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WORKING PAPER

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From:	UK delegation
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	UK comments on the Compliance and Enforcement Regulation Proposal (Art. 10-21)

Commission Proposal on Compliance and Enforcement: UK Comments on articles 10 - 21

We are still consulting internally within the UK Government but offer the following comments following the Council Working Group's initial discussion of the Commission proposal.

Article 10: Obligations of market surveillance authorities as regards organisation

The UK welcomes measures which will improve the coordination of market surveillance in the EU.

Article 11: Market surveillance authorities and single liaison offices

The UK welcomes measures which will improve the coordination of market surveillance in the EU, however is unclear why it is necessary to formally designate single liaison offices.

Article 12: Activities of market surveillance authorities

The UK is concerned that this article places an undue emphasis on non-compliant products, as opposed to products which pose a risk to health and safety. We consider that article 3 in particular has a disproportionate focus on non-compliance and that this may discourage risk-based enforcement activity. This should be clarified in the article.

Article 13: National market surveillance strategies

While the UK supports measures which are aimed at increasing cooperation, we do not consider it feasible to produce a national market surveillance strategy every 3 years and have concerns that this measure might incentivise non-compliance if the information should be made public. In addition the UK is concerned that this approach might prove to be counter productive if the strategies are not flexible – for example strategies would need to take into account new products which may come on to the market at times that cannot be predicted. In addition the UK is unclear as to the overall purpose of producing the strategies; given that market surveillance must remain the competence of Member States these strategies should not be evaluated by the Commission. It would also be difficult to fairly compare the strategies of Member States. As such, we question the extent to which this measure would be effective.

Article 14: Powers and duties of market surveillance authorities

The UK is concerned that this article is overly prescriptive and goes beyond the level of detail necessary for effective market surveillance. We are in particular concerned about the powers which article 14(3) would confer on market surveillance authorities; for example articles 14(3c and d) are not qualified and do not mention the right for an economic operator to seek redress; article 14(3e3) could lead to members of staff being questioned without them having an appropriate level of knowledge about the product; article 14(3f) could lead to expensive samples being seized for incidences of non-compliance which are minor and which would be disproportionately expensive for the economic operator. While we note that the proposal does state that "market surveillance authorities shall exercise their powers in accordance with the principle of proportionality" this is not sufficiently explained; in addition we would repeat that there is no mention of routes for seeking address for economic operators who may consider that they have been treated unfairly.

Article 15: Market surveillance measures

The UK is concerned about references to "representative samples" and considers that this should be substituted with "adequate samples" so as to avoid the inference that "golden sampling" is acceptable.

Article 20: Union testing facilities

The UK is unclear as to the problem which this article seeks to address, given that accredited testing facilities already exist across the EU, the services of which are available to market surveillance authorities in all Member States. We are concerned that the introduction of Union testing facilities could lead to a two-tier system where facilities that are not designated as "Union testing facilities" could be perceived as substandard. This could compromise the business interests of existing testing facilities and also undermines the principle of accreditation. We consider that arbitration can already be provided by the courts, and are also concerned that the introduction of implementing acts for designating testing facilities is unnecessary and would reinforce the potential for the emergence of a two-tier system.

Article 21: Financing and recovery of costs by market surveillance authorities

The UK supports in principle the recovery of costs by market surveillance authorities where this action is proportionate and in line with the "polluter pays" principle. We also wish to be clear that the Member State should retain competence for setting that levels of any fines which might be imposed, and for the system for this.