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WORKING PAPER

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From:	EE delegation
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	EE comments on the Compliance and Enforcement Regulation Proposal - Presidency discussion paper: doc. WK 9693 REV 1

Estonia's comments on doc WK 9693/18 REV1:

Presidency discussion paper on 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.

*Deletions marked in ~~strike through~~ and additions in **bold and underlined**.

Proposals have been set in the order of importance.

1. Art 36(3) – Financial provisions

Written suggestions:

3. The financing of the electronic interface referred to in Article 34(5) shall be shared between the Union and the Member States. The Union shall be responsible for **financing the development of information and communication system referred to in Article 34 to that purpose** ~~central module and link to the Network~~. Member States shall be responsible for **co-**financing the adaptation of their national systems.

Justifications:

Para 3 – not clear what is meant by “central module and link to the Network”. Difficult to follow what is a “central module”. Furthermore, according to art 31 and 32 “the Network” means an Union Product Compliance Network, i.e a symposium of experts of market surveillance for the purpose of dealing with general and horizontal matters of market surveillance. Not clear how such a symposium is related to the possibility to transmit data as per art 34(5).

Para 3 – given that we are talking about the functioning of a EU wide system EE considers that such adaptations should be financed via EU budget. However, as a compromise solution we would propose a co-financing requirement. This does not fall far from what was said in the September working party meeting where the Commission stated that MS have the possibility to finance the adaptation of their own IT system via EU projects for that purpose.

2. Art 4(5) – Compliance

Written suggestions:

~~5. 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 the economic operator responsible for compliance with respect to the product. With this regard, online marketplaces shall facilitate the display of abovementioned~~

information for the products sold through them.

Justification:

Para 5 - considering the sheer number of online sales offers it is hard to imagine how this para could be enforced by MSA-s in practice, especially in cases where online sales are done in 3rd countries. In essence it will create the same disparity that the new art 4 tries to resolve, EU companies would be in the reach and 3rd country companies not. Hence, such an obligation would be declarative and not enforceable in practice.

3. Art 14(1) and 14(2) – Market surveillance powers and measures

Wording suggestions:

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 Union harmonisation legislation set out in Annex I ~~and shall provide them with the necessary resources in that regard.~~
2. Market surveillance authorities shall exercise their powers set out in this Article in accordance with the principle of proportionality, to the extent that relates to the subject matter, and the purpose of the their actions and the nature and the overall actual or potential harm of the instance of non-compliance. Powers shall be exercised 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 procedural safeguards and the Union rules on data protection, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council.~~

Justification:

Para 1 – ending of last sentence is a repetition of what is said in art 11(4).

Para 2 – ending is more of a recital material than a text for articles.