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WORKING PAPER

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From:	Presidency
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	Article 4 – RO Presidency proposal and EP suggestions

Article 4 – RO PCY proposal with EP comments and suggestions

Text in **green** - Agreed, Text in **yellow** - For possible agreement, Text in **red** - For further discussion, Text in **blue** – RO PCY proposal
Text in **purple** - EP comments and suggestions

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
CHAPTER II				
100	Chapter II Compliance information	Chapter II Compliance information	Chapter II Compliance information	
ARTICLE 4				
101	Article 4 Person responsible for compliance information	Article 4 <i>Reference</i> person responsible for compliance information AM 47	Article 4 Person responsible for compliance information Tasks of economic operators regarding compliance	Article 4 Tasks of economic operators regarding compliance of products subject to certain Union harmonisation legislation
ARTICLE 4 - PARAGRAPH 1				
102	1. A product may be made available on the market only if the following conditions are met:	1. A product may be made available on the market only if the following conditions are met: <i>there is a reference person established in the</i>	<u>1. Notwithstanding any obligations set out in applicable Union harmonisation legislation, a product subject to legislation in paragraph 7</u> may be made	<i>Maintain Council mandate</i> <i>EP to show flexibility on the issue of placing on the market"</i>

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		<i>Union with respect to this product.</i> AM 48	available <u>placed</u> on the market only if the following conditions are met <u>there is an economic operator established in the Union who is responsible for the tasks set out in paragraph 3 in respect to this product.</u>	
ARTICLE 4 - PARAGRAPH 1a (new)				
102 A			<u>1a. For the purpose of this Article, the economic operator referred to in paragraph 1 means any of:</u>	1a. For the purpose of this Article, the economic operator referred to in paragraph 1 means any of the following:
ARTICLE 4 - PARAGRAPH 1 - POINT a				
103	(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 is established in the Union or there is at least one of the following in place with respect to the product: AM 49	(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>Maintain Council mandate</i> <i>See row 106a in the EP mandate</i>
ARTICLE 4 - PARAGRAPH 1 - POINT a - POINT i				
104	(i) an importer;	(i) an importer; AM 49	(i) <u>(aa) an importer, when the manufacturer is not established in the Union;</u>	<i>Maintain Council mandate</i> <i>See row 106a in the EP mandate</i>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
ARTICLE 4 - PARAGRAPH 1 - POINT a - POINT ii				
105	(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) 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; AM 49	(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;	<i>Main Council mandate</i>
ARTICLE 4 - PARAGRAPH 1 - POINT ab				
105 A			<u>(ab) an authorised representative;</u>	<u>(ab) an authorised representative who has a written mandate from the manufacturer designating him to perform tasks listed in paragraph 3 on the manufacturer's behalf;</u>
ARTICLE 4 - PARAGRAPH 1 - POINT ac				
105 B			<u>(ac) a fulfilment service provider established in the Union with respect to products handled by it when no other economic operator is established in the Union.</u>	<u>(ac) a fulfilment service provider established in the Union with respect to products handled by it when no other economic operator as mentioned in points (a) to (ab) is established in the Union.</u>

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ARTICLE 4 - PARAGRAPH 1 - POINT b				
106	(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 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. AM 50	(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.	Main Council mandate
ARTICLE 4 - PARAGRAPH 1 a (new)				
106A		<i>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,</i>		See rows 102A-105B

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		<i>who has a written mandate from the manufacturer requiring him to perform tasks listed in paragraph 3 on the manufacturer's behalf;</i> <i>The mandate referred to in point (c) shall be signed both by the manufacturer and designated authorised representative.</i> AM 51		
ARTICLE 4 - PARAGRAPH 2				
107	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.	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. AM 52	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.	<i>Maintain Council mandate</i>

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ARTICLE 4 - PARAGRAPH 3				
108	3. The person responsible for compliance information shall perform the following tasks:	3. <i>Without prejudice to any obligations and responsibilities of economic operators under the applicable Union harmonisation legislation, a reference</i> The responsible for compliance information person shall perform the following tasks: AM 53	<u>3. Without prejudice to any obligations of economic operators under the applicable Union harmonisation legislation, the person economic operator responsible for compliance information referred to in paragraph 1 shall perform the following tasks as a minimum:</u>	3. Without prejudice to any obligations of economic operators under the applicable Union harmonisation legislation, the economic operator referred to in paragraph 1 shall perform the following tasks as a minimum:
ARTICLE 4 - PARAGRAPH 3 - POINT a				
109	(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	(a) if the Union harmonisation legislation applicable to the product provides for an EU declaration of conformity and technical documentation, <i>verifying that EU declaration of conformity and technical documentation have been drawn up and</i> keeping the	(a) if the Union harmonisation legislation applicable to the product provides for an EU declaration of conformity <u>or declaration of performance</u> and technical documentation, <u>verifying that respective EU declaration of conformity or declaration of performance and technical documentation have been correctly drawn</u>	(a) if the Union harmonisation legislation applicable to the product provides for an EU declaration of conformity or declaration of performance and technical documentation, verifying that <u>respective EU declaration of conformity or declaration of performance and technical documentation have been correctly drawn up and</u> keeping the declaration of conformity or declaration of performance and technical documentation at the disposal of market surveillance authorities for the period

