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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
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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,
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COMMISSION STAFF WORKING DOCUMENT

STAKEHOLDER CONSULTATION - SYNOPSIS REPORT

Accompanying the document

Proposal of the European Parliament and of the Council for a Regulation

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

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1. OBJECTIVES OF THE CONSULTATION

The Commission wanted to make an evidence-based assessment of the extent to which the provisions on market surveillance of Regulation (EC) No 765/2008 have been effective, efficient, relevant, coherent and achieved EU added-value. The results of the evaluation will support taking actions to enhance efforts to fight non-compliant products made available in the Single Market.

1.1. Consultation methods and tools

The **market surveillance authorities** have been consulted during the meetings of the Expert Group on the Internal Market for Products in 2016.

A **stakeholder conference** - open to all interested participants - **was** organised by the Commission on **17 June 2016**.

A **public consultation in all EU official languages**, published on a website hosted on *Europa*, run from 1 July to 31 October 2016. Participation of SMEs in the consultation was promoted and supported through the European Enterprise Network.

2. RESULTS OF THE CONSULTATION ACTIVITIES

2.1. Meetings of the Expert Group on the Internal Market for Products – Market Surveillance Group

The Expert Group on the Internal Market for Products – Market Surveillance Group held its last meetings on 1st February 2016, 21st October 2016 and 31st March 2017.

During the first meeting, the Commission recalled the challenges reported by market surveillance authorities in the national reviews and assessment of activities carried out between 2010 and 2013. The detailed IMP document is annexed to the Impact Assessment (Annex 2).

During the meeting held on 21 October 2016, the Commission informed the participants of the state of play of the enforcement and compliance initiative and explained that the purpose was to receive feedback on the suitability of the ideas under examination. The detailed minutes can be found at: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=28611>.

The meeting held on 31 March 2017 focused on the legislative proposal and especially on how to enhance cooperation between the member states, create a uniform and sufficient level of market surveillance and have stronger border controls of imported products to the European market.

2.2. Meetings of the Customs Expert Group

The Customs Expert Group that met on 22 April was informed about the launch of the Enforcement and Compliance initiative. Customs authorities were invited to participate in the consultations and provide their views on possible challenges and actions needed.

The Expert Group PARCS met to discuss product safety and compliance controls on 1 December 2016. At the meeting the Commission presented the state of play on the revision of Regulation (EC) No 765/2008.

2.3. Stakeholder conference

A stakeholders' event was organised on 17 June 2016, to identify the main issues related to the compliance and better enforcement in the Single Market and to identify possible ways forward. 144 participants attended the event, representing businesses (62), national authorities (60) and others (22). The detailed minutes of this conference can be found at: <http://ec.europa.eu/DocsRoom/documents/17963>.

2.4. Public Consultation

239 replies were received via the online form foreseen during the public consultation. The numbers and percentages used to describe the distribution of the responses to the public consultation derive from the answers under the EU-Survey tool. Other submissions of stakeholders to the public consultation have been taken into account, but without being considered for the statistical representation.

The consultation was divided into five parts. Since only part B1 was obligatory, the other sections were partly answered. Therefore, the average ratio of replies was **80%** for section B2, **66%** for section B3, **80%** for section B4 and **84%** for section B5.

All statistics included in this summary are based on the data gathered from the replies for each section. Detailed statistics for each category can be found in Annex 2 of the Impact Assessment.

Businesses were strongly represented (**127**), followed by public authorities (**80**), and citizens (**32**). More specifically for businesses, **49%** of them represent product manufacturers, **21%** product importer / distributors, **8%** product users, **5%** conformity assessment bodies, **1%** online intermediaries and **16%** other.

Concerning the geographical distribution of responses, all countries were represented except for Latvia, Luxembourg, Malta, and Liechtenstein. The majority of respondents (**116**) exert their activities only in their country of establishment.

2.4.1. Product compliance in the Single Market and deterrence of existing enforcement mechanisms

The majority of respondents (**89%**) consider that their products are affected by non-compliance with product requirements laid down in EU harmonisation legislation.

However, **45%** of the respondents are unable to estimate the approximate proportion of non-compliant products for their sector. This percentage is approximately equal for all type of respondents.

