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**A7-0346/2013**

22.10.2013

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## **REPORT**

on the proposal for a regulation of the European Parliament and of the Council on market surveillance of products and amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC, 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council  
(COM(2013)0075 – C7-0043/2013 – 2013/0048(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Sirpa Pietikäinen

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a regulation of the European Parliament and of the Council on market surveillance of products and amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC, 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council (COM(2013)0075 – C7-0043/2013 – 2013/0048(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0075),
  - having regard to Article 294(2) and Articles 33, 114 and 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0043/2013),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 22 May 2013<sup>1</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on International Trade (A7-0346/2013),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 271, 19.9.2013, p. 86.

## Amendment 1

### Proposal for a regulation

#### Recital 2

*Text proposed by the Commission*

(2) Market surveillance activities covered by this Regulation should not be directed exclusively towards the protection of health and safety but should also be applicable to the enforcement of Union legislation which seeks to safeguard other public interests, for example, by means of regulating the accuracy of measurement, electromagnetic compatibility **and energy efficiency**.

*Amendment*

(2) Market surveillance activities covered by this Regulation should not be directed exclusively towards the protection of health and safety but should also be applicable to the enforcement of Union legislation which seeks to safeguard other public interests, for example, by means of regulating the accuracy of measurement, electromagnetic compatibility, **energy efficiency and applicable environmental legislation**.

## Amendment 2

### Proposal for a regulation

#### Recital 11 a (new)

*Text proposed by the Commission*

*Amendment*

***(11a) This Regulation should apply to all forms of supply of products, including distance selling. Member States and the Commission should develop a common approach for the market surveillance of products sold online and, where appropriate, produce guidance on the respective roles and responsibilities of operators involved in the e-commerce supply chain in order to strengthen enforcement of the rules for products sold online.***

## Amendment 3

### Proposal for a regulation

#### Recital 14 a (new)

*Text proposed by the Commission*

*Amendment*

***(14a) In order to facilitate the work of market surveillance authorities, economic operators should make available all the documentation and information necessary to such authorities for the purpose of carrying out their activities. Market surveillance authorities should only require documentation and information that the relevant economic operator can be expected to possess according to their role in the supply chain.***

*Justification*

*Clarification of the obligations of economic operators laid down in Article 8.*

#### **Amendment 4**

##### **Proposal for a regulation Recital 15**

*Text proposed by the Commission*

*Amendment*

(15) Market surveillance should be based on the assessment of the risk presented by a product taking all relevant data into account. A product that is subject to Union harmonisation legislation which lays down essential requirements relating to protection of certain public interests should be presumed not to present a risk to those public interests if it complies with those essential requirements.

(15) Market surveillance should be based on the assessment of the risk presented by a product taking all relevant data into account. ***The methodology and criteria for assessing risks should be homogeneous in all Member States in order to ensure a level playing field for all economic operators.*** A product that is subject to Union harmonisation legislation which lays down essential requirements relating to protection of certain public interests should be presumed not to present a risk to those public interests if it complies with those essential requirements.

#### **Amendment 5**

##### **Proposal for a regulation Recital 15 a (new)**

***(15a) Consumers can play an active and important role in contributing to market surveillance, as they are usually in direct contact with products presenting a risk, including products that are not compliant with applicable Union legislation. In that context Member States should raise consumers' awareness with regard to their rights to submit complaints on issues relating to product safety and market surveillance activities and ensure that the reporting procedure is easily accessible, relatively simple and efficient. The Commission should, furthermore, explore the opportunities for making the submission of such complaints harmonised throughout the Union, for example through the creation of a central database where the complaints filed by the consumers can be stored, as well as examine possibilities of making those complaints public, subject to the right of review and reply by the economic operators involved.***

## Amendment 6

### Proposal for a regulation Recital 20

(20) Obliging the authorities responsible for the control of products entering the Union market to carry out checks on an adequate scale therefore contributes to a safer Union market for products. In order to increase the effectiveness of such checks, ***cooperation and exchange of information between those authorities and market surveillance authorities*** concerning products presenting a risk ***should be enhanced.***

(20) Obliging the authorities responsible for the control of products entering the Union market to carry out checks on an adequate scale therefore contributes to a safer Union market for products. In order to increase the effectiveness of such checks, ***those authorities and market surveillance authorities should be obliged to cooperate and exchange information*** concerning products presenting a risk ***and products that are non-compliant.***



## Amendment 7

### Proposal for a regulation Recital 21

#### *Text proposed by the Commission*

(21) Market surveillance authorities should be given the power to destroy products, render inoperable or order their destruction by the relevant economic operator, if they deem it necessary and proportionate to ensure that such goods cannot pose any further threats.

#### *Amendment*

(21) Market surveillance authorities should be given the power to destroy products, render inoperable or order their destruction by the relevant economic operator, if they deem it necessary and proportionate to ensure that such goods cannot pose any further threats. ***The relevant economic operator should bear all the costs related to those actions, in particular the costs incurred by the market surveillance authority.***

## Amendment 8

### Proposal for a regulation Recital 23

#### *Text proposed by the Commission*

(23) There should be effective, speedy and accurate exchange of information among the Member States and between the Member States and the Commission. It is therefore necessary to provide for effective tools for such exchange. The Union rapid information system (RAPEX) has proved its effectiveness and efficiency. RAPEX enables measures to be taken across the Union in relation to products that present a risk beyond the territory of a single Member State. To avoid unnecessary duplication, this system should be used for all alert notifications required by this Regulation relating to products presenting a risk.

#### *Amendment*

(23) There should be effective, speedy and accurate exchange of information among the Member States and between the Member States and the Commission. It is therefore necessary to provide for effective tools for such exchange. The Union rapid information system (RAPEX) has proved its effectiveness and efficiency. RAPEX enables measures to be taken across the Union in relation to products that present a risk beyond the territory of a single Member State. To avoid unnecessary duplication, this system should be used ***and constantly updated*** for all alert notifications required by this Regulation relating to products presenting a risk. ***RAPEX should also include notifications related to Food Contact Materials, moved there from the Rapid Alert System for***

**Amendment 9**

**Proposal for a regulation  
Recital 25**

*Text proposed by the Commission*

(25) Given the size of the Union market for goods and as there are no internal borders, it is imperative that ***the*** market surveillance authorities of the Member States ***are willing and able*** to cooperate with each other effectively and to coordinate joint support and action. Accordingly, mechanisms for mutual assistance should be established.