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	for the period required by that legislation;	declaration <i>of conformity</i> and technical documentation at the disposal of market surveillance authorities for the period required by that legislation; AM 54	<u>up and</u> keeping the declaration <u>of conformity or declaration of performance</u> and technical documentation at the disposal of market surveillance authorities for the period required by that legislation;	required by that legislation; or <i>EP proposals to analyse:</i> <i>1 option</i> (a) if the Union harmonisation legislation applicable to the product provides for an EU declaration of conformity or declaration of performance and technical documentation, verifying that respective EU declaration of conformity or declaration of performance and technical documentation have been correctly drawn up, and keeping the declaration of conformity or declaration of performance and technical documentation at the disposal of market surveillance authorities for the period required by that legislation <u>and ensuring that the technical documentation can be made available to those authorities, upon request.</u> <i>2 option</i> (a) if the Union harmonisation legislation applicable to the product provides for an EU declaration of conformity or declaration of performance and technical documentation, verifying that respective EU declaration of conformity or declaration of performance and technical documentation have been correctly drawn up and keeping the declaration of

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				conformity or declaration of performance and technical documentation at the disposal of market surveillance authorities for the period required by that legislation; (aa) keeping the technical documentation at the disposal of national market surveillance authorities for the period required by that legislation when fulfilling the role of manufacturer or authorised representative or ensuring that the technical documentation can be made available to those authorities upon request when fulfilling the role of importer or fulfilment service provider;
ARTICLE 4 - PARAGRAPH 3 - POINT b				
110	(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;	(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;	(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 <u>which can be easily understood by that authority;</u>	<i>Maintain Council mandate</i>

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ARTICLE 4 - PARAGRAPH 3 - POINT b a (new)				
110A		<i>(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;</i> AM 55		<i>(ba) when considering or having reason to believe that a product in question presents a serious risk, not in conformity with the applicable Union harmonisation legislation, immediately informing the manufacturer and, where applicable, other economic operators as well as the market surveillance authorities;</i> <i>EP proposal: deletion of “serious” in order to better align this provision to the text of Decision 768/2008</i>
ARTICLE 4 - PARAGRAPH 3 - POINT c				
111	(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.	(c) cooperating with the market surveillance authorities, and taking immediate at their request, on any action taken to eliminate or to remedy any case of non-compliance with the requirements set out in Union harmonisation legislation applicable to	(c) cooperating with the market surveillance authorities, at their including further to a reasoned request, on any action taken to eliminate making sure that the immediate necessary corrective action is taken to remedy any case of non-compliance with the requirements set out in	Maintain Council mandate or EP proposal, seeking to accommodate COM concerns and ensure that responsible person does not have to constantly monitor compliance of the products: (c) cooperating with the market surveillance authorities, at their including further to a

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		<i>the product in question</i> or, if that is not possible, mitigate the risks posed by the <i>that</i> product. AM 56	<u>Union harmonisation legislation applicable to the product in question</u>, or, if that is not possible, mitigate the risks posed by the <i>that</i> product <u>at their own initiative or when required to do so by the market surveillance authorities</u>.	<u>reasoned</u> request, on any action taken to eliminate <u>making sure that the immediate necessary corrective action is taken to remedy any case of non-compliance with the requirements set out in Union harmonisation legislation applicable to the product in question</u>, or, if that is not possible, mitigate the risks posed by the <i>that</i> product <u>at their own initiative or when required to do so by the market surveillance authorities or at their own initiative when they consider or have reason to believe that the product in question presents a risk.</u>
ARTICLE 4 - PARAGRAPH 3 - POINT c a (new)				
111A		<i>(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.</i> AM 57		<i>Maintain Council mandate (in Council's text this issue is covered in Article 4a)</i>
ARTICLE 4 - PARAGRAPH 4				
112	4. Manufacturers shall	4. Manufacturers shall	4. Manufacturers shall make	<i>Maintain Council mandate</i>

