



Council of the European Union  
General Secretariat

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### **WORKING PAPER**

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### **WORKING DOCUMENT**

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| From:    | Presidency  |
| To:      | Working Party on Technical Harmonisation (Goods package)                  |
| Subject: | Regulation on compliance and enforcement - EP suggestions (Article 22-24) |

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|     | PARLIAMENT TEXT  | COUNCIL TEXT   | drafting   |
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| 256 | Article 22<br>Requests for information   | <b>Article 22 deleted</b>  | Article 22<br>Requests for information   |
| 257 | <i>-1. There shall be efficient cooperation and exchange of information among the market surveillance authorities within the Member States and the Union, and between market surveillance authorities and the Commission.</i><br><br>AM 142  | <b><u>Article 22a</u></b><br><b><u>1. There shall be efficient cooperation and exchange of information among the market surveillance authorities of the Member States, and between market surveillance authorities and the Commission and the relevant Union agencies.</u></b>   | <b><u>-1. There shall be efficient cooperation and exchange of information among the market surveillance authorities of the Member States, and between market surveillance authorities and the Commission and the relevant Union agencies.</u></b><br><br>(corresponds to EP text in paragraph -1 and Council's text in paragraph 1 of Article 22a)  |
| 258 | 1. At the <i>duly motivated</i> request of an applicant authority, the requested authority shall supply <i>to the applicant authority without delay, and in any event within 30 days</i> , any information that the requested authority deems relevant to establish whether a product is non-compliant and to ensure that the non-compliance can be brought to an end. | <del>1. At the request of an applicant authority, the requested authority shall supply any information that the requested authority deems relevant to establish whether a product is non-compliant and to ensure that the non-compliance can be brought to an end.</del><br><br><b><u>Article 22a</u></b><br><b><u>2. When an authority has undertaken all appropriate efforts to obtain information itself, and nevertheless cannot conclude its investigations, it may put forward a motivated request</u></b> | <b><u>1. When a market surveillance authority has undertaken all appropriate efforts to obtain information itself, and nevertheless cannot conclude its investigations, it may submit a motivated request to the market surveillance authority of another Member State where access to this information can be obtained. In this case</u></b> the requested authority shall supply <i>to the applicant authority without delay, and in any event within 30 days</i> , any information that the requested authority deems relevant to establish whether a product is non- |

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|     | AM 143   | <b><u>to the authority of another Member State where access to this information can be enforced.</u></b>  | compliant and to ensure that the non-compliance can be brought to an end.<br><br>(redrafted text, based on Council's text in paragraph 2 of Article 22a, and EP text in paragraph 1)  |
| 259 | <p>2. The requested authority shall undertake appropriate investigations or take any other measures that are appropriate in order to gather the required information. Where necessary, those investigations shall be carried out with the assistance of other market surveillance authorities. <i>The requested authority shall keep the applicant authority informed about the actions undertaken with regard to its request.</i></p> <p>AM 144</p> | <p><del>2. The requested authority shall undertake appropriate investigations or take any other measures that are appropriate in order to gather the required information. Where necessary, those investigations shall be carried out with the assistance of other market surveillance authorities.</del></p> <p><b><u>Article 22a</u></b><br/> <b><u>3. The applicant authority remains responsible for the investigation it has initiated, unless the requested authority expressly agrees to take over responsibility.</u></b></p> | <p>2. The requested authority shall undertake appropriate investigations or take any other measures that are appropriate in order to gather the required information. Where necessary, those investigations shall be carried out with the assistance of other market surveillance authorities.</p> <p><b><u>2a. The applicant authority remains responsible for the investigation it has initiated, unless the requested authority agrees to take over responsibility.</u></b><br/> (para. 3 of Article 22a, Council text)</p> <p><i>2b. The requested authority shall keep the applicant authority informed about the actions undertaken with regard to its request.</i><br/> (para 2 EP text)</p> |
| 260 | <p>3. At the request of the applicant authority, the requested authority may allow officials of the applicant authority to accompany their counterparts in the requested</p>   | <p><del>3. At the request of the applicant authority, the requested authority may allow officials of the applicant authority to accompany their counterparts in the requested authority during the course of their investigations.</del></p>  | <p>3. At the request of the applicant authority, the requested authority may allow officials of the applicant authority to accompany their counterparts in the requested authority during the course of their investigations.</p>   |

