Council of the European Union
General Secretariat

Interinstitutional files:
2017/0353 (COD)

Brussels, 14 May 2018

WK 5656/2018 INIT

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WORKING PAPER

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WORKING DOCUMENT

From:	NL delegation
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	Comments of the Netherlands on articles 22-64 Regulation 2017 (795)

Comments of the Netherlands on articles 22-64 Regulation 2017 (795)
May 2018

All input under parliamentary scrutiny reserve.

Article 22

- The Netherlands is of the opinion that the article should make clear that the applicant authority should first try to obtain the necessary information itself before requesting it from another authority. The request should be 'necessary and justified'.
- Moreover, there should be a possibility for the requested authority to refuse to act upon the request (cf. articles 14 and 15 of the CPC regulation).
- Par. 1 jo. par. 4: Include the time-limits in the regulation and not in an implementing act (cf. article 11(1) CPC regulation: 'without delay and in any event within 30 days unless otherwise agreed').
- Par. 2: Measures should be 'appropriate' and 'necessary'.

Article 23

- As for article 22, the Netherlands is of the opinion that this article should make clear that the applicant authority should only file a request in 'necessary and justified' cases.
- Par. 1 and 2: it should be made clear that the requested authority can decide which measures it wants to take and whether it wants to take any measures at all. Text proposal: *When the requested authority deems it appropriate and necessary to take enforcement measures to bring an instance of non-compliance to an end, it shall determine which enforcement measures will be taken.*
- Par. 5: Include the time-limits in the regulation and not in an implementing act.

Article 24

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Article 25

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Chapter VII: Products entering the Union market

- The Netherlands is a proponent of making a link between market surveillance and border controls as is done in this chapter. However, it is of the opinion that the proposal incorporates to much rules and regulations that are specific to customs. For the Netherlands it important that this cooperation will work in practice and does not just create administrative burdens.

Artikel 26

- Par. 3: NL is a proponent of using risk-analysis, but is of the opinion that the reference to customs code is not correct here, as the authorities responsible for border control can be other authorities than customs.
- Par. 4: The appropriate customs procedure allowing such processing refers to the procedure for inward processing.
    - According to the Netherlands, this is quite a demanding procedure in customs law, which importers can choose to make use of for fiscal reasons.
    - Whether this procedure should be used under this regulation, should up to the MSA to decide.
- Par. 5: The Netherlands believes that sharing information on risk between authorities is a good practice, however the reference to the customs code in this respect is not correct. The paragraphs of regulation 952/2013 that are mentioned under a and b are customs specific and do not concern market surveillance activities.
- Par. 5, last sentence: it is unclear to NL what is meant here:
    - Is it referring to the obligation for customs authorities to share information on the basis of regulation 952/2003? In that case NL believes it is not necessary to include this obligation here as well.
    - Or does this sentence imply that customs authorities should also perform market surveillance activities during customs activities? This would mean an enlargement of the tasks of customs authorities for which they do not have the required knowledge.

- Par. 7: The requested information is very detailed and it is not clear how market surveillance in the EU will improve by collecting all this information. This is an additional administrative burden for MSAs. The time they have to put in the collection of data and reporting cannot be put into actual market surveillance.

Article 27
- The reference to articles 197-199 of regulation 952/2013 is not clear to the Netherlands.
    - First, article 27 is about goods for which the free circulation is suspended, while articles 197-199 are on goods that are permanently not allowed to enter the market and can therefore be destroyed, etc.
    - Second, articles 197-199 of regulation 952/2013 are related to customs rules, they do not cover prohibitions or restrictions of other regulations.

Article 28
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Artikel 29
- Par. 1: NL supports the use of the concept of Authorised Economic Operator (AEO), but is against the obligation for MSAs to treat goods of AEOs with priority:
    - The AEO status is related to performance of the EO as regards customs rules, it is not related to product safety. Hence, the AEO status does not imply that the EO lives up to the applicable product regulation(s).
    - The AEO status can however be an indication that an EO can be trusted to (also) follow the rules related to product regulation. Therefore, NL is of the opinion that it should be up to the MSA to decide whether it wants to handle products of an AEO with priority.

Article 30
- For the same reasons as for article 27, NL is of the opinion that the reference to articles 197-199 of regulation 952/2013 is not correct here.

Article 31
The Netherlands has a positive standing towards the Union Product Compliance Network.

Article 32
The Netherlands is of the opinion that the members of the ADCOs should have the possibility to decide whether representatives of business associations and consumer associations should be part of the ADCO. The current text is not totally clear about this point. Suggestion: add '*may include'* before '*representatives of single liaison offices…'* in par. 3.

Article 33
- Par 1 (a): The Netherlands is of the opinion that the ADCOs should decide about their own work programs. It is good that the Commission will monitor all the different programs, but the ADCOs should keep the autonomy to adopt their own program.
- Par 1 (h): The Netherlands would like to add that the Commission provides administrative and financial help for the meetings of the ADCOs.
- Par 2: The Netherlands questions what the exact role of the EUPC board will be? Is more coordination really necessary? The Netherlands emphasizes that the Network should be lean and mean, so no unnecessary (administrative) burdens.
- What is the relation between 2(a) and 3(e). It looks like the EUPC board has the same task as the ADCOs. The Netherlands is of the opinion that the priorities for the joint actions (common market surveillance actions) should be decided by the ADCOs.

Article 34
- The Netherlands believes that this article lacks balance between exchange of information and administrative burden.
- Par 3(d): 'all complaints' is way too much. It should be about justified complaints. Moreover for products causing a serious risk, the info has to be put in RAPEX already.
- Medical devices has its own system: EUDAMED. NL believes it is not efficient to have several parallel systems in which MSAs have to put more or less the same information.

Article 35
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Article 36
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Article 37
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Chapter X: Final provisions
- The Netherlands did not check all the provisions in this chapter into dept yet. It would like to stress again that it is necessary to have a decent overview of which legislation will fall under this regulation and which will fall under regulation 765/2008.
- Regarding Article 42 (on the CPR), the Netherlands already has specific remarks. According to the Netherlands, the proposed deletion leads to the following problems:
- Het schrappen van het voorgesteld lid levert volgens NL de volgende problemen op:
    - In the CPR there are several references to this paragraph which make no sense anymore after deletion.
    - The CPR works differently than other product legislation. The main goal of the CPR is the creation of a level playing field and not so much product safety. Therefore MSAs need additional tools to perform market surveillance which are mentioned in article 56(1) of the CPR. Deleting that paragraph will diminish the possibilities for MSAs to take measures.

Article 61
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Artikel 62
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Artikel 63
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Artikel 64
- Whether the terms in this article are acceptable for the Netherlands depends on the time it will take to reach agreement on the text and the content of that agreed tekst.