



**The Parliament of Romania
Senate**

Bucharest, 14 March 2018

Courtesy translation

**OPINION of the ROMANIN SENATE
on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL laying down rules and procedures for compliance and ensuring the
application harmonized legislation of the Union on products and amending Regulations
(EU) no. 305/2011, (EU) nr. 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and
(EU) 2017/1369 of the European Parliament and the Council, and also the Directives
2004/42/CE, 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/UE and 2014/90/UE of the European Parliament and of the Council -
COM (2017) 795 final**

The Romanian Senate, pursuant to art. 67, art. 148 (2) and (3) of the Romanian Constitution and the Protocol no.2 annexed to the Treaty of Lisbon amending the Treaty on European Union and the Treaty on the Functioning of the European Union, signed in Lisbon in 13rd December 2007, has examined the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules and procedures for compliance and ensuring the application of harmonised legislation of the Union on products and amending Regulations (EU) no. 305/2011, (EU) nr. 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and the Council, and also the Directives 2004/42/CE, 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/UE and 2014/90/UE of the European Parliament and of the Council - COM (2017) 795 final.

Having in view the report of the Committee on European Affairs from 7th March 2018, the Romanian Senate, issued on 12 March 2018 an OPINION, as follows:

(1) The proposal for a Regulation does not violate the principle of subsidiarity, as the objectives of the Regulation can not be achieved at national level.

Market surveillance activities and, in particular, to ensure the application of harmonised legislation of the Union on products, falls within the competence of national authorities of the member states. This will not change.

However, in order to be efficient, the effort to oversee the single market must be uniform throughout the Union. If market surveillance is „lax” in certain parts of the EU, weak

points are created that threaten the public interest, create unequal trading conditions and encourage „forum shopping”.

There must also be effective market surveillance across all external borders of the Union.

(2) As regards the principle of proportionality, the proposal is without prejudice to the competences of the member states concerning the enforcement of law.

However, some member states may have to adapt their national procedural rules to ensure that market surveillance authorities can effectively use cross-border enforcement powers with the aim to cooperate and tackle product non-compliance within the EU.

The proposal will improve enforcement cooperation without imposing a disproportionate or excessive burden on the authorities of the member states. Therefore, the proposal does not go beyond what is necessary to achieve its objectives.

At the same time, the text of the proposal still requires many clarifications, for which the Senate is sending the following comments to the European Commission.

(3) Recommends:

a) It should be noted that placing on the market of non-compliant products is in line with unfair competition practices and the proposal for a Regulation does not contain any reference to the incidence of these practices in the functioning of the single market.

b) Unification of regulations in the field, for economic operators and market surveillance authorities, in order to reduce the difficulties of applying the two regulations (Regulation 765/2008 and the present draft).

c) In Article 5, proposes that the text be supplemented by a reference to the *Declaration of Performance*, as provided for by Regulation 305/2011.

d) In Article 7, a major revision or deletion of the article, due to the existence of a conflict of interest. Currently, in Romania, the market surveillance authority provides free information on the applicable legislation, in which it does not support the text of paragraph 4.

e) In Article 8, major revision or deletion. It appreciates that the text includes contradictory provisions, given the requirement of an “**independent, impartial and unbiased entity**”.

f) In Article 13, point 1 - proposes that this aspect be optional in the development of the national market surveillance strategy, taking into account that there are major digital disparities between member states, which would involve disproportionate costs for collecting information related to digital supply chains.

g) At Art.62 - calls for a two year delay of the application period, given the multiple additional obligations for both economic operators and ASP.

(4) Draws attention to the necessary clarifications regarding the definition of terms and situations:

a) In Article 4, issues concerning the free movement of goods whose manufacturer is not established in the EU. Is it cargo of EU origin that an EU importer only provides for packaging and labeling? Who is the person responsible for the compliance information, the manufacturer, the importer or the distributor?

b) In Article 12, point 2, letter a), point i, clarification of the ways of obtaining the information related to the number of products on the market.

c) In Article 12, point 2, letter b), the clarification regarding the phrase „**risk profiles**” as well as on the basis of which criteria such a profile is drawn up.

d) In Art. 13, point 2, letter b), clarification of the criteria according to which the priority areas are identified.

e) In Article 14, point 3, lit. m, clarification of the term „**profit**”

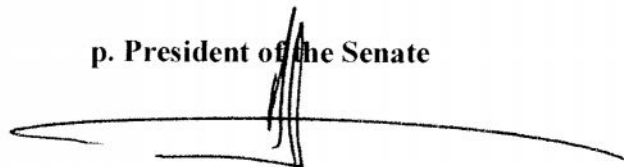
f) In Article 21, point 2, the replacement of the phrase „**may charge administrative fees**” with the phrase „**levy administrative fees**”, to avoid discretionary application.

g) In Article 27, the duties of the customs authorities to suspend the release of goods, in order to prevent abuses.

h) In Article 30, point 4, the reformulation, in the sense that the current form refers **to the person who declared** and, explicitly legally, **to the legal person, which is the importer**.

i) In Art. 61, point 2, letter a), the phrase „**financial situation of SMEs**”, respectively whether it refers to the fact that the company is active, in insolvency, etc. or just turnover.

p. President of the Senate

A handwritten signature in black ink, consisting of several vertical strokes and a long horizontal flourish extending to the right.

Adrian ȚUȚIANU