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|      | authority during the course of their investigations.  |  |   |
| 260A | <p><i>3a. While supplying the information to the applicant authority pursuant to paragraph 1, the requested authority shall observe the principle of confidentiality in order to protect professional and commercial secrets or to preserve personal data pursuant to national legislation.</i></p> <p>AM 145</p> | <p><b>Article 22a</b></p> <p><b><u>4. In well justified cases, a requested authority may refuse to comply with a request for information under paragraph 1, when own duties would be substantially impaired, or when the applicant authority does not agree that the information is subject to the rules on confidentiality and on professional and commercial secrecy as laid down in Article 16.</u></b></p> | <p><i>(Considered as covered by article 16)</i></p> |
| 261  | <p><b>deleted</b></p> <p>AM 146</p>   | <p><del>4. The requested authority shall reply to the request under paragraph 1 using the procedure and within the time limits specified by the Commission under paragraph 5.</del></p>  | <p><b>Deleted</b></p>                               |
| 262  | <p><b>deleted</b></p> <p>AM 147</p>   | <p><del>5. The Commission shall adopt implementing acts specifying the time limits, standard forms and further details of the procedure to be used for making and responding to requests for information under paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.</del></p>   | <p><b>Deleted</b></p>                               |

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| 262A |  | <b><u>Article 22a</u></b><br><b><u>Mutual Assistance</u></b>   |  |
| 262B |  | <b><u>1. There shall be efficient cooperation and exchange of information among the market surveillance authorities of the Member States, and between market surveillance authorities and the Commission and the relevant Union agencies.</u></b>  | <i>(moved to para. -1 of article 22)</i>     |
| 262C |  | <b><u>2. When an authority has undertaken all appropriate efforts to obtain information itself, and nevertheless cannot conclude its investigations, it may put forward a motivated request to the authority of another Member State where access to this information can be enforced.</u></b> | <i>(moved to para. 1 of article 22)</i>      |
| 262D |  | <b><u>3. The applicant authority remains responsible for the investigation it has initiated, unless the requested authority expressly agrees to take over responsibility.</u></b>  | <i>(moved to new para. 2a of article 22)</i> |
| 262E |  | <b><u>4. In well justified cases, a requested authority may refuse to comply with a request for information under paragraph 1, when own duties would</u></b>   | <i>(Considered as covered by article 16)</i> |

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|     |   | <u>be substantially impaired, or when the applicant authority does not agree that the information is subject to the rules on confidentiality and on professional and commercial secrecy as laid down in Article 16.</u>                                       |   |
| 263 | Article 23<br>Requests for enforcement measures   | <del>Article 23</del><br><del>Requests for enforcement measures</del>   | Article 23<br>Requests for enforcement measures   |
| 264 | 1. <del>At the</del> <i>In case where bringing a non-compliance with regard to the product to an end requires measures within the jurisdiction of another Member State, a duly motivated</i> <del>of request for enforcement measures may be made by an applicant authority to a requested authority in that Member State. In this case,</del> the requested authority shall without delay take all necessary enforcement measures using the powers conferred on it under this Regulation in order to bring an instance of non-compliance to an end <del>by exercising the powers laid down in Article 14 and any</del> | <del>1. At the request of an applicant authority, the requested authority shall without delay take all necessary enforcement measures using the powers conferred on it under this Regulation in order to bring an instance of non-compliance to an end.</del> | 1. <del>At the</del> <i>In case where bringing a non-compliance with regard to the product to an end requires measures within the jurisdiction of another Member State and where such measures do not result from the requirements of Article 15(1e), a duly motivated</i> <del>of request for enforcement measures may be made by an applicant authority to a requested authority in that Member State.</del><br><i>1a. The requested authority shall without delay <b>determine and</b> take all <b>appropriate</b> necessary enforcement measures using the powers conferred on it under this Regulation in order to bring an instance of non-compliance to an end by exercising the powers laid down in Article 14 and any additional powers granted to it under the national law, including the imposition</i> |