*Amendment*

(25) Given the size of the Union market for goods and as there are no internal borders, it is imperative that ***this Regulation builds the framework for*** market surveillance authorities of the Member States to cooperate with each other effectively and to coordinate joint support and action. Accordingly, mechanisms for mutual assistance should be established, ***enforced, verified and duly financed.***

**Amendment 10**

**Proposal for a regulation  
Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

***(25a) The consistent application of this Regulation should be closely monitored by the Commission, which should also, where necessary, give recommendations to Member States where it finds the powers and resources they have given to their market surveillance authorities are insufficient to meet the requirements of this Regulation properly.***

**Amendment 11**

**Proposal for a regulation  
Recital 26 a (new)**

*Text proposed by the Commission*

*Amendment*

***(26a) Injuries and accidents place a high social and economic burden on societies in general and on individuals. Injury and accident prevention can be enhanced primarily by improving injury surveillance. Based on the experience gained in the framework of the Joint Action on Monitoring Injuries in Europe (JAMIE) project, a genuine pan-European injuries database should urgently be established, especially given the fact that JAMIE project expires in 2014. Moreover, political commitment is necessary to ensure that the exchange of injury data among the Member States is an absolute priority.***

## **Amendment 12**

### **Proposal for a regulation Recital 27**

*Text proposed by the Commission*

*Amendment*

(27) A European Market Surveillance Forum composed of representatives from market surveillance authorities should be established. The Forum should provide a means of involving all stakeholders concerned, including professional organisations and consumer organisations, in order to take advantage of available information relevant for market surveillance when establishing, implementing and updating market surveillance programmes.

(27) A European Market Surveillance Forum composed of representatives from market surveillance authorities should be established. The Forum should ***serve as a platform for structured cooperation between the authorities of the Member States and should*** provide a ***continuous and permanent*** means of involving all stakeholders concerned, including professional organisations, ***business organisations*** and consumer organisations, in order to take advantage of available information relevant for market surveillance when establishing, implementing and updating market surveillance programmes.

## Amendment 13

### Proposal for a regulation Recital 28

*Text proposed by the Commission*

(28) The Commission should provide support for cooperation between market surveillance authorities and participate in the Forum. The Regulation should set out a list of tasks to be performed by the Forum. An executive secretariat should organise the Forum's meetings and provide other operational support for the accomplishment of its tasks.

*Amendment*

(28) The Commission should provide support for cooperation between market surveillance authorities and participate in the Forum. The Regulation should set out a list of tasks to be performed by the Forum. An executive secretariat should organise the Forum's meetings and provide other operational support for the accomplishment of its tasks. ***To streamline the practices of market surveillance within the Union and to make market surveillance more effective, the Commission should consider proposing, when this Regulation is next reviewed, that the Forum is given the power to set binding recommendations as to the quality and practices of market surveillance.***

## Amendment 14

### Proposal for a regulation Recital 29 a (new)

*Text proposed by the Commission*

*Amendment*

***(29a) In view of the conflict between the increased number of products in circulation within the internal market on the one hand, and the constraints on public resources that limit the possibility to drastically increase public market surveillance on an adequate scale on the other, the Commission should explore complementary, new and innovative, market-based solutions for more effective market surveillance on a larger scale, such as third party auditing of quality control systems and products. The Commission should include the results of those deliberations in the general***

## **Amendment 15**

### **Proposal for a regulation**

#### **Recital 30**

##### *Text proposed by the Commission*

(30) This Regulation should strike a balance between transparency through the release of the maximum possible amount of information to the public and maintaining confidentiality, for example for reasons of **personal data protection**, commercial secrecy or the protection of investigations, in accordance with rules on confidentiality pursuant to applicable national law or, as regards the Commission, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data apply in the context of this Regulation.

##### *Amendment*

(30) This Regulation should strike a balance between transparency through the release of the maximum possible amount of information to the public and maintaining confidentiality, for example for reasons of commercial secrecy or the protection of investigations, , in accordance with rules on confidentiality pursuant to applicable national law or, as regards the Commission, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. ***Moreover, this Regulation should respect data protection principles, such as confidential handling of personal data, requirement to process data fairly and lawfully and for specific purpose, while ensuring their quality and allowing the individuals concerned to exercise their rights.*** Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data apply in the context of this Regulation.

## **Amendment 16**

### **Proposal for a regulation**

### Recital 33

*Text proposed by the Commission*

(33) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.

*Amendment*

(33) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive ***and depend on the seriousness, duration and intentional or recurring character of the infringement, as well as the size of the undertakings, in terms of the number of persons employed by and annual turnover of the economic operators concerned, with a particular regard to small and medium-sized enterprises. Infringements shall entail administrative penalties that are harmonised at Union level. Member States should be encouraged to allocate the revenues collected from such penalties to market surveillance activities.***

### Amendment 17

#### Proposal for a regulation Recital 33 a (new)

*Text proposed by the Commission*

*Amendment*

***(33a) In order to enhance the deterrent effect of the penalties, the Commission should make them public. In addition, economic operators who are repeatedly found to have intentionally breached this Regulation should be placed on a public, Union-wide blacklist.***

### Amendment 18

#### Proposal for a regulation Recital 34

*Text proposed by the Commission*

*Amendment*

(34) Market surveillance should be financed at least in part by fees charged to economic operators where they are

(34) Market surveillance should be financed at least in part by fees charged to economic operators where they are

required by market surveillance authorities to take corrective action or where those authorities are obliged to take action themselves.

required by market surveillance authorities to take corrective action or where those authorities are obliged to take action themselves. ***Member States should ensure that the revenues collected from fees charged in accordance with this Regulation are allocated to market surveillance activities.***

#### *Justification*

*The Member States should consider market surveillance activities as a priority, and following from this, earmark sufficient resources for those activities.*

### **Amendment 19**

#### **Proposal for a regulation Recital 38**

##### *Text proposed by the Commission*

(38) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards uniform conditions for the carrying out of checks by reference to particular product categories or sectors, including the scale of checks to be carried out and the adequacy of samples to be checked. Implementing powers should also be conferred as regards the modalities for the provision of information to market surveillance authorities by economic operators, as regards establishing uniform conditions for determining cases in which such information need not be provided. Implementing powers should also be conferred as regards the modalities and procedures for the exchange of information through RAPEX and as regards the adoption of temporary or permanent marketing restrictions on products presenting a serious risk, where appropriate, specifying the necessary control measures to be taken by the Member States for their effective implementation where other Union

##### *Amendment*

(38) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards uniform conditions for the carrying out of checks by reference to particular product categories or sectors, including the scale of checks to be carried out and the adequacy of samples to be checked. Implementing powers should also be conferred as regards the modalities for the provision of information to market surveillance authorities by economic operators, as regards establishing uniform conditions for determining cases in which such information need not be provided. Implementing powers should also be conferred as regards the modalities and procedures for the exchange of information through RAPEX and as regards the adoption of temporary or permanent marketing restrictions on products presenting a serious risk, where appropriate, specifying the necessary control measures to be taken by the Member States for their effective implementation where other Union

legislation does not provide a specific procedure to address the risks in question. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by *the* Member States of the Commission's exercise of its implementing powers.

legislation does not provide a specific procedure to address the risks in question. ***In addition, implementing powers should be conferred to the Commission as regards general risk assessment methodology and, where appropriate, guidelines for the application of that general methodology to specific categories of products.*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of its implementing powers.

