



Council of the European Union
General Secretariat

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

Brussels, 25 September 2018

WK 11196/2018 INIT

LIMITE

**ENT
MI
CONSOM
COMPET
UD
CHIMIE
COMER
CODEC**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

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

**PROPOSITION OF AMENDMENTS AND COMMENTS OF PL TO THE
PROPOSAL FOR A REGULATION LAYING DOWN RULES AND PROCEDURES
FOR COMPLIANCE WITH AND ENFORCEMENT OF UNION HARMONISATION
LEGISLATION ON PRODUCTS COM(2017) 795 FINAL**

(art. 2 p. 4; art. 3 (13) and (14); art. 4; art. 12 p. 2(a) and 8; art. 15 p. 6, art. 20 p. 3, art. 26 p. 6(a) and (d), art. 28 (a), art. 35 p.3, art. 61 p 1 and 2)

For the purposes of this paper “Text proposed by the Presidency (AT)” means AT Presidency discussion paper ref. WK 9693/2018 REV 1

Article 2 paragraph 4

Text proposed by the Presidency (AT)

Amendment

4. Each of the provisions of this Regulation shall apply in so far as there are no specific provisions with the same objective in the Union harmonisation legislation, which regulate in a more specific manner particular aspects of market surveillance and enforcement.

4. Each of the provisions of this Regulation shall apply in so far as there are no specific provisions with the same objective in the Union ~~harmonisation~~ legislation, which regulate ~~in a more specific manner particular~~—aspects of market surveillance and enforcement, **after adding such an act to the Annex I.**

Justification:

It simplifies the scope of the Regulation and makes it more clear for all stakeholders. It will reduce legal uncertainty.

Article 3 (13) and (14)

We have serious doubts about effects of wide extension of economic operator definition. Some of entrepreneurs can be covered by this regulation unintentionally and unnecessary. At the same time we understand the need to market surveillance cover of e-commerce. We are open for discussion and are waiting for opinions of other delegations.

Article 4

We uphold previously submitted doubts about provision (WK 9760/2018 INIT. 30-08-2018).

There are still considerable doubts as to whether article 4 in its current form would be proportional and effective. We support SK comments sent to Presidency 18 July 2018 which are still valid. There is a risk of creating serious administrative burden without solving the problem. In our opinion article in its current form is unproportional and ineffective, as obligations could be easily circumvented (letterbox/shell companies). Moreover, it will be a

burden for sellers from third countries who will bear higher costs or even stop offering goods in EU and for customers in EU who will pay higher prices for products and will have narrower choice of products. This will cause a decrease in competitiveness in the EU.

Article 12 proposition of paragraph 2a and paragraph 8 introduction

Text proposed by the Presidency (AT)

Amendment

8. Market surveillance authorities shall establish adequate procedures in connection with products subject to the Union harmonisation legislation set out in Annex I as follows:

2a -Market surveillance authorities shall exercise their powers and perform their duties, including using or requiring evidence or information, carry out on site inspections and mutual assistance activities, without prejudice to specific exclusions established in national law system of a particular Member State.

8. Market surveillance ~~authorities shall establish adequate~~ operates in accordance with established procedures in connection with products subject to the Union harmonisation legislation set out in Annex I as follows:

Justification:

[2a] – Exercising powers and performing duties of market surveillance authorities, as proposed in proposal of Regulation, could interfere with the consistency of a legal regulation systems in Member States. This applies in particular articles 12 p. 6, 14 p. 4 and 5 and 24 p.2. In the current form of proposal, the law of a Member State may not limit the exercise of the obligations and powers of the market surveillance authorities indicated in these provisions (even when provision uses “may”). Article 16 (professional and commercial secrecy) is not enough. Exclusions of authorities’ activities established in national law can relate for example to: age of the person interviewed, the mental condition of the person interviewed , seal of confession, freedom of the press, enter the premises).

[8] - The decision who sets the procedures should not be in competence of Member States.

Article 15 p. 6

Text proposed by the Presidency (AT)

Amendment

6. ~~Market surveillance authorities shall alert or have alerted, within an~~

6. **Market surveillance authorities shall take appropriate measures to**

~~adequate timeframe, end-users within their territories to hazards that they have identified relating to any product so as to reduce the risk of injury or other damage.~~

alert users within their territories within an adequate timeframe of hazards they have identified relating to any product so as to reduce the risk of injury or other damage.

Justification:

We prefer wording of art. 19 paragraph 2 Regulation (EC) No 765/2008/. It is more clear and consistent with current practice of market surveillance authorities.