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|     | <p><i>additional powers granted to it under the national law, including the imposition of penalties.</i></p> <p>AM 148</p>  |   | <p><i>of penalties. <u>Where necessary, enforcement measures shall be determined and implemented with the assistance of other public authorities.</u></i></p>  |
| 265 | <p>2. The requested authority shall determine the appropriate enforcement measures required to bring an instance of non-compliance to an end. Where necessary, enforcement measures shall be determined and implemented with the assistance of other public authorities.</p>  | <p><del>2. The requested authority shall determine the appropriate enforcement measures required to bring an instance of non-compliance to an end. Where necessary, enforcement measures shall be determined and implemented with the assistance of other public authorities.</del></p> | <p><b>Deleted (text moved to paragraph 1)</b></p>  |
| 266 | <p>The requested authority shall regularly and without undue delay inform and consult the applicant authority about the measures referred to in paragraph 2 that have been taken or which are intended to be taken. <i>The requested authority may consult the applicant authority on these measures when considers it necessary.</i></p> <p>AM 149</p> | <p><del>3. The requested authority shall regularly and without undue delay inform and consult the applicant authority about the measures referred to in paragraph 2 that have been taken or which are intended to be taken.</del></p>   | <p>3. The requested authority shall regularly and without undue delay inform and consult the applicant authority about the measures referred to in paragraph 2 that have been taken or which are intended to be taken. <i>The requested authority may consult the applicant authority on these measures when considers it necessary.</i></p> |

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| 267 | <p>The requested authority shall notify the applicant authority, the market surveillance authorities of other Member States, and the Commission of the measures taken by it and of their effect on the non-compliance in question. The notification shall be made using the system referred to in Article 34. <del>and shall include the following information as a minimum:</del></p> <p>AM 150</p> | <p><del>The requested authority shall without delay notify the applicant authority, the market surveillance authorities of other Member States, and the Commission of the measures taken by it and of their effect on the non-compliance in question. The notification shall be made using the system referred to in Article 34 and shall include the following information as a minimum:</del></p> | <p><i>(To be discussed further)</i></p> |
| 268 | <p><del>(a) whether temporary measures have been imposed;</del></p> <p>AM 151</p>  | <p><del>(a) whether temporary measures have been imposed;</del></p>   | <p><b>Deleted</b></p>                   |
| 269 | <p><del>(b) whether the non-compliance has ceased;</del></p> <p>AM 152</p>   | <p><del>(b) whether the non-compliance has ceased;</del></p>  | <p><b>Deleted</b></p>                   |
| 270 | <p><del>(c) whether penalties have been imposed and, if so, what;</del></p> <p>AM 153</p>  | <p><del>(c) whether penalties have been imposed and, if so, what;</del></p>   | <p><b>Deleted</b></p>                   |



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| 271 | <p><del>(d) whether other measures taken by the requested authority or the economic operator have been implemented.</del></p> <p>AM 154</p>  | <p>(d) whether other measures taken by the requested authority or the economic operator have been implemented.</p>  | Deleted    |
| 272 | <p><del>4. The requested authority shall reply to the request under paragraph 1 using the procedure and within the time limits specified by the Commission under paragraph 5.</del></p> <p>AM 155</p>  | <p>4. The requested authority shall reply to the request under paragraph 1 using the procedure and within the time limits specified by the Commission under paragraph 5.</p>  | Deleted    |
| 273 | <p><del>5. The Commission shall adopt implementing acts specifying the time limits, standard forms and further details of the procedures to be used for making and responding to requests for enforcement measures under paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.</del></p> <p>AM 156</p> | <p>5. The Commission shall adopt implementing acts specifying the time limits, standard forms and further details of the procedures to be used for making and responding to requests for enforcement measures under paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.</p> | Deleted    |
| 274 | Article 24   | Article 24  | Article 24 |

|     | Procedure for mutual assistance requests  | Procedure for mutual assistance requests  | Procedure for mutual assistance requests  |
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| 275 | <p>1. The applicant authority shall provide <del>sufficient</del> <b>all available</b> information, in the case of requests for mutual assistance under Article 22 or 23, to enable the requested authority to fulfill the request, including any necessary evidence obtainable only in the Member State of the applicant authority.</p> <p>AM 157</p>  | <p><del>1. The applicant authority shall provide sufficient information, in the case of requests for mutual assistance under Article 22 or 23, to enable the requested authority to fulfill the request, including any necessary evidence obtainable only in the Member State of the applicant authority.</del></p> <p><b><u>2a. The applicant authority shall carry out itself all investigations reasonable possible before launching a request for assistance.</u></b></p>   | <p>1. The applicant authority <b><u>shall endeavour to carry out itself all investigations before launching a request for assistance</u></b> and shall provide sufficient <b>all available</b> information, in the case of requests for mutual assistance under Article 22 or 23, to enable the requested authority to fulfil the request, including any necessary evidence obtainable only in the Member State of the applicant authority.</p> <p><i>(para.1 EP text, para. 2a Council text redrafted)</i></p> |
| 276 | <p>2. Requests for mutual assistance under Article 22 or 23 shall be sent by the applicant authority to the <del>single liaison office of the Member State of the</del> requested authority and also to the single liaison office <b>offices</b> of the Member State <b>States</b> of <b>both</b> the applicant authority and the requested authority for information purposes. <del>The single liaison office of the Member State of the requested authority</del></p> | <p><del>2. Requests for mutual assistance under Article 22 or 23 shall be sent by the applicant authority to the single liaison office of the Member State of the requested authority and also to the single liaison office of the Member State of the applicant authority for information purposes. The single liaison office of the Member State of the requested authority shall pass the requests on to the appropriate competent authority, without undue delay.</del></p> | <p><b>Deleted</b> (<i>see para. 3</i>)</p>  |

