraph 4 – point e a (new)

Text proposed by the Commission

Amendment

(ea) act as a knowledge centre in respect of risks and emerging risks for consumers and the environment, for example in relation to harmful chemicals that are classified as carcinogenic, mutagenic and toxic for reproduction or other substances of concern in consumer products;

Amendment 65

Proposal for a regulation

Article 20 – paragraph 4 – points e b (new)

Text proposed by the Commission

Amendment

(eb) act as a knowledge centre on new risks for consumers related to products which can connect to the internet;

Amendment 66

Proposal for a regulation

Article 20 – paragraph 4 – points e c (new)

Text proposed by the Commission

Amendment

(ec) Union testing facilities shall also assist the Commission and Member States in developing joint state of the art testing methodologies; close relationships shall be established between the European Chemicals Agency and Union testing facilities acting as a knowledge centre to avoid overlaps and ensure optimal support for the Member States market

surveillance and enforcement activities.

Amendment 67

Proposal for a regulation

Article 20 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Market surveillance authorities shall take due account of the test results, analysis and conclusions of the Union testing facilities when adopting appropriate market surveillance measures.

Amendment 68

Proposal for a regulation

Article 23 – paragraph 1

Text proposed by the Commission

Amendment

1. At the request of an applicant authority, the requested authority shall without delay take all necessary enforcement measures using the powers conferred on it under this Regulation in order to bring an instance of non-compliance to an end.

1. At the request of an applicant authority **or the Commission or any other stakeholders bringing due evidence of non-compliance**, the requested authority shall without delay take all necessary enforcement measures using the powers conferred on it under this Regulation in order to bring an instance of non-compliance to an end. **If the requested authority does not take action, the Commission may itself take all necessary enforcement measures.**

Amendment 69

Proposal for a regulation

Article 26 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Amendment

The Commission shall draw up a report each year by 30 June, containing the information submitted by the Member States for the previous calendar year. The

The Commission shall draw up a **report and a summary of the** report each year by 30 June, containing the information submitted by the Member States for the

report shall be published in the system referred to in Article 34.

previous calendar year. The report shall be published in the system referred to in Article 34.

Amendment 70

Proposal for a regulation

Article 26 – paragraph 8 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

When customs authorities of a Member State have reason to believe that an economic operator has changed its point of entry for products into the Union market to another Member State because controls there are less stringent or systematic, they shall inform the corresponding authorities of that Member State of the risk profile attributed to the economic operator and may ask the Union Product Compliance Network to monitor the entry of such products.

Justification

The purpose is to ensure that only safe and compliant products enter the market.

Amendment 71

Proposal for a regulation

Article 27 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the product is not marked or labelled in accordance with that Union harmonisation legislation;

(b) the product is not marked or labelled in accordance with that Union harmonisation legislation ***and this cannot be solved by correction within a reasonable time;***

Amendment 72

Proposal for a regulation

Article 29 – paragraph 1

Text proposed by the Commission

1. Market surveillance authorities shall treat ***as a matter of priority products declared free for circulation by an authorised economic operator as set out in Article 38(2) of Regulation (EU) No 952/2013***, the release of which ***is*** suspended in accordance with Article 28(1) of this Regulation.

Amendment

1. Market surveillance authorities shall treat the release of ***products*** which ***are*** suspended in accordance with Article 28(1) of this Regulation ***equally for all economic operators***.

Amendment 73

Proposal for a regulation

Article 32 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission shall allow relevant stakeholders, including consumer groups, to give structured input to help prioritise and select common, simultaneous surveillance activities.

Justification

Consumer organisations carry out regularly comparative product testing in laboratories and contribute to identification of unsafe and non-compliant consumer products. Their gathered evidence and data at national and European could contribute to better functioning of the Union Product Compliance Network.

Amendment 74

Proposal for a regulation

Article 33 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) to monitor the activities of market surveillance and customs authorities in order to ensure that there is an equal and stringent level of controls of harmonised and non-harmonised products in the different Member States;

Amendment 75

Proposal for a regulation
Article 33 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ab) to define a common testing methodology in order to ensure there is uniformity in the controls carried out by Member States;

Amendment 76

Proposal for a regulation
Article 33 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) to organise cooperation and the effective exchange of information and best practices between market surveillance authorities;

(f) to organise cooperation and **facilitate** the effective **and regular** exchange of information and best practices between **Member States as well as between** market surveillance authorities, **and between Member States and relevant stakeholders;**

Amendment 77

Proposal for a regulation
Article 33 – paragraph 1 – point m a (new)

Text proposed by the Commission

Amendment

(ma) to develop uniform practices for risk analysis and definition of different risk categories;