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	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 Union free of charge.	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 Union free of charge. AM 58	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 Union free of charge.	
ARTICLE 4 - PARAGRAPH 5				
113	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.	5. The identity and <i>name, registered trade name or registered trade mark and the</i> contact details, <i>including the postal address,</i> of the reference person responsible for compliance information with respect to the product shall be indicated on or identifiable from information indicated on <i>the product or, where</i>	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.	5a. Without prejudice to the respective obligations of the economic operators under the applicable Union harmonisation legislation, the name, registered trade name or registered trade mark and the contact details, including the postal address, of the economic operator referred to in paragraph 1 shall be indicated on the product or on its packaging, the parcel or an accompanying document. <i>Moved from Council mandate, see row 113A</i> <i>or</i>

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		<i>that is not possible because of the size or physical characteristics of the product, on its packaging, the parcel or an accompanying document.</i> AM 59		EP proposal: 5a. Without prejudice to the respective obligations of the economic operators under the applicable Union harmonisation legislation, the name, registered trade name or registered trade mark and the contact details, including the postal address, of the economic operator referred to in paragraph 1 shall be indicated on the product or on its packaging, the parcel or an accompanying document and, in relation to the products referred to in Article 4aa of this Regulation, in the offer for sale. <i>Moved from Council mandate, see row 113A</i> EP proposal, replacing the EP text in row 113A
ARTICLE 4 - PARAGRAPH 5 a (new)				
113A		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	<u>5a. Without prejudice to the respective obligations of the economic operators under the applicable Union harmonisation legislation, the name, registered trade name or registered trade mark and the contact details, including the postal address, of the economic operator referred to in paragraph 1 shall be indicated on the product or on its packaging,</u>	<i>Council mandate moved to row 113</i>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<i>marketplaces shall facilitate the display of abovementioned information for the products sold through them.</i> AM 60	<u>the parcel or an accompanying document.</u>	
ARTICLE 4 - PARAGRAPH 6				
114	6. For the purposes of paragraph 1:	6. For the purposes of paragraph 1: AM 61	6. For the purposes of paragraph 1:	Maintain Council mandate
ARTICLE 4 - PARAGRAPH 6 - POINT a				
115	(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;	(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; AM 61	(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;	Maintain Council mandate
ARTICLE 4 - PARAGRAPH 6 - POINT b				

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116	(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.	(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. AM 61	(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.	Maintain Council mandate
ARTICLE 4 - PARAGRAPH 7				
117	This Article shall not apply in relation to a product that is subject to Regulation (EC) No 1223/2009, Regulation (EU) 2017/745, Regulation 2017/746 or Regulation 2017/1369.	This Article shall not apply in relation to a product that is subject to Regulation (EC) No 1223/2009, Regulation (EU) 2017/745, Regulation 2017/746 or Regulation 2017/1369.	7. This Article shall not only apply in relation to a products that is are subject to Regulations (EC) No 1223/2009, Regulation (EU) 2017/745, Regulation 2017/746 or Regulation 2017/1369 (EU) 305/2011 ('construction products'), (EU) 2016/425 ('personal protective equipment'), (EU) 2016/426 ('gas appliances')	7. This Article shall only apply in relation to a products that are subject to Regulations (EU) 305/2011 ('construction products'), (EU) 2016/425 ('personal protective equipment'), (EU) 2016/426 ('gas appliances') and Directives 2000/14/EC ('outdoor noise'), 2006/42/EC ('machinery directive'), 2009/48/EC ('toy safety'), 2009/125/EC ('ecodesign'), 2010/35/EU ('transportable pressure equipment'), 2011/65/EU ('RoHS'), 2013/29/EU ('pyrotechnics'), 2013/53/EU ('recreational craft'), 2014/29/EU ('simple

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			<u>and Directives 2000/14/EC ('outdoor noise'), 2006/42/EC ('machinery directive'), 2009/48/EC ('toy safety'), 2009/125/EC ('ecodesign'), 2010/35/EU ('transportable pressure equipment'), 2011/65/EU ('RoHS'), 2013/29/EU ('pyrotechnics'), 2013/53/EU ('recreational craft'), 2014/29/EU ('simple pressure vessels'), 2014/30/EU ('electromagnetic compatibility'), 2014/34/EU ('ATEX'), 2014/35/EU ('low voltage directive'), 2014/53/EU ('radio equipment'), 2014/68/EU ('pressure equipment').</u>	pressure vessels'), 2014/30/EU ('electromagnetic compatibility'), <u>2014/31/EU ('NAWI'), 2014/32/EU ('MID'), 2014/34/EU ('ATEX'), 2014/35/EU ('low voltage directive'), 2014/53/EU ('radio equipment'), 2014/68/EU ('pressure equipment').</u>