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|      | shall pass the requests on to the appropriate competent authority, without undue delay.<br><br>AM 158   |  |   |
| 276A |   | <b><u>2a. The applicant authority shall carry out itself all investigations reasonable possible before launching a request for assistance.</u></b>   | <i>(moved to para. 1)</i>   |
| 276B |   | <b><u>2b. The requested authority shall without delay, and in any event within 4 weeks unless otherwise agreed, give assistance on an adequate scale by supplying information or documentation, by carrying out appropriate investigations or any other appropriate measures, and by participating in investigations initiated by the applicant authority.</u></b> | Covered by paragraph 1 of Articles 22 and paragraph 1a of Article 23  |
| 277  | 3. Requests for mutual assistance under Article 22 or 23 and all communication linked to them shall be made using electronic standard forms by means of the the system referred to in Article 34. | 3. Requests for mutual assistance under <del>Article 22 or 23</del> and all communication linked to them shall be made using electronic standard forms by means of the system referred to in Article 34.   | 3. Requests for mutual assistance under Article 22 or 23 and all communication linked to them <b><u>shall take place either directly between the involved authorities or through the single liaison offices of both the applicant and the requested authorities and</u></b> shall be made using electronic standard forms by means of the the system referred to in Article 34. <b><u>For this purpose, the system referred to in Article 34 shall provide structured</u></b> |

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|      |   |  | <b><u>information on mutual assistance cases to the single liaison offices involved.</u></b><br>(paragraph 3a and paragraph 7 of the Council text merged with paragraph 2 of EP text)  |
| 277A |   | <b><u>3a. Communication shall take place either directly between the involved authorities or through the single liaison office.</u></b>  | (moved to para. 3)   |
| 278  | 4. The languages to be used for requests for mutual assistance under Article 22 or 23 and for all communication linked to them shall be agreed upon by the competent authorities concerned.   | 4. The languages to be used for requests for mutual assistance <del>under Article 22 or 23</del> and for all communication linked to them shall be agreed upon by the competent authorities concerned.   | 4. The languages to be used for requests for mutual assistance under Article 22 or 23 and for all communication linked to them shall be agreed upon by the competent authorities concerned.  |
| 279  | 5. Where no agreement about the languages to be can be reached between the competent authorities concerned, the requests for mutual assistance under Article 22 or 23 shall be sent in the official language of the Member State of the applicant authority and the replies to such requests in the official language of the Member State of the requested authority. In that instance, the applicant | 5. Where no agreement about the languages <del>to be</del> can be reached between the competent authorities concerned, the requests for mutual assistance <del>under Article 22 or 23</del> shall be sent in the official language of the Member State of the applicant authority and the replies to such requests in the official language of the Member State of the requested authority. In that instance, the applicant authority and the requested authority shall arrange for the translation of the requests, replies or other documents that it receives from the other. | 5. Where no agreement about the languages to be can be reached between the competent authorities concerned, the requests for mutual assistance under Article 22 or 23 shall be sent in the official language of the Member State of the applicant authority and the replies to such requests in the official language of the Member State of the requested authority. In that instance, the applicant authority and the requested authority shall arrange for the translation of the requests, replies or other documents that it receives from the other. |

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|      | authority and the requested authority shall arrange for the translation of the requests, replies or other documents that it receives from the other.  |   |                           |
| 280  | 6. The requested authority shall reply directly to the applicant authority and also to the single liaison offices of the Member States of both the applicant authority and the requested authority. | <del>6. The requested authority shall reply directly to the applicant authority and also to the single liaison offices of the Member States of both the applicant authority and the requested authority.</del>  | <b>Deleted</b>            |
| 280A |   | <b><u>7. The system referred to in Article 34 shall provide structured information on mutual assistance cases to the single liaison offices involved. Utilising this information, single liaison offices shall give any support necessary to facilitate assistance.</u></b> | <b>(moved to para. 3)</b> |