Article 20 paragraph 3

Text proposed by the Presidency (AT)

Amendment

3. The Commission shall adopt implementing acts on testing facility support programmes. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.

3. The Commission shall adopt implementing acts on testing facility support programmes **in accordance with the conditions set out in Annex IV**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.

Justification:

We propose that the EC lists in an Annex IV main prerequisites and criteria of selecting or setting up laboratories, procedures for financing such programmes and indicates the most urgent fields of interests – i.e. what group of products need intervention at first.

Article 26 paragraph 6 (a) and (d)

Text proposed by the Presidency (AT)

- (a) the number of interventions in the field of controls on such products, including product safety and compliance;
- (d) the characteristics of any product found to be non-compliant.

Amendment

- (a) the number of interventions in the field of controls on **such** product, ~~including product~~ safety and compliance;
- (d) ~~the characteristics of any product found to be non-compliant~~ **the reasons for non-compliance of the products.**

Justification:

(a) - – *The scope of the Regulation is very wide. Goods covered by harmonization legislation can be inspected by customs authorities with regard to many issues not concerned with safety and compliance. The question is whether customs authorities would need to provide data on all controls, also concerning e.g. proper tariff classification or origin of goods? Is it suggested to provide data only on controls related to product safety and compliance.*

(d) *“Characteristics of any product is not very clear and unspecific”. It is suggested to change for „the reasons for non-compliance of the product”.*

Article 28 (a)

Text proposed by the Presidency (AT)

- (a) within five working days of the suspension, the authorities designated under Article 26(1) have not been requested by the market surveillance authorities to maintain the suspension;

Amendment

- (a) within ~~five~~ **three** working days of the suspension, the authorities designated under Article 26(1) have not been requested by the market surveillance authorities to maintain the suspension;

Justification:

Extending the time for reaction of MSAs to customs requests will significantly influence in a negative way speed of customs clearance.

Article 35 paragraph 3

Text proposed by the Presidency (AT)

3. The Commission may, approve a specific system of product-related pre-export control carried out by a third country on products immediately prior to their export into the Union in order to verify that those products satisfy the requirements of the Union harmonisation legislation applicable to them. The approval may be granted in respect of one or more products, in respect of one or more categories of product or in respect of products or categories of product manufactured by certain manufacturers.

Amendment

3. ~~The Commission may, approve a specific system of product-related pre-export control carried out by a third country on products immediately prior to their export into the Union in order to verify that those products satisfy the requirements of the Union harmonisation legislation applicable to them.~~ The Commission may approve a specific system of product-related pre-export control carried out by a third country on products immediately prior to their export into the Union in order to verify that those products satisfy the requirements of the Union harmonisation legislation applicable to them only after prior validation by the Network. The approval may be granted in respect of one or more products, in respect of one or more categories of product or in respect of products or categories of product manufactured by certain manufacturers.

or

3. ~~The Commission may, approve a specific system of product-related pre-export control carried out by a third country on products immediately prior to their export into the Union in order to verify that those products satisfy the requirements of the Union harmonisation legislation applicable to them.~~ The

Commission shall consult and get approval of the Network before start a procedure of approve a specific system of product-related pre-export control carried out by a third country on products. The approval may be granted in respect of one or more products, in respect of one or more categories of product or in respect of products or categories of product manufactured by certain manufacturers.

Justification

The proposal allows to make the procedure set out in the art. 35 more coherent with the art. 33a paragraph 2b (a task of the Network).

Article 61 paragraph 1 and 2

Text proposed by the Presidency (AT)

Amendment

- | | |
|--|---|
| <p>1. The Member States shall, according to national legislation, lay down the rules on penalties applicable to infringements of the provisions of this Regulation that impose obligations on economic operators and shall take all measures necessary to ensure that they are implemented.</p> <p>2. The penalties provided for shall be effective, proportionate and dissuasive.</p> | <p>1. The Member States shall lay down the rules on penalties applicable to infringements in the article the provisions of this Regulation that impose obligations on economic operators and shall take all measures necessary to ensure that they are implemented.</p> <p>2. The penalties provided for shall be effective, proportionate and dissuasive and may be increased if the relevant economic operator has previously committed a similar infringement of the provisions of this Regulation."</p> |
|--|---|

Justification

Specific provisions of the Regulation, infringement of which will be penalized, should be set out in this paragraph. We propose that EC list this provisions.

It seems justified that the proportionality of the penalties applied should also be subject to the frequency of infringements by the economic operator

