



Council of the
European Union

Brussels, 21 December 2017
(OR. en)

**Interinstitutional File:
2017/0353 (COD)**

**15950/17
ADD 11**

**ENT 276
MI 987
CONSUM 410
COMPET 895
UD 309
CHIMIE 110
COMER 132
CODEC 2130
IA 225**

PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 20 December 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: SWD(2017) 470 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE REFIT EVALUATION Accompanying the document 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 and amending Regulations (EU) No
305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU)
2016/426 and (EU) 2017/1369 of the European Parliament and of the
Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU,
2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU,
2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU,
2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and
of the Council

Delegations will find attached document SWD(2017) 470 final.

Encl.: SWD(2017) 470 final



Brussels, 19.12.2017
SWD(2017) 470 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE REFIT EVALUATION

Accompanying the document

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 and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council

{COM(2017) 795 final} - {SWD(2017) 466 final} - {SWD(2017) 467 final} -
{SWD(2017) 468 final} - {SWD(2017) 469 final}

EXECUTIVE SUMMARY

Regulation (EC) No 765/2008, applicable from 1 January 2010, provides a framework for market surveillance of products aiming to *protect the public interests through the reduction of the number of non-compliant products on the EU Internal Market* and to *ensure a level playing field among economic operators*. The evaluation's conclusions are:

Effectiveness

The Regulation has been **only partly effective**.

- Although **coordination and cooperation** developed significantly, they have not reached a satisfactory level. Member States do not sufficiently use the available tools for cross-border cooperation. Market surveillance authorities and customs make limited use of each others' findings. Although the value of administrative cooperation is essential, there is no active participation in several Administrative Cooperation groups.
- **Uniformity and rigorousness of market surveillance have not yet been achieved** due to significant differences across Member States as to their organisation, availability of resources, powers of inspections/sanctions and systems of monitoring/reporting.
- The **border controls on imported products** seem insufficient due mainly to a lack of jurisdiction of authorities outside their territories.

Efficiency

Most of the provisions' costs are borne by Member States' authorities. Costs vary considerably due possibly to national organisational models requiring different resources. Average annual budgets allocated do not correlate with the market size. However, the analysis has been limited by the poor quality of data included in the reports.

Regarding the **costs for economic operators**, information costs are perceived as insignificant. Businesses address the negative impact that across-the-board inconsistencies in the approach taken by different Member States have on them. They also stress that the enforcement mechanism cannot create a level playing field for businesses that are selling products in the Internal Market. In terms of **benefits**, the Regulation did not achieve **the expected improved safety for consumers/users and level playing field for businesses** in light of the mentioned persistence/increase in the number of non-compliant products.

Relevance

The Regulation's **definitions** are generally clear and appropriate, however they are not complete and up-to-date, especially regarding new/emerging dynamics (e.g. online sales).

Coherence

The Regulation's **internal coherence** was not questioned. As for **the external coherence** some issues have been identified relating to the General Product Safety Directive, in terms of clear boundaries and alignment of definitions. These issues were tackled in the proposal put forward in 2013. The coherence of the Regulation with sectoral directives is sufficiently safeguarded by the *lex specialis* provision. While not hindering the implementation of the Regulation, some discrepancies and gaps in definitions and terminology could diminish the overall clarity of the framework for market surveillance.

EU added value

The benefits of a **single piece of European legislation** instead of several different pieces of national legislation are widely recognised. In particular the common **information systems** would favour administrative cooperation. Overall, the potential for the Regulation to achieve a **full EU added value is still hindered** by the sub-optimal level of cross-border exchange of information and cooperation, and by the lack of a uniform implementation of the market surveillance framework.