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WORKING PAPER

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From:	DE delegation
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	DE comments on the Compliance and Enforcement Regulation Proposal (Art. 22-64)

German comments regarding the proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products (COM (2017) 795 final)

Concerning articles 22 to 64 DE comments as follows:

Chapter VI (Articles 22 – 25):

Mutual assistance is very important means to improve market surveillance within the EU. But there must be clear framework conditions for this assistance in line with the responsibilities and competence of the MS. It also must be clearly expressed that the applicant MS remains responsible for the case for which it has asked for assistance. The current text does not solve these problems. DE suggests to recognize the current practice and existing guidelines to keep the practice in-line with the law. The responsibilities for the assumption of costs for translations should be also arranged.

Article 25 (3):

(3) should be revised, because it conflicts with the safeguard procedure mentioned in most harmonized EU legislation.

Chapter VII (Articles 26 – 30):

The reference to regulation (EU) No 952/2013 should be handled carefully, as this draft is meant to be a provision for market surveillance when products are (supposed to be) placed on the market. The requirements of the regulation (EU) No 952/2013 are specific ones for customs.

Article 26 (3):

The last sentence / should either be deleted or at least added by *"…and the rules of market surveillance according to this regulation and the relevant harmonized EU legislation"*.

Article 26 (4):

This provision sets out a general duty to place goods under a customs procedure for further processing, if these products do not (yet) comply with the applicable harmonisation legislation. There does not appear to be a factual requirement for such a general duty. The market surveillance authorities will also be able to monitor conformity following release for free circulation in the future, as is the case under the current provisions. The customs supervision necessary under the new provision

would be associated with unnecessary additional work and expense for the economic operators as well as for customs administration. E.g. further processing may also be conducted upon approval by and under the supervision of market surveillance authorities after the release for free circulation. The (unknown) goal pursued by the provision is not in proportion to the efforts it would entail.

Article 26 (5):

The exchange of information between the customs and market surveillance authorities should be formulated openly, in line with Article 27, paragraph 2, of Regulation (EC) No 765/2008. Limiting the exchange to risk-related information would entail an unnecessary limitation of the exchange of information that is actually required (e.g. information that market surveillance authorities need to gain on products that have been imported from third countries). For this reason, the term "Risk-related" and the reference to Article 46, paragraph 5 and Article 47, paragraph 2 of Regulation (EU) No 952/2013 should be deleted.

Article 26 (7):

Subparagraph (7) contains an obligation to record the "number of interventions in the field of controls on such products, including product safety and compliance". This can only refer to the gathering of data related to product safety and conformity. It is not possible for customs authorities to comprehensively gather such data because customs checks accomplish multiple tasks and target all kinds of aspects, product safety and compliance being only one of many other prohibitions and restrictions. Recording all checks that pertain to other customs aspects as well as product safety and product conformity would be in line with the Regulation and acceptable from an economic perspective, regardless of whether these checks also lead to a suspension of the release for free circulation with a subsequent report to the market surveillance authorities. A more specific wording with this regard seems necessary.

All the suggested obligations to submit certain data about the activities of the MS' authorities in conjunction with making products available on the market should be carefully checked as to whether they are really needed and possible to be collected easily without too high bureaucratic burdens.

Article 26 (8):

The sentence should be changed after the comma into: *"…it shall inform the Member State concerned about the case to assure, that the responsible Market surveillance authority could ensure that appropriate measures will be taken. COM should recommend the third country to take appropriate measures to ensure that there are no products entering the Union market, posing a serious risk."*

Article 26 (9):

All the suggested obligations to submit certain data about the activities of the MS' authorities in conjunction with making products available on the market should be

carefully checked, if they are really needed and possible to be collected easily without too high bureaucratic burdens.

Article 27 (1):

With reference to Article 26 paragraph 3, the first sentence should be formulated more specifically for clarification, by adding the following: "... if the following is found in the course of checks pursuant to Article 26, paragraph 3."

Article 27 (4):

The suspension of the release for free circulation allows the market surveillance authorities to review and decide on whether the goods are conform with Union harmonization legislation or not. While this is taking place, the customs clearance is "suspended", and in general no customs measures pursuant to Regulation (EU) No 952/2013 come into consideration. There is also no apparent reason to provide the application by analogy of Articles 197 to 199 of Regulation (EU) No 952/2013 (confiscation and sale, or destruction etc. by customs authorities). In light of the above, paragraph 4 of Article 27 should be deleted.