## Amendment 20

### Proposal for a regulation Recital 39 a (new)

*Text proposed by the Commission*

*Amendment*

***(39a) In order to facilitate the identification and traceability of products bearing a potential serious risk to health and safety and thus to maintain a high level of health and safety of consumers, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in order to establish a Pan-European Injuries Database. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.***



## Amendment 21

### Proposal for a regulation Recital 42 a (new)

*Text proposed by the Commission*

*Amendment*

***(42a) The precautionary principle, as laid down in Article 191(2) TFEU, and outlined inter alia in the Commission Communication of 2 February 2000 on the precautionary principle, is a fundamental principle for the safety of products and for the safety of consumers and should be taken into due account by market surveillance authorities when assessing the safety of a product.***

## Amendment 22

### Proposal for a regulation Article 1 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***The provisions of this Regulation are based on the precautionary principle.***

## Amendment 23

### Proposal for a regulation Article 3 – point 1

*Text proposed by the Commission*

*Amendment*

(1) ‘product’ means a ***product obtained*** through a manufacturing process;

(1) ‘product’ means a ***substance, mixture, preparation or good produced*** through a manufacturing process ***other than food, feed, products of human origin and products of plants and animals relating directly to their future reproduction;***

*Justification*

*Clarifying the term "product".*

## Amendment 24

### Proposal for a regulation Article 3 – point 5

*Text proposed by the Commission*

(5) ‘authorised representative’ means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks;

*Amendment*

(5) ‘authorised representative’ means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks ***with regard to the manufacturer's obligations under the relevant Union legislation;***

## Amendment 25

### Proposal for a regulation Article 3 – point 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(7a) ‘intermediary service providers’ means any natural or legal person who enables the placing or making available on the market of a product via electronic means, such as by operating e-commerce platforms or hosting websites;***

*Justification*

*Intermediary service providers, such as online hosts and registrars, who provide electronic platforms for economic operators from third countries to sell their products online (as defined in Article 3(7a) new), are often based on EU territory. Such intermediaries should be obliged to cooperate with market surveillance authorities and take corrective actions where required, like other economic operators, in order to prevent the selling of unsafe or otherwise non-compliant products online.*

## Amendment 26

### Proposal for a regulation Article 3 – point 12

*Text proposed by the Commission*

(12) ‘market surveillance authority’ means an authority of a Member State **responsible for carrying out market surveillance on its territory**;

*Amendment*

(12) ‘market surveillance authority’ means an authority of a Member State **competent for exercising the regulated powers under this Regulation**;

*Justification*

*The duties of the market surveillance authorities laid down in this Regulation are not market surveillance activities in the strict sense of the term. Besides conducting product checks, they also have to collect complaints, alert users, enter data in the Information and Communication System for Market Surveillance (ICSMS) and work with economic actors to draw up codes of good practice, etc. These tasks amount to more than straightforward market surveillance.*

**Amendment 27**

**Proposal for a regulation  
Article 3 – point -13 (new)**

*Text proposed by the Commission*

*Amendment*

**(-13) ‘non-compliant product’ means a product which is not in conformity with the requirements laid down in applicable Union legislation;**

**Amendment 28**

**Proposal for a regulation  
Article 3 – point 13**

*Text proposed by the Commission*

*Amendment*

(13) ‘product presenting a risk’ means a product **having** the potential to affect adversely health and safety of persons in general, health and safety in the workplace, consumer protection, the environment and public security as well as other public interests to a degree which goes beyond that considered reasonable and acceptable under the normal or reasonably foreseeable conditions of use of the product concerned, including the duration of use and, where applicable, its putting into service, installation and maintenance requirements;

(13) ‘product presenting a risk’ means a product **which has** the potential to affect adversely health and safety of persons in general, health and safety in the workplace, consumer protection, the environment and public security as well as other public interests to a degree which goes beyond that considered reasonable and acceptable under the normal or reasonably foreseeable conditions of use of the product concerned, including the duration of use and, where applicable, its putting into service, installation and maintenance requirements;

## Amendment 29

### Proposal for a regulation Article 3 – point 13 a (new)

*Text proposed by the Commission*

*Amendment*

***(13a) 'product presenting an emerging risk' means a product on which there is solid scientific evidence that it presents a newly developing risk or a known risk if the product is used in new or unfamiliar conditions which cannot be reasonably foreseen by the manufacturer.***

*Justification*

*Market surveillance authorities should also tackle products presenting an emerging risk. The proposed definition aims at clarification in order to be easily applied in a harmonised manner across the EU*

## Amendment 30

### Proposal for a regulation Article 3 – point 18

*Text proposed by the Commission*

*Amendment*

(18) 'Union harmonisation legislation' means Union legislation harmonising the conditions for the marketing of products;

(18) 'Union harmonisation legislation' means Union legislation harmonising the conditions for the marketing of products ***by laying down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures;***

*Justification*

*Clarification of the term setting out that legislation concerning placing on the market of goods should be covered*

## Amendment 31

### Proposal for a regulation Article 4 – paragraph 2

*Text proposed by the Commission*

2. Market surveillance shall be organised and carried out in accordance with this Regulation with a view to ensuring that products presenting a risk are not made available on the Union market and, where such products have been made available, effective measures are taken to remove the risk presented by the product.

*Amendment*

2. Market surveillance shall be organised and carried out in accordance with this Regulation with a view to ensuring that products presenting a risk **and non-compliant products** are not **placed or** made available on the Union market and, where such products have been made available, effective **and proportionate** measures are taken to remove the risk presented by the product **or to resolve non-compliance**.

## Amendment 32

### Proposal for a regulation Article 4 – paragraph 3

*Text proposed by the Commission*

3. **The implementation of** market surveillance activities and external border controls **shall be monitored by the Member States which shall report on these activities and controls** to the Commission every year. The information reported shall include statistics regarding the number of controls carried out and shall be communicated to all Member States. **Member States may make a summary of the results accessible** to the public.