80% of businesses participating in the consultation confirm non-compliance has a negative effect on sales and/or market shares of businesses complying with legal obligations. Many businesses (**42%**), however, are unable to estimate their approximate loss in sales due to non-compliance.

As to the most important reason for product non-compliance in the Single Market, **33.47%** of the respondents consider that it is about a deliberate choice to exploit market opportunities at the lowest cost, followed by a lack of knowledge (**26.78%**), a technical or other type of inability to comply with the rules (**10.88%**), ambiguity in the rules (**10.46%**) and carelessness (**9.62%**).

All types of respondents have experience / knowledge of instances where market surveillance authorities lacked sufficient financial and human resources as well as the technical means to carry out specific tasks. Nevertheless, **67.36%** of the respondents could not estimate the approximate financial resource gap of the national authority.

Regarding the increase of resources for market surveillance activities, although two of the three solutions receive a unanimous acceptance by the respondents, for the third one, namely that market surveillance authorities should levy administrative fees on operators in their sector to finance controls, the results are contradictory. **55.91%** of the businesses and **40.63%** of the consumers and others strongly disagree with this option, while **50.00%** of the public authorities agree with it (15% strongly agree and 35% agree).

Stakeholders have similar views as regards the effective use of resources for market surveillance activities.

Many respondents (**46%**) agree that market surveillance does not provide sufficient deterrence in their sector or that it provides deterrence to a moderate extent (**34%**) and that the options proposed by the Commission would improve the deterrence of market surveillance action.

2.4.2. Compliance assistance in Member States and at EU level

This section of the questionnaire was optional, so the average ratio of replies came up to **80%** (approximately **190** replies per question).

There is a consensus on the fact that **sometimes** it is difficult to find but also understand the correct information on the technical rules that products need to meet before they can be placed on the domestic and on other EU markets.

The approach taken by respondents to look for support and information on technical rules that products need to meet **slightly** differs according to the type of respondent. The majority of respondents prefer to refer to the information available on Commission websites. Regarding the approaches that should be followed by national authorities to reduce the level of non-compliant products on the market, the respondents consider that the best approach is the **combination of information, support and enforcement by the public authorities**.

2.4.3. Business' demonstration of product compliance

This section of the questionnaire was optional, so the average ratio of replies came up to **66%** (approximately **158** replies per question).

Businesses were asked to provide answers on how they supply information about product compliance. Approximately **30%** of the respondents consider that the proposed options **are not applicable to them**.

A large majority of respondents strongly agrees or agrees that a broader use of electronic means to demonstrate compliance would help to reduce the administrative burden for businesses (70.62%), reduce administrative costs of enforcement for authorities (65.14%), provide/allow information to be obtained faster (82.29%), and provide more and up-to-date information to consumers/end users (68.00%).

2.4.4. *Cross-border market surveillance within the EU*

This section of the questionnaire was optional, so the average ratio of replies came up to 80% (approximately 190 replies per question).

Most of the respondents (91) were unable to estimate the approximate proportion of products placed on the market by manufacturers or EU importers located in another EU Member State.

Public authorities believe that businesses contacted do not reply to requests for information/documentation or for corrective actions, while for **businesses** the main difficulty is that authorities find it more costly to contact businesses located in another EU Member State.

Concerning, the exchange of communication between national authorities in the EU Member States, the majority of respondents stated lack of opinion / experience (33%) while 25% of the respondents consider that national authorities rarely restrict the marketing of a product following exchange of information about measures adopted by another authority in the EU against the same product.

Additionally, as to the adequate mechanisms to increase the effectiveness of the market surveillance in the Single Market, the results showed an extremely large support **for more exchange of information and discussion among authorities**, but also for **close coordination between Member States and simultaneous applicability of decisions against non-compliant products**.

2.4.5. *Market surveillance of products imported from non-EU countries*

This section of the questionnaire was optional, so the average ratio of replies came up to 84% (approximately 201 replies per question).

Many respondents (39%) were unable to estimate the approximate proportion of products imported from non-EU countries in their sector. However, 21% of them indicated that the proportion of products imported from non-EU countries is **more than 50%**. At the same time, 88% of the respondents believe that the products in their sector imported from non-EU countries are affected by non-compliance.