Article 29:

The provisions about the authorized economic operators are critical and a revision of the provision seems necessary.

Article 30 (1):

The Market surveillance authorities are not able to require customs to do anything. Therefore GER prefers the formulation in the relevant paragraphs of Article 29 of Regulation (EC) Nr. 765/2008. Alternatively, the words *"require"* should be exchanged by *"ask" or "request".*

Article 30 (4):

If the competent authorities pursuant to paragraph 1 of Article 26 are not identical to the market surveillance authorities – as it is the case in Germany – then these authorities will never be in a position to decide on destroying or rendering unusable a product that does not comply with the harmonisation legislation. The English version includes the inserted phrase "by the authority in question", which has not been incorporated into the German version. The wording of paragraph 4 must therefore be amended accordingly.

The application by analogy of Articles 197 to 199 of Regulation (EU) No 952/2013 is not comprehensible and should therefore be deleted. Cf. explanatory comments on paragraph 4 of Article 27.

Chapter VIII (Articles 31– 35):

In general DE welcomes the Union Product Compliance Network. Nevertheless a basically revision of the provisions of Article 31 – 35 seems necessary. The network for cooperation between the MS via their market surveillance authorities has to take into account the established and proven structures and their effective way of working. A careful balance between the undisputed need for improved coordination and the limitations given by the responsibility of each Member State for market surveillance must not be ignored. A blueprint for the Union Product Compliance Network provision could be the provision on the European Market Surveillance forum from the proposal of 2013, version May 2015 (Doc. 9096/15) on which all MS agreed in 2015.

Article 32 (3):

DE declines the incorporation of representatives of the relevant business associations in the ADCO's.

Article 33 (1):

(c) should be slightly changed such as: *"to support the coordination of the activities of the single liaison offices referred to in Article 11;"*

Article 34 (1):

DE asks to mention clearly, that all relevant market surveillance authorities have access to the system. It has to be stated that a new and/or parallel development of an additional system bias ICSMS is not planned.

Article 34 (3):

The mentioned amount of data to be entered into the system seems to create a bureaucratic burden without offering too much positive possibilities. In general, the data should not be treated in that detail in the regulation but should be determined by guidelines worked out together by COM and MS on the level of the AdCo- groups.

Especially it doesn´t make sense to document every check of the existence of a correct CE-Marking and conformity declaration if the result shows no relevant violation of the European system [Article 34 (3)].

Article 34 (4) in combination with Article 33 (1)

Referring to the planned electronic interface of ICSMS's with national customs systems the English version names the "EU Single Window environment for customs". This is a DG TAXUD project which is still under development and which, in its current state (with different functions), is only being used by some Member States. It is not possible at the moment to gauge how much of the project is going to be

continued and completed. The legal basis for this “EU Single Window environment for customs” is currently being discussed by the relevant working committees.

It does not seem helpful to refer to an “EU Customs Single Window” for which there are no legal provisions in a Regulation which will enter into force beforehand. It seems preferable to include a note in recital 41.

Article 34 (5):

DE raises concern against the obligation for market surveillance authorities (= shall) to recognize the validity of test reports prepared by other MS. In this context the possibility should be sufficient to recognize the validity of the mentioned test reports.

Article 35 (1):

It should be clarified, that the data sovereignty relies to the responsible market surveillance authority and that requirements of data protection have to be considered.

Article 35 (3):

Commission controls in third countries should also be made possible to assess the third-country control system for its efficiency and effectiveness. Otherwise the suggested certification system of products from third countries seems not to be adequate.

Article 35 (8):

Market surveillance is a task of the MS, the COM should not have the power of coordination / decision in the field of market surveillance activities. Therefore, DE asks that the increase of the number of controls on products should be solely in the administrative discretion of the relevant market surveillance authority.

Chapter X (Articles 38 – 64):

The scope of the regulation should be fully clarified. In connection with this, it should be determined, if an annex is needed and which regulations should be mentioned to be in the scope of the regulation.

Article 38:

Regarding the referral in Art. 38 to the Articles 15 to 29 of Regulation (EC) 765/2008 see DE comments on Article 2.

It is suggested to insert a provision in Article 2 that the Regulation shall apply to all products covered by EU legislation in so far as other EU legislation does not contain

specific provisions relating to the organisation of border controls (cf. Art. 15, paragraph 5 of Regulation (EC) 765/2008).

Article 57:

DE has still a scrutiny reservation.

Article 61:

DE asks to ensure that the requirements in Article 61 do not interfere with the allocation of competences between EU, COM and Member States.