*Amendment*

3. **Member States shall report on the** market surveillance activities and external border controls to the Commission every year. The information reported shall include statistics regarding the number **and results** of controls carried out and shall be communicated to all Member States. **The Commission shall make that information available to the public electronically and, where appropriate, by other means.**

## Amendment 33

### Proposal for a regulation Article 4 – paragraph 4

*Text proposed by the Commission*

**4. The results of the monitoring and assessment of market surveillance activities carried out pursuant to**

*Amendment*

**deleted**

*paragraph 3 shall be made available to the public, electronically and, where appropriate, by other means.*

#### Amendment 34

##### Proposal for a regulation Article 5 – paragraph 1

*Text proposed by the Commission*

1. Each Member State shall establish or designate market surveillance authorities ***and define their duties, powers and organisation.***

*Amendment*

1. Each Member State shall establish or designate market surveillance authorities.

#### Amendment 35

##### Proposal for a regulation Article 5 – paragraph 2

*Text proposed by the Commission*

2. ***Market surveillance authorities*** shall ***be given*** the powers and ***entrusted*** with the resources and means necessary for the proper performance of their tasks.

*Amendment*

2. ***Each Member State*** shall ***grant market surveillance authorities*** the powers and ***entrust them*** with the resources and means necessary for the proper performance of their tasks ***and report to the Commission thereon. The Commission shall evaluate whether those powers and resources are sufficient for the proper performance of that Member State's market surveillance obligations under this Regulation, and shall make the outcomes of its evaluations available to the public electronically and, where appropriate, by other means.***

#### *Justification*

*In order to ensure harmonised application of this Regulation throughout EU, the Commission should be given the task to closely monitor its implementation.*

## Amendment 36

### Proposal for a regulation Article 5 – paragraph 3

*Text proposed by the Commission*

3. ***Each Member State shall establish appropriate mechanisms to ensure that the*** market surveillance authorities ***that it has established or designated*** exchange information, cooperate and coordinate their activities both among themselves and with the authorities in charge of controls of products at the external borders of the Union.

*Amendment*

3. Market surveillance authorities ***shall*** exchange information, cooperate and coordinate their activities both among themselves and with the authorities in charge of controls of products at the external borders of the Union.

## Amendment 37

### Proposal for a regulation Article 5 – paragraph 4

*Text proposed by the Commission*

4. Each Member State shall inform the Commission about its market surveillance authorities and their areas of competence, providing the necessary contact details, ***and*** the Commission shall ***transmit this information*** to the ***other Member States and publish a list of market surveillance authorities***.

*Amendment*

4. Each Member State shall inform the Commission about its market surveillance authorities and their areas of competence, providing the necessary contact details. The Commission shall ***make the list available*** to the ***public electronically and, where appropriate, by other means***.

## Amendment 38

### Proposal for a regulation Article 5 – paragraph 5

*Text proposed by the Commission*

5. Member States shall inform the public of the existence, responsibilities and identity of national market surveillance authorities and how those authorities may be contacted.

*Amendment*

5. Member States shall inform the public of the existence, responsibilities, ***powers, available resources, cooperation mechanisms*** and identity of national market surveillance authorities and how those authorities may be contacted.

## Amendment 39

### Proposal for a regulation

#### Article 6 – paragraph 1 – subparagraph 1

##### *Text proposed by the Commission*

1. Market surveillance authorities shall perform appropriate checks on the characteristics of products on an adequate scale and with adequate frequency, by means of a documentary check and, where necessary, a physical and laboratory check on the basis of an adequate sample. They shall record these checks in the information and communication system for market surveillance referred to in Article 21.

##### *Amendment*

1. Market surveillance authorities shall ***organise their activities in such a way that maximum effectiveness can be achieved. They shall*** perform appropriate checks on the characteristics of products on an adequate scale and with adequate frequency, by means of a documentary check and, where necessary, a physical and laboratory check on the basis of an adequate sample. ***They shall, accordingly, carry out the sample checks on sufficient numbers of products made available on the market, enabling conformity and the real risk posed to be assessed. Where appropriate, along with those traditional market sampling mechanisms, the market surveillance authorities shall endeavour to move to pro-active auditing of supply chain processes at entities involved in the manufacturing, importing, trading, branding and retailing of consumer products.*** They shall record these checks in the information and communication system for market surveillance referred to in Article 21.

## Amendment 40

### Proposal for a regulation

#### Article 6 – paragraph 1 – subparagraph 2

##### *Text proposed by the Commission*

In cases of known or emerging risk related to the objectives set out in Article 1 of this Regulation and concerning a particular product or a category of products, the Commission may adopt implementing acts

##### *Amendment*

In cases of known or emerging risk related to the objectives set out in Article 1 of this Regulation and concerning a particular product or a category of products, the Commission may adopt implementing acts



to establish uniform conditions for the carrying out of the checks performed by one or several market surveillance authorities in relation to that particular product or category of products and the characteristics of that known or emerging risk. These conditions may include requirements for a temporary increase of the scale and frequency of checks to be carried out and the adequacy of samples to be checked. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 32(2).

to establish uniform conditions for the carrying out of the checks performed by one or several market surveillance authorities in relation to that particular product or category of products, ***criteria for determination of the amount of samples to be checked in relation to that particular product or category of products*** and the characteristics of that known or emerging risk. These conditions may include requirements for a temporary increase of the scale and frequency of checks to be carried out and the adequacy of samples to be checked. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 32(2).

#### Amendment 41

##### Proposal for a regulation

##### Article 6 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

2. ***Where appropriate***, market surveillance authorities shall alert users in their territories ***within an adequate timeframe*** of products that those authorities have identified as presenting a risk.

*Amendment*

2. Market surveillance authorities shall alert users in their territories ***without delay of the identity*** of products that those authorities have identified as presenting a risk. ***Where available, that information shall also include data on the manufacturer, retail channel and period of sales.***

#### Amendment 42

##### Proposal for a regulation

##### Article 6 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

***They*** shall cooperate with economic operators to prevent or reduce risks caused by products made available by those operators. For this purpose, they shall encourage and promote voluntary action by

*Amendment*

***Market surveillance authorities*** shall cooperate with economic operators ***and other competent national authorities*** to prevent or reduce risks caused by products made available by those ***economic***

economic operators including, where applicable, through the development of and adherence to codes of good practice.

operators. For this purpose, they shall encourage and promote voluntary action by economic operators including, where applicable, through the development of and adherence to codes of good practice.

#### **Amendment 43**

##### **Proposal for a regulation Article 6 – paragraph 4**

###### *Text proposed by the Commission*

4. Where it is necessary and justified for carrying out their duties, market surveillance authorities may enter the premises of economic operators and take any necessary samples of products.

