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WORKING PAPER

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

Ireland welcomes the Austrian Presidency text (WK 9693 2018 REV1) while continuing to retain a general scrutiny reservation and submits the following comments.

Chapter 1

Article 3

3(1) We do not see the need to include a definition of product as such a definition is not included in Regulation 765/2008. Each piece of sectoral legislation set out in Annex I details the specific product falling within the scope of that particular legislation.

3(8) The words 'or the requirements of this Regulation;' are superfluous as this Regulation will become part of the Union harmonisation legislation when adopted.

3(9) (a) Delete the wording after "trademark". Paragraphs (b) and (c) could be moved into the recitals in order to make this definition more concise.

3(14) (b) We suggest a slight change of wording here: "they allow economic operators to offer goods or services to end users, with a view to facilitating ~~the initiating of~~ direct transactions between those economic operators and end users, irrespective of where those transactions are ultimately concluded;" The rationale behind this small change is to provide clarity to the definition.

3(21) This definition appears to widen the scope of end-user beyond that of a person having a contractual relationship with an economic operator, as a product may have an affect (whether personal or legal) on people who are not directly connected to the economic operator. Perhaps wording such as this may tighten the definition: "'end-user' means any natural or legal person, residing or established in the Union, who has a contractual relationship with an economic operator for the supply of a product."

Chapter IV

Article 11

The creation of a Single Liaison Office (SLO) is a welcome initiative but care must be taken that it does not become a burdensome provision for the body that is given the role of SLO.

11(2) In some cases, a Member State may wish to designate a body other than a market surveillance authority or a competent authority as the SLO and this should be reflected in the text of the Article. We suggest: "Each Member State shall appoint a single liaison office."

11(3) The Customs Authority in Ireland does not perform a market surveillance role so it may not always be appropriate to look for a coordinated position between Customs and market surveillance authorities when it comes to market surveillance issues. We suggest inserting "if appropriate," or "in accordance with national structures," before "the authorities designated under Article 26(1)."

Chapter V

Article 14

14(4)(a) In our previous submission we pointed out that there may have been an issue with Irish law in connection to acquiring product samples but that issue has now been clarified and is no longer a problem for us.

14(4)(d) How can market surveillance authorities force internet service providers to remove/restrict content on websites where the ISPs are located in a third country? Even if content could be removed or restricted from one website rogue suppliers would just create a new website for their product(s) and carry on as before.

14(5) The use of “intelligence” is not permissible as evidence in Irish courts but as this is a “may” provision then it probably would not apply.

Article 15

15(6) It should be the economic operator that alerts end-users in the first instance. Market surveillance authorities should take on that obligation only when the economic operator fails to do so.

Article 18

18(1) This paragraph can be deleted as paragraphs (2) and (3) seem to contain the same provisions.

Chapter VI

Article 24

24(7) The term “follow” needs to be explained further – does every SLO have to “follow” every case on the system or does this provision mean that only the SLOs concerned need to be involved?

Chapter VII

Article 26

26(5) What does a “higher risk of non-compliance” actually mean and how will market surveillance authorities evaluate such a provision?

26(6) We are concerned that this provision will mean an additional administrative burden on customs authorities without any evidence of an additional benefit to customs or market surveillance authorities. In particular, paragraph (d) does not appear to be relevant and could be deleted. In addition, the opening sentence says that “Member States shall submit to the Commission...” – is this through the SLO and/or through the system referred to in Article 34?

Article 28

The reference to “five working days” in paragraph (a) should be changed to “three working days” as it is not reasonable to expect customs authorities to hold on to consignments for such a long time. It is also unfair on economic operators to have their products held up for this length of time.

Chapter VIII

Article 32

It should be up to Member States to decide whether the SLO or another competent representative should be a member of the Network. The revised wording could be, “The network shall be composed of representatives from the Member States, assisted by...”