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WORKING PAPER

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From:	IE delegation
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	IE comments on the Compliance and Enforcement Regulation Proposal (Art. 61)

Ireland welcomes the Commission proposal on compliance and enforcement while holding a general scrutiny reservation. The following comments are based on the text of Presidency discussion document WK 5426/2018 INIT.

Article 1

Ireland agrees with the Council Legal Service that the legal basis for the Regulation should be weighted towards the Internal Market and Customs. There is no justification for including Common Commercial Policy.

Article 2

This Regulation should apply to all products that are subject to Union harmonisation legislation. Therefore, the reference to the Annex in 2(1) should be removed otherwise we will end up with a number of non-aligned pieces of legislation on market surveillance – this Regulation, Regulation 765/2008 and the General Product Safety Directive. This will cause confusion for market surveillance authorities, economic operators and consumers. We note that the Presidency document WK 5486/2018 INIT has deleted the reference to the Annex in Articles 10 and 12, which Ireland supports.

Article 3

In general, all definitions should be concise and unambiguous.

2(7) in line with the suggestion from the Czech Republic at the last Working Party meeting we can agree to delete the wording after ‘Union harmonisation legislation’.

2(8) the definition for ‘manufacturer’ is not concise enough and we can agree with those Member States calling for the deletion of points (b) and (c).

2(12) the definition for ‘economic operator’ is not concise enough and deviates too much from the definition in Regulation 765/2008 and the definitions used in the NLF texts. The wording from the 2013 package (ST 16902/13) could be used *“‘economic operator’ means the manufacturer, the authorised representative, the importer the distributor, and any other person subject to obligations in relation to the making available of products on the market or putting them into service in accordance with the relevant Union harmonisation legislation.”*

2(16) the additional wording is superfluous and could be deleted.

Article 4

We question the need for a person that is only responsible for information on compliance as we are not sure what problem this provision is solving. It creates an additional burden on businesses for no apparent return. Also, as other Member States have pointed out, the provision may cut across sectoral legislation. If there is a problem with accessing information on compliance it might be more appropriate for an authorised representative to be responsible. In addition, there is no penalty for not appointing a person responsible for compliance information.

Article 5

What is the purpose behind this article? Most consumers would not look for a declaration of conformity. Such declarations are only of interest to market surveillance authorities and so this article should be deleted.

Article 6

This information would be better provided by the European Commission as it deals with harmonised legislation which should have a uniform application across Member States. The article as written is too broad and could prove unnecessarily burdensome for the Product Contact Points.

Article 7

Market surveillance authorities must be independent and neutral in their enforcement activities and if market surveillance authorities enter into partnership agreements with economic operators this could create a conflict of interest and may divert limited resources from actual market surveillance activities. We agree with those MS that have called for a deletion of this article.

Article 8

Similar to Article 7, we believe it impinges on the independence of markets surveillance authorities. There is no added value to this article and therefore it can be deleted. In particular, the requirement that the activity mentioned in 8(2) be carried out '*independently, impartially and without bias*' would be difficult to demonstrate and could be challenged by the economic operators concerned.

Article 9

There is no need to have this article in the Regulation, if the European Commission wish to develop such an online portal it doesn't need to be specified in this piece of legislation. We would question the need for another online portal as RAPEX and ICSMS are already in operation.

Article 10

10(2)(a) it is unclear exactly what is being addressed here – what sort of reports should be considered and who draws them up?

(10)(2)(b) in many cases this information is not within the control of market surveillance authorities but is held by, for example, health or emergency services including coroners and fire authorities. Therefore it could be difficult for market surveillance authorities to monitor. In addition, having this as a mandatory obligation will put a lot of stress on the resources of market surveillance authorities.

(10)(2)(c) this provision is not a competence of market surveillance authorities and can be deleted.

Article 11

The creation of a Single Liaison Office (SLO) could be a good idea but we have to be careful that it does not become a burdensome provision for a market surveillance authority. We welcome the Presidency changes, particularly in 11(3) as an SLO should not be coordinating the enforcement activities of other market surveillance authorities. Market surveillance authorities must remain independent in the performance of their functions.

Article 12

12(2)(b) is more relevant to the customs authorities and is not needed in this provision.

12(3)(b) is too restrictive and not proportionate having regard to formal non-compliance.

Article 13

13(1) the wording in Article 18(5) of Regulation 765/2008 should be used here rather than an obligation to write strategies within a certain timeframe.

13(2) the criteria laid down in this provision are too precise and restrictive and will add an additional unnecessary burden to market surveillance activities.