###### *Amendment*

4. Where it is necessary and justified for carrying out their duties, market surveillance authorities may enter the premises of economic operators, ***check, examine and obtain copies of any relevant documents*** and take any necessary samples of products.

#### **Amendment 44**

##### **Proposal for a regulation Article 6 – paragraph 5 – point a**

###### *Text proposed by the Commission*

(a) provide consumers and other interested parties with the opportunity to submit complaints on issues relating to product safety, market surveillance activities and risks arising in connection with products and follow up those complaints ***as appropriate***;

###### *Amendment*

(a) provide consumers and other interested parties with the opportunity to submit complaints on issues relating to product safety, market surveillance activities and risks arising in connection with products and follow up those complaints ***within a reasonable time frame***;

#### **Amendment 45**

##### **Proposal for a regulation Article 6 – paragraph 5 – point b**

###### *Text proposed by the Commission*

(b) verify that corrective action has been

###### *Amendment*

(b) verify that corrective action has been

taken;

taken *in a timely manner*;

#### **Amendment 46**

##### **Proposal for a regulation**

##### **Article 6 – paragraph 5 – point c**

*Text proposed by the Commission*

(c) follow and keep up to date with developments in scientific and technical knowledge concerning the safety of products.

*Amendment*

(c) follow and keep up to date with developments in scientific and technical knowledge concerning the safety of products ***and compliance of products with applicable Union legislation.***

*Justification*

*Given the scope of the Regulation, this requirement should not be limited to product safety only, but needs to be enlarged to include all other technical areas where the market surveillance authorities are called upon to act.*

#### **Amendment 47**

##### **Proposal for a regulation**

##### **Article 6 – paragraph 5 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) monitor accidents and damage to health which are suspected to have been caused by those products.***

#### **Amendment 48**

##### **Proposal for a regulation**

##### **Article 6 – paragraph 5 – point c b (new)**

*Text proposed by the Commission*

*Amendment*

***(cb) be encouraged to participate in national standardisation activities aimed at the development or revision of standards requested by the Commission in accordance with Article 10 of Regulation (EU) No 1025/2012.***

## Amendment 49

### Proposal for a regulation

#### Article 7 – paragraph 1 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) the levels and methods for calculation of fees applicable to economic operators pursuant to Articles 10 and 16 of this Regulation;***

*Justification*

*In order to encourage the emergence of a common practice with regard to the fees charged to economic operators who make available on the market unsafe or otherwise non-compliant products, it seems appropriate to include information thereon in the general market surveillance programmes, so that both the Commission and the other Member States are kept informed.*

## Amendment 50

### Proposal for a regulation

#### Article 7 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Each Member State shall draw up sector-specific programmes and shall review these programmes, and update them if necessary, every year. These programmes shall cover all sectors in which authorities conduct market surveillance activities.

2. Each Member State shall draw up sector-specific programmes ***with the input of key stakeholders concerned, including professional organisations, business organisations and consumer organisations***, and shall review these programmes, and update them if necessary, every year. These programmes shall cover all sectors in which authorities conduct market surveillance activities.

## Amendment 51

### Proposal for a regulation

#### Article 7 – paragraph 3

*Text proposed by the Commission*

3. The general and sector-specific programmes and their updates shall be communicated to the other Member States **and** the Commission **and**, subject to Article 6(6), shall be made accessible to the public electronically and, where appropriate, by other means.

*Amendment*

3. The general and sector-specific programmes and their updates shall be ***drawn up after consultation of relevant stakeholders and shall be*** communicated to the other Member States ***via*** the Commission. Subject to Article 6(6), ***they*** shall be made accessible to the public electronically and, where appropriate, by other means.

*Justification*

*In order to ensure that the market surveillance programmes take into account the needs of businesses, consumers etc. it is appropriate for Member States to consult relevant stakeholders before drawing up such programmes. It would be more efficient for the Commission to inform the Member States of the programmes.*

**Amendment 52**

**Proposal for a regulation**

**Article 7 – paragraph 3 - subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The Commission shall evaluate the general and sector-specific programmes and, if appropriate, make recommendations to the Member States based on that evaluation. The Commission shall make the outcomes of its evaluations and, if applicable, its recommendations to Member States available to the public electronically and, where appropriate, by other means.***

*Justification*

*In order to ensure harmonised application of this Regulation throughout EU, the Commission should be given the task to closely monitor its implementation and give, where appropriate, recommendations to the Member States.*

## Amendment 53

### Proposal for a regulation Article 8 – paragraph 1

*Text proposed by the Commission*

1. **On** request, economic operators and, where applicable, conformity assessment bodies, **shall** make available to market surveillance authorities **any** documentation and information that those authorities require for the purpose of carrying out their activities, **in a language which can be easily understood by them.**

*Amendment*

1. **Further to a reasoned** request, economic operators **shall, according to their respective role in the supply chain** and, where applicable, **including** conformity assessment bodies, make available to market surveillance authorities **all the** documentation and information that those authorities require for the purpose of carrying out their activities. **Such information shall include information that enables the precise identification of the product and facilitates the tracing of the product, as appropriate. Where an economic operator has previously received the documentation and information concerned from another economic operator, and where it is classified as confidential under Union and Member State trade secrecy rules, market surveillance authorities shall ensure confidentiality when that documentation and information is made available.**

## Amendment 54

### Proposal for a regulation Article 8 – paragraph 2

*Text proposed by the Commission*

2. Economic operators shall **provide all necessary information to** market surveillance authorities **including information that enables the precise identification of the product and facilitates the tracing of the product.**

*Amendment*

2. Economic operators shall **cooperate with** market surveillance authorities **at their request, on any action taken to eliminate the risks presented by or non-compliance of products that they have placed or made available on the market.**

## **Amendment 55**

### **Proposal for a regulation**

#### **Article 8 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. All information supplied or made available to market surveillance authorities under this Article shall be clear, understandable and intelligible.***

## **Amendment 56**

### **Proposal for a regulation**

#### **Article 8 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. The obligations laid down in this Article shall also apply to intermediary service providers.***

## **Amendment 57**

### **Proposal for a regulation**

#### **Article 9 – title**

*Text proposed by the Commission*

*Amendment*

*Products presenting a risk*

***Non-compliant products and products presenting a risk***

## **Amendment 58**

### **Proposal for a regulation**

#### **Article 9 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

1. Where, in the course of carrying out the checks referred to in Article 6(1) or as a result of information received, market surveillance authorities have sufficient reason to believe that a product that is placed or made available on the market or

1. Where, in the course of carrying out the checks referred to in Article 6(1) or as a result of information received, market surveillance authorities have sufficient reason to believe that a product that is placed or made available on the market or

is used in the course of the provision of a service may present a risk, they shall carry out a risk assessment in relation to that product taking account of the considerations and criteria set out in Article 13.

is used in the course of the provision of a service may ***be non-compliant or*** present a risk, they shall carry out a risk assessment in relation to that product taking account of the considerations and criteria set out in Article 13 ***of this Regulation and in Article 6 of Regulation (EU) No .../....*** \*.