Amendment 78

Proposal for a regulation
Article 33 – paragraph 1 – point m b (new)

Text proposed by the Commission

Amendment

(mb) to monitor the performance of customs authorities and address gaps in their performance which might lead to a

weakening of the level playing field for compliant Union producers vis-à-vis third country producers exporting to the Union, and the practice of third country exporters of choosing those points of entry to the Union where controls are less stringent or systematic;

Amendment 79

Proposal for a regulation

Article 33 – paragraph 1 – point m c (new)

Text proposed by the Commission

Amendment

(mc) to present an annual report to the European Parliament on the activities of the EUPC;

Amendment 80

Proposal for a regulation

Article 33 – paragraph 1 – point m d (new)

Text proposed by the Commission

Amendment

(md) to set up procedures for a pan-European database for the collection of data regarding accidents, harm or damages caused to the health, safety and/or security of end-users or to the environment, and to make the information provided in that database readily accessible to all relevant stakeholders.

Amendment 81

Proposal for a regulation

Article 35 – paragraph 1

Text proposed by the Commission

Amendment

1. The Commission may exchange confidential market surveillance related information with regulatory authorities of

1. The Commission may exchange confidential market surveillance related information with regulatory authorities of

third countries or international organisations **where it has concluded confidentiality arrangements based on reciprocity with those authorities or organisations.**

third countries or international organisations, **subject to the strictest guarantees of confidentiality and of professional and commercial secrecy.**

Amendment 82

Proposal for a regulation

Article 61 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation that impose obligations on economic operators and to infringements of provisions of any Union **harmonisation** legislation on products **covered by this Regulation** that impose obligations on economic operators where that legislation does not provide for penalties, and shall take all measures necessary to ensure that they are implemented. The penalties **provided for** shall be effective, proportionate and dissuasive.

Amendment

The **Commission, together with** Member States, shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation that impose obligations on economic operators and to infringements of provisions of any Union legislation on products that impose obligations on economic operators where that legislation does not provide for penalties, and shall take all measures necessary to ensure that they are implemented. The penalties shall be effective, proportionate and dissuasive. **The Commission shall also lay down the operational rules for Member States to take temporary measures and corrective actions regarding non-compliant products and non-compliant economic operators in order to speedily protect consumers when facing a risk.**

Amendment 83

Proposal for a regulation

Article 61 – paragraph 2 – point a

Text proposed by the Commission

(a) **the financial situation of small and medium-sized enterprises;**

Amendment

deleted

Justification

This criteria is not related to the proportionality of harm caused to end-users or to the

environment and therefore should not come first in the process of the penalty decision.

Amendment 84

Proposal for a regulation

Article 61 – paragraph 2 – point b

Text proposed by the Commission

(b) the nature, gravity and duration of the non-compliance taking into account the harm caused to end-users;

Amendment

(b) the nature, gravity and duration of the non-compliance taking into account the harm caused to end-users, ***to the environment, to social and economic interests;***

Amendment 85

Proposal for a regulation

Article 61 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the financial situation of small and medium-sized enterprises.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Rules and procedures for compliance with and enforcement of Union harmonisation legislation on products						
References	COM(2017)0795 – C8-0004/2018 – 2017/0353(COD)						
Committee responsible Date announced in plenary	IMCO 5.2.2018						
Opinion by Date announced in plenary	ENVI 5.2.2018						
Rapporteur Date appointed	Miroslav Mikolášik 1.3.2018						
Discussed in committee	16.5.2018						
Date adopted	10.7.2018						
Result of final vote	<table> <tr> <td>+: </td><td>53</td></tr> <tr> <td>–: </td><td>1</td></tr> <tr> <td>0: </td><td>0</td></tr> </table>	+:	53	–:	1	0:	0
+:	53						
–:	1						
0:	0						
Members present for the final vote	Marco Affronte, Margrete Auken, Pilar Ayuso, Zoltán Balczó, Catherine Bearder, Biljana Borzan, Paul Brannen, Soledad Cabezón Ruiz, Nessa Childers, Alberto Cirio, Birgit Collin-Langen, Miriam Dalli, Seb Dance, Mark Demesmaecker, Stefan Eck, Bas Eickhout, Francisc Gambús, Arne Gericke, Jens Gieseke, Julie Girling, Sylvie Goddyn, Françoise Grossetête, Andrzej Grzyb, Jytte Guteland, György Hölvényi, Anneli Jäätteenmäki, Karin Kadenbach, Urszula Krupa, Giovanni La Via, Jo Leinen, Peter Liese, Valentinas Mazuronis, Susanne Melior, Miroslav Mikolášik, Rory Palmer, Massimo Paolucci, Piernicola Pedicini, Bolesław G. Piecha, Pavel Poc, John Procter, Julia Reid, Daciana Octavia Sârbu, Annie Schreijer-Pierik, Davor Škrlec, Renate Sommer, Adina-Ioana Vălean, Damiano Zoffoli						
Substitutes present for the final vote	Guillaume Balas, Anja Hazekamp, Merja Kyllönen, Alojz Peterle, Christel Schaldemose, Keith Taylor						
Substitutes under Rule 200(2) present for the final vote	Marc Joulaud, Stanisław Ozóg						

