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WORKING PAPER

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From:	BG delegation
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	BG comments on Article 8 (following the WP meeting on 21 January)

New RO Presidency proposal for Article 8 – based on EP proposal of 8 January, WK 197/2019 INIT

Text in **green** - Agreed, Text in **yellow** - For possible agreement, Text in **red** - For further discussion, Text in **blue** - RO PCY compromise

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
129	Article 8 Memoranda of understanding with stakeholders	Article 8 Memoranda of understanding with stakeholders Cooperation between market surveillance authorities and economic operators AM 68	Article 8 Memoranda of understanding with stakeholders Joint awareness raising and information campaigns	Article 8 Joint activities between market surveillance authorities and economic operators with stakeholders
ARTICLE 8 - PARAGRAPH 1 - SUBPARAGRAPH 1				
130	1. 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	Market surveillance authorities may enter into memoranda of understanding with businesses economic operators or organisations representing businesses economic operators, other relevant authorities or end-users for the carrying out, or financing, of joint activities aimed at raising awareness,	1. Market surveillance authorities may, in compliance with national legislation, enter into memoranda of understanding agree with businesses other relevant authorities, or organisations representing businesses economic operators or end-users for on the carrying out, or financing, of joint activities aimed at identifying non-	1. Market surveillance authorities may, in compliance with national legislation, agree with other relevant authorities, economic operators or organisations representing economic operators or end-users on carrying out or financing joint activities aimed at promoting or identifying non-compliance, raising awareness and providing advice and guidance in relation to the Union harmonisation legislation and with respect to specific categories of products, in particular the ones that are

Commented [a1]: Flexible.

Commented [a2]: Improvement with deletion of two problematic expressions!

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	or with respect to specific categories of product.	<p><i>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.</i></p> <p>AM 69</p>	<p>compliance or promoting compliance, <u>raising awareness and providing advice and guidance in relation to the Union harmonisation legislation in specific geographical areas or with respect to specific categories of products, in particular the ones that are often found to be presenting a serious risk, including the products sold online.</u></p>	<p><u>often found to be presenting a serious risk, including the products sold online.</u></p> <p>2. The market surveillance authority in question and the parties referred to in paragraph 1 shall ensure <i>that the agreement on joint activities does not create unfair competition between economic operators, does not affect the objectivity, independence and impartiality of the parties and respect the confidentiality of the information and of the activities concerned.</i></p> <p><i>(covered by Art. 16)</i></p> <p>3. A market surveillance authority may use any information resulting from joint activities carried out as part of any investigation undertaken by it into non-compliance.</p> <p>4. Any exchange of information between market surveillance authorities and the parties referred to in paragraph 1 for the purposes <i>of joint activities</i> shall be deemed not to infringe the requirements of professional and commercial secrecy.</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>(covered by Art. 16)</p> <p>5. The market surveillance authority in question shall make the agreement on joint activities, including the names of the parties involved, available to the general public and shall enter it in the system referred to in Article 34.</p> <p>The Network established under Article 31 shall, at the request of a Member State, assist in the drawing up and implementation of the agreement on joint activities.</p>
ARTICLE 8 - PARAGRAPH 1 - SUBPARAGRAPH 1 a (new)				
130 A		<p><i>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.</i></p> <p>AM 70</p>		<p>Maintain Council mandate</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
ARTICLE 8 - PARAGRAPH 1 - SUBPARAGRAPH 2				
131	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. AM 71	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.	Maintain Council mandate
ARTICLE 8 - PARAGRAPH 1 - SUBPARAGRAPH 2 a (new)				
131 A		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. AM 72		Maintain Council mandate

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
ARTICLE 8 - PARAGRAPH 1 a (new)				
131 B		<p><i>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.</i></p> <p>AM 73</p>		Maintain Council mandate
ARTICLE 8 - PARAGRAPH 2				
132	2. A market surveillance	2. A market surveillance	2. A market surveillance	Maintain Council mandate

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	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.	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.	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.	
ARTICLE 8 - PARAGRAPH 3				
133	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	3. Any exchange of information between market surveillance authorities and businesses or organisations the parties referred to in paragraph 1 for the purposes of preparing or implementing a memorandum of understanding entered into by them under that	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	Maintain Council mandate

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	paragraph shall be deemed not to infringe the requirements of professional secrecy.	paragraph shall be deemed not to infringe the requirements of professional secrecy. AM 74	professional secrecy.	