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***\* OJ: please insert the number of Regulation on Consumer Product Safety (2013/0049(COD)) in the text and the full title and the publication reference in a footnote.***

## **Amendment 59**

### **Proposal for a regulation Article 9 – paragraph 1 – subparagraph 2**

#### *Text proposed by the Commission*

Market surveillance authorities shall take ***due*** consideration of any readily available test result and risk assessment that has already been carried out or issued in relation to the product by an economic operator or any other person or authority including the authorities of other Member States.

#### *Amendment*

Market surveillance authorities shall take consideration of any readily available ***and comprehensible*** test result and risk assessment that has already been carried out or issued in relation to the product by an economic operator or any other person or authority including the authorities of other Member States.

#### *Justification*

*‘Due’ is deleted as this may give rise to differing interpretations, while ‘comprehensible’ is added following ‘readily available’ with reference to interpreting the results of the risk assessment.*

## **Amendment 60**

### **Proposal for a regulation Article 9 – paragraph 2 – subparagraph 1 – introductory part**

#### *Text proposed by the Commission*

In relation to a product ***that is subject to Union harmonisation legislation***, formal

#### *Amendment*

In relation to a product, formal non-compliance with ***EU*** legislation ***may***



non-compliance with *that* legislation **shall** give market surveillance authorities sufficient reason to believe that the product may present a risk in any of the following cases:

give market surveillance authorities sufficient reason to believe that the product may present a risk in any of the following cases:

#### *Justification*

*Formal non-compliance should be extended to include all products, including non-harmonised ones, since the RCPC sets out the obligation on the availability of technical documentation attesting to the safety of the product to be placed on the market, the identification of the economic operators and the provision, where necessary, of instructions and warnings. Moreover, it is for the market surveillance authorities to decide whether a product presents risks.*

### **Amendment 61**

#### **Proposal for a regulation**

#### **Article 9 – paragraph 2 – subparagraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) the product or any presentation of the product bears without authorisation a trade mark that is essentially similar to a registered trade mark for that product, thereby not allowing its authenticity or origin to be guaranteed;***

### **Amendment 62**

#### **Proposal for a regulation**

#### **Article 9 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Regardless whether the risk assessment shows that the product in fact presents a risk, market surveillance authorities shall require the economic operator to rectify the formal non-compliance. If the economic operator fails to do so, market surveillance authorities **shall ensure that** the product **is withdrawn or recalled**.

Regardless whether the risk assessment shows that the product in fact presents a risk, market surveillance authorities shall require the economic operator to rectify the formal non-compliance. If the economic operator fails to do so, market surveillance authorities **may, if appropriate, withdraw or recall** the product **in question until the**

*non-compliance is rectified.*

*Justification*

*Products which are subject only to minor infringements should not be dealt with in the same way as products which present a general risk.*

**Amendment 63**

**Proposal for a regulation**

**Article 9 – paragraph 4 – introductory part**

*Text proposed by the Commission*

*Amendment*

4. Corrective action to be taken **by economic operators** in relation to a product presenting a risk may include:

4. Corrective action to be taken in relation to a product presenting a risk may include:

*Justification*

*This would appear to be a list of corrective measures concerning products presenting a risk that economic operators can take voluntarily or may be imposed by the market surveillance authorities, and to derive from Article 8.1 of the GDPS. The inclusion of the term ‘by economic operators’ in the introductory part therefore creates confusion and should be deleted.*

**Amendment 64**

**Proposal for a regulation**

**Article 9 – paragraph 4 – point b – introductory part**

*Text proposed by the Commission*

*Amendment*

(b) in the case of a product that is liable to present a risk only in certain conditions or only to certain persons and where such risk is not addressed by requirements of Union **harmonisation** legislation:

(b) in the case of a product that is liable to present a risk only in certain conditions or only to certain persons and where such risk is not addressed by requirements of Union legislation:

*Justification*

*This does not make it clear that the Regulation applies to all products, and it is therefore proposed that the word ‘harmonisation’ be eliminated.*

## Amendment 65

### Proposal for a regulation

#### Article 9 – paragraph 4 – point b – point iii

##### *Text proposed by the Commission*

(iii) alerting the persons at risk to the risk, ***in good time*** and in an appropriate form, including by publication of special warnings;

##### *Amendment*

(iii) alerting the persons at risk to the risk, ***immediately*** and in an appropriate form, including by publication of special warnings;

##### *Justification*

*Point b) iii) the term 'in good time' should be replaced with the term 'immediately', which is the one used in the current General Directive on Product Safety (GDPS).*

## Amendment 66

### Proposal for a regulation

#### Article 9 – paragraph 4 – point d – point i

##### *Text proposed by the Commission*

(i) preventing the product from being placed or made available on the market;

##### *Amendment*

(i) preventing ***immediately*** the product from being placed or made available on the market;

##### *Justification*

*Inclusion of the word 'immediately', since the products in question present a serious risk, as in the GDPS.*

## Amendment 67

### Proposal for a regulation

#### Article 9 – paragraph 4 – point d – point ii

##### *Text proposed by the Commission*

(ii) withdrawing or recalling the product and alerting the public to the risk presented;

##### *Amendment*

(ii) withdrawing or recalling the product and ***immediately*** alerting the public, ***in an appropriate form***, to the risk presented;

## Amendment 68

### Proposal for a regulation Article 9 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. The Commission may adopt implementing acts establishing the modalities for the provision of information in accordance with the third subparagraph of paragraph 3, while ensuring the effectiveness and proper functioning of the system. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 32(2).**

**deleted**

## Amendment 69

### Proposal for a regulation Article 10 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

Market surveillance authorities may destroy or otherwise render inoperable a product presenting a risk where they deem it necessary and proportionate. **They may require** the relevant economic operator **to bear** the cost **of such action**.

Market surveillance authorities may destroy or otherwise render inoperable a product presenting a risk where they deem it necessary and proportionate.

## Amendment 70

### Proposal for a regulation Article 10 – paragraph 2 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**All of the expenses incurred by the market surveillance authority in the course of the application of the first subparagraph shall be borne by the relevant economic operator unless the market surveillance authority considers it to be disproportionate, in which case it may**

*decide that the cost shall be borne only partly by the economic operator.*

## **Amendment 71**

### **Proposal for a regulation Article 10 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. Prior to taking any measure under paragraph 1 in relation to an economic operator who has failed to take the necessary corrective action, market surveillance authorities shall allow him at least 10 days within which to be heard.**

**deleted**

#### *Justification*

*It is general practice, when a product is identified that may present a risk, to inform the economic operator and grant him a period to present his case, in which he can remedy problems and make counterclaims, as is laid down in Article 21 of Regulation 765/2008/EC. The deadline for this is already set under Article 9.3, making it wrong for another deadline to be set for economic operators who in the first instance have not taken the requisite corrective action specified by the surveillance authorities.*

## **Amendment 72**

### **Proposal for a regulation Article 10 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. Market surveillance authorities shall publish information about product identification, the nature of a risk and the measures taken to prevent, reduce or eliminate that risk on a dedicated website to the fullest extent necessary to protect the interests of users of products in the Union. This information shall not be published where it is imperative to observe confidentiality in order to protect commercial secrets, preserve personal data pursuant to national and Union legislation or avoid undermining monitoring and**

**6. *In the case of products found to present a risk*, market surveillance authorities shall publish information about product identification, the nature of a risk and the measures taken to prevent, reduce or eliminate that risk on a dedicated website to the fullest extent necessary to protect the interests of users of products in the Union. This information shall not be published where it is imperative to observe confidentiality in order to protect commercial secrets, preserve personal data pursuant to national and Union legislation**

investigation activities.

or avoid undermining monitoring and investigation activities.

*Justification*

*It should be specified that the information to be published on the internet relates to products which present a risk.*

**Amendment 73**

**Proposal for a regulation**

**Article 10 – paragraph 8 – subparagraph 1**

*Text proposed by the Commission*

8. Market surveillance authorities **may** charge fees on economic operators which wholly or partly cover the costs of their activities, including testing carried out for the risk assessment, where they take measures in accordance with paragraphs 1 or 4.

*Amendment*

8. Market surveillance authorities **shall** charge fees on ***the relevant*** economic operators which ***are caught placing or making available non-compliant products and products presenting a risk on the Union market. Such fees should*** wholly or partly cover the costs of their activities, including testing carried out for the risk assessment, where they take measures in accordance with paragraphs 1 or 4.

*Justification*

*An obligation instead of the optional measure would contribute to the incentives for action by market surveillance authorities, and can also be considered as a deterrent for relevant economic operators.*

**Amendment 74**

**Proposal for a regulation**

**Article 10 – paragraph 8 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The fees shall be calculated on the basis of the actual costs of each market surveillance activity, and shall be applied to the economic operators subject to such market surveillance activities. Such fee shall not exceed the actual costs of the market surveillance activity performed***

*and may partly or entirely reflect the time taken by the staff of the market surveillance authorities to perform the market surveillance controls.*

*Justification*

*The practice of charging fees should be aligned in the Regulation to ensure harmonised application across the EU.*

**Amendment 75**

**Proposal for a regulation**  
**Article 11 – paragraph 1**

*Text proposed by the Commission*

1. Within **60** days of communication by the Commission to the Member States, pursuant to Article 20(4), of measures taken pursuant to paragraphs 1 or 4 of Article 10 by the original notifying Member State, a Member State may object to those measures where they relate to a product subject to Union harmonisation legislation. The Member State shall state its reasons for objecting, indicate any difference in its assessment of the risk presented by the product and mention any special circumstances and any additional information relating to the product in question.

*Amendment*

1. Within **30** days of communication by the Commission to the Member States, pursuant to Article 20(4), of measures taken pursuant to paragraphs 1 or 4 of Article 10 by the original notifying Member State, a Member State may object to those measures where they relate to a product subject to Union harmonisation legislation. The Member State shall state its reasons for objecting, indicate any difference in its assessment of the risk presented by the product and mention any special circumstances and any additional information relating to the product in question.

*Justification*

*A 60-day deadline for objecting to measures adopted is too long and is detrimental to economic operators themselves. This period, added to the Commission's decision-making time frame, is sufficient for the supervisory authorities to have taken precautionary action to limit the marketing of the product or prevented the import thereof and ensured its return to its point of origin. The information provided by the notifying Member State along with the notification (test report, grounds for action and risk assessment) is enough to determine in a brief period whether or not the measure is adequate. There is no need to wait 60 days. The adoption of two time frames is recommended to ensure that these provisions are not detrimental to economic operators: a short (15-day) deadline for objections to be entered, together with the Commission's (60-day) decision-making time frame.*

## Amendment 76

### Proposal for a regulation Article 11 – paragraph 3

*Text proposed by the Commission*

3. Where an objection is raised by a Member State pursuant to paragraph 1 or the Commission considers that the national measures may be contrary to Union legislation, the Commission shall without delay enter into consultation with the relevant economic operator(s) and shall evaluate the national measures, taking account of all available scientific or technical evidence.

*Amendment*

3. Where an objection is raised by a Member State pursuant to paragraph 1 or the Commission considers that the national measures may be contrary to Union legislation, the Commission shall without delay enter into consultation with ***the notifying Member State and*** the relevant economic operator(s) and shall evaluate, ***within 30 days at the most,*** the national measures, taking account of all available scientific or technical evidence.

*Justification*

*It is essential to consult the notifying Member State, given that it holds all the supporting documentation relating to the measure.*

## Amendment 77

### Proposal for a regulation Article 11 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. If an objection is raised in accordance with paragraph 1 by the Commission or a Member State, the Commission shall inform all the Member States through the RAPEX contact points.***

## Amendment 78

### Proposal for a regulation Article 11 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. On the basis of the results of the

4. On the basis of the results of the



evaluation conducted pursuant to paragraph 3, the Commission *may* decide by implementing acts whether the national measures are justified and similar measures should be taken by all Member States that have not already done so. In this case, it shall address the decision to the Member States concerned and immediately communicate it to all Member States and the relevant economic operator or operators.

evaluation conducted pursuant to paragraph 3, the Commission *shall* decide by implementing acts *within three months* whether the national measures are justified and similar measures should be taken by all Member States that have not already done so. In this case, it shall address the decision to the Member States concerned and immediately communicate it to all Member States and the relevant economic operator or operators.

## Amendment 79

### Proposal for a regulation Article 12 – paragraph 2

#### *Text proposed by the Commission*

2. For products *and risks* subject to Regulation (EC) No 1907/2006, a decision taken by the Commission pursuant to paragraph 1 of this Article shall be valid for up to two years and may be extended for additional periods of up to two years. Such a decision shall be without prejudice to procedures provided in that Regulation.

#### *Amendment*

2. For products subject to Regulation (EC) No 1907/2006, *the Commission may take a decision, pursuant to paragraph 1 of this Article, only if it has justifiable grounds for believing that urgent action is essential to protect human health or the environment.* A decision taken by the Commission pursuant to paragraph 1 of this Article shall be valid for up to two years and may be extended for additional periods of up to two years. Such a decision shall be without prejudice to procedures provided in that Regulation. *The Commission shall immediately inform the Member States and the European Chemicals Agency thereof, giving reasons for its decision and submitting the scientific or technical information on which the provisional measure is based. If the provisional measure adopted by the Commission involves restricting the placing on the market or use of a substance, the Commission shall initiate a Community restrictions procedure by submitting to European Chemicals Agency a dossier, in accordance with Annex XV to Regulation (EC) No 1907/2006, within three months of the*

*date of the Commission decision.*

*Justification*

*Brought into line with the restrictions procedure under Article 129 of the REACH Regulation so as to prevent duplicated regulatory action. If the Commission decision involves restricting the placing on the market or use of a substance, the decision should result in initiation of a Community restrictions procedure.*

**Amendment 80**

**Proposal for a regulation**  
**Article 13 – paragraph 1**

*Text proposed by the Commission*

1. Risk assessment shall be based on available scientific or technical evidence.

*Amendment*

1. Risk assessment shall be based on available scientific or technical evidence.  
***Risk assessment shall be carried out in accordance with the general risk assessment methodology and, where appropriate, Commission guidelines on the application of that methodology to a specific category of products. The Commission shall, by means of implementing acts, adopt the general risk assessment methodology. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 32(2).***

**Amendment 81**

**Proposal for a regulation**  
**Article 13 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) any requirements laid down in or pursuant to Union harmonisation legislation that apply to the product and relate to the potential risk under consideration, taking **full** account of test reports or certificates attesting conformity and issued by a conformity assessment body;

*Amendment*

(a) any requirements laid down in or pursuant to Union harmonisation legislation that apply to the product and relate to the potential risk under consideration, taking account of test, ***inspection and calibration*** reports or certificates attesting conformity and issued by a conformity assessment body

***accredited in accordance with Regulation (EC) No 765/2008, including assessments drawn up pursuant to Regulation (EC) No 1907/2006, for instance in connection with registration, authorisation, restrictions or reporting;***

*Justification*

*It is proposed that, for the sake of clarity, the word 'full' be deleted, since it signifies 'complete' or 'absolute' and could give rise to confusion. Test reports and certificates are in any case taken into account in their entirety and not in part. Brought into line with the REACH Regulation so as to prevent duplicated regulatory action. The REACH Regulation provides the main framework for risk assessment in respect of substances, and, for that reason, account has to be taken of such assessments.*

**Amendment 82**

**Proposal for a regulation**

**Article 13 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. In the absence of requirements laid down in points (a), (b) and (c), account shall be taken of Article 6 of Regulation ... \*;***

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***OJ: please insert the number of Regulation on Consumer Product Safety (2013/0049(COD)).***

*Justification*

*Firstly, a name change is proposed for the sake of terminological alignment with the CPSR. Secondly, the wording does not cover risk assessment. Non-harmonised products that are not regulated by any standards are also excluded, necessitating a reference to the CPSR and more particularly Article 6 thereof.*

## Amendment 83

### Proposal for a regulation Article 13 – paragraph 3

*Text proposed by the Commission*

3. Compliance with the criteria referred to in points (a), (b) and (c) of paragraph 2 shall raise a presumption that the product adequately safeguards the public interests to which those criteria relate. However, this shall not prevent market surveillance authorities from taking action under this Regulation where there is **new** evidence that, despite such conformity or compliance, the product presents a risk.

*Amendment*

3. Compliance with **any of** the criteria referred to in points (a), (b) and (c) of paragraph 2 shall raise a presumption that the product adequately safeguards the public interests to which those criteria relate. However, this shall not prevent market surveillance authorities from taking action under this Regulation where there is evidence that, despite such conformity or compliance, the product presents a risk. ***In that case, the market surveillance authority shall demonstrate that the product presents a risk.***

## Amendment 84

### Proposal for a regulation Article 13 – paragraph 4

*Text proposed by the Commission*

4. The feasibility of obtaining higher levels of protection of the public interest concerned and the availability of other products presenting a lesser risk shall not be **a** reason to consider that a product presents a risk.

*Amendment*

4. The feasibility of obtaining higher levels of protection of the public interest concerned and the availability of other products presenting a lesser risk shall not be **sufficient** reason to consider that a product presents a risk.

## Amendment 85

### Proposal for a regulation Article 13 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. The Commission may, on its own initiative or at the request of a market surveillance authority, have a risk***

***assessment carried out by a European Union reference laboratory , in accordance with Article 28. Such assessment shall be binding on all stakeholders.***

*Justification*

*The proposal to use the European Union's reference laboratories to resolve differences in assessment of risk by Member States permits making up for the absence of an independent authority in the field of non-food products, while permitting a uniform assessment of risk across the European Union.*

**Amendment 86**

**Proposal for a regulation**

**Article 13 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***4b. In cases where Member State risk assessment practices differ and result in divergent interpretations as to the necessity of measures in respect of similar products, the Commission shall provide guidance on appropriate risk assessment practices. The Commission shall be assisted by the scientific committees established under Commission Decision 2004/210/EC and take into account all available scientific and technical evidence relating to the risks under consideration.***

*Justification*

*A procedure should be established for the cases where the results of risk assessments undertaken by different Member States differ from one another.*

**Amendment 87**

**Proposal for a regulation**

**Article 14 – paragraph 3 – subparagraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) the product or any presentation of the***

*product bears without authorisation a trade mark that is essentially similar to a registered trade mark for this product, thereby not allowing its authenticity or origin to be guaranteed.*

## **Amendment 88**

### **Proposal for a regulation**

#### **Article 14 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*3a. Where products are not intended to be placed on the market in the Member State in which they are released for free circulation, the language in which the information set out in points (a), (b) and (c) of the second subparagraph of paragraph 3 is presented shall not give the authorities in charge of external border controls sufficient reason to believe that the product may present a risk.*

#### *Justification*

*Small items (e.g. cosmetics) are often re-labelled after their release for free circulation and before being placed in the market. Customs authorities have sometimes wrongly suspended the release of such products because they were not labelled in their national languages. This misunderstanding should be avoided. Nevertheless, importers and distributors will still have to check that instructions and safety information are in the language of the Member State where they make the products available.*

## **Amendment 89**

### **Proposal for a regulation