As to the country of origin of often non-compliant imported products, China lead with 137 replies, followed by India (30), Turkey and United States (18) and Hong Kong (17). Finally, the most preferred options in taking actions against non-compliant products traded by businesses located in a non-EU country were the need for more coordination of controls of products entering the EU between customs and market surveillance authorities (88.27%).

2.5. Targeted Consultation conducted by the Contractor

In general, **all stakeholders consulted** through the targeted surveys and interviews **uniformly recognise the effectiveness of the Regulation needs to be improved.**¹ Around half respondents declare that the **dimension of product non-compliance** has not changed after the entry into force of the Regulation. While this is true for public authorities, respondents from the private sector perceive that product non-compliance has increased. Most economic operators, industry associations and civil society representatives state to experience discrepancies across Member States in terms of market surveillance. Such discrepancies have more negative impacts in terms of hindering the **free circulation of goods**, influencing **market behaviour, reducing the safety of products** and **raising costs** for public authorities and economic operators to comply with the Regulation. Among all respondents, only customs have a positive opinion on the **adequacy of current border controls**. In general, **industry representatives want to be more involved** in market surveillance activities. According to respondents, the **efficiency** of the Regulation could be improved by solving the existing discrepancies in its implementation.

The majority of respondents **confirm the Regulation's relevance**, this being confirmed by all economic operators and a large part of customs and coordinating authorities. However, the Regulation's relevance can be challenged by its low capacity to **address emerging issues**. All stakeholders agree that the Regulation is not able to tackle issues deriving from **online sales**. **No stakeholder category reported major issues in term of coherence** of the Regulation, both within its provisions and with other legislations relevant for market surveillance.

All stakeholders recognise the EU added value of the Regulation, which enhanced the **free movement** of goods and **legislative transparency**. The **harmonisation of rules** and **cooperation between Member States** are also reported as benefits by all. Different categories also argued that the Regulation can establish **a level playing field across businesses in the EU**.

2.6. Informal consultation of SMEs at the Small Business Act follow-up meeting with stakeholders in December 2016

The Commission presented the reflections on the possible options to address the problem of non-compliance and asked for feedback. Businesses representatives confirmed that SMEs are also hit by non-compliance like bigger companies.

3. FEEDBACK TO STAKEHOLDERS

The consultation processes provided a wide range of views regarding the functioning of market surveillance in terms of what has worked well and what has not worked so well, seen through the eyes of these stakeholders. The meetings with the stakeholders provided an early opportunity to promote the engagement of the national authorities, thus enhancing the chances of a good response rate.

The general objective of this initiative is to reduce the number of non-compliant products in the Single Market by improving at the same time incentives to comply and effectiveness of market surveillance.

¹ All questions of the Public Consultation were basically related to evaluating the effectiveness of the Regulation.

The considered options covered in order of increasing ambition and EU coordination and action: (1) Baseline, (2) Improvement of existing tools and cooperation mechanisms; (3) in addition increased deterrence effect to enforcement tools and stepped up EU coordination and (4) further added-on centralised EU level enforcement in certain cases.

The preferred option (3) includes:

- the extension of Product Contact Points advice role to businesses and ad-hoc public-private partnerships;
- digital systems through which manufacturers or importers would make compliance information available to both consumers and market surveillance authorities and common European portal for voluntary measures;
- regime of publicity for decisions to restrict the marketing of products, fine-tuning authorities powers notably in relation to on-line sales imports from third countries, recovery of costs of controls for products found to be non-compliant;
- stricter obligations for mutual assistance and legal presumption that products found to be noncompliant in Member State A are also non-compliant in Member State B;
- Member States' enforcement strategies setting out national control activities and capacity building needs and an EU Product Compliance Network providing an administrative support structure to peer review Member States' performance coordinate and help implementing joint enforcement activities of Member States.

The measures underlying the preferred option were rated highly favourable across the different categories of respondents in the public consultation. Stakeholders concur on the need for much stronger coordination, more resources and efficient use of resources for market surveillance and more effective tools to improve the enforcement framework for controls within the Single Market and on imports into the EU. A more pro-active approach to prevent non-compliance by providing information and assistance to economic operators is also supported by stakeholders. On a more detailed level some variations occur between the views of authorities and businesses on the most appropriate form of the digital compliance system or the specific powers and sanctions; these concerns have been integrated in the assessment.

More information on the different options, on those retained and on the views of the stakeholders can be found in the Impact Assessment.