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

53	+
ALDE	Catherine Bearder, Anneli Jäätteenmäki, Valentinas Mazuronis
ECR	Mark Demesmaeker, Arne Gericke, Urszula Krupa, Stanisław Ożóg, Bolesław G. Piecha, John Procter
EFDD	Piernicola Pedicini
ENF	Sylvie Goddyn
GUE/NGL	Stefan Eck, Anja Hazekamp, Merja Kyllönen
NI	Zoltán Balczó
PPE	Pilar Ayuso, Birgit Collin-Langen, Francesc Gambús, Jens Gieseke, Julie Girling, Françoise Grossetête, Andrzej Grzyb, György Hölvényi, Marc Joulaud, Giovanni La Via, Peter Liese, Miroslav Mikolášik, Alojz Peterle, Annie Schreijer Pierik, Renate Sommer, Adina Ioana Vălean
S&D	Guillaume Balas, Biljana Borzan, Paul Brannen, Soledad Cabezón Ruiz, Nessa Childers, Miriam Dalli, Seb Dance, Jytte Guteland, Karin Kadenbach, Jo Leinen, Susanne Melior, Rory Palmer, Massimo Paolucci, Pavel Poc, Christel Schaldemose, Daciana Octavia Sârbu, Damiano Zoffoli
Verts/ALE	Marco Affronte, Margrete Auken, Bas Eickhout, Davor Škrlec, Keith Taylor

1	-
EFDD	Julie Reid

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Rules and procedures for compliance with and enforcement of Union harmonisation legislation on products			
References	COM(2017)0795 – C8-0004/2018 – 2017/0353(COD)			
Date submitted to Parliament	20.12.2017			
Committee responsible Date announced in plenary	IMCO 5.2.2018			
Committees asked for opinions Date announced in plenary	INTA 5.2.2018	ENVI 5.2.2018	ITRE 5.2.2018	
Not delivering opinions Date of decision	INTA 22.1.2018	ITRE 23.1.2018		
Rapporteurs Date appointed	Nicola Danti 23.1.2018			
Discussed in committee	22.1.2018	16.5.2018	18.6.2018	11.7.2018
Date adopted	3.9.2018			
Result of final vote	+: -: 0:	28 5 1		
Members present for the final vote	John Stuart Agnew, Pascal Arimont, Daniel Dalton, Nicola Danti, Pascal Durand, Maria Grapini, Liisa Jaakonsaari, Philippe Juvin, Antonio López-Istúriz White, Morten Løkkegaard, Eva Maydell, Nosheena Mobarik, Marcus Pretzell, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Jasenko Selimovic, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Anneleen Van Bossuyt, Marco Zullo			
Substitutes present for the final vote	Birgit Collin-Langen, Roberta Metsola, Adam Szejnfeld, Sabine Verheyen, Kerstin Westphal			
Substitutes under Rule 200(2) present for the final vote	Fabio Massimo Castaldo, Isabella De Monte, Michael Detjen, Michaela Šojdrová			
Date tabled	6.9.2018			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

28	+
ALDE	Morten Løkkegaard, Jasenko Selimovic
EFDD	Fabio Massimo Castaldo, Marco Zullo
PPE	Pascal Arimont, Birgit Collin-Langen, Philippe Juvin, Antonio López-Istúriz White, Eva Maydell, Roberta Metsola, Andreas Schwab, Michaela Šojdrová, Ivan Štefanec, Adam Szejnfeld, Róza Gräfin von Thun und Hohenstein, Sabine Verheyen
S&D	Nicola Danti, Isabella De Monte, Michael Detjen, Maria Grapini, Liisa Jaakonsaari, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler, Kerstin Westphal
VERTS/ALE	Pascal Durand, Igor Šoltes

5	-
ECR	Daniel Dalton, Nosheena Mobarik, Anneleen Van Bossuyt
EFDD	John Stuart Agnew
ENF	Marcus Pretzell

1	0
ENF	Mylène Troszczynski

Key to symbols:

+ : in favour

- : against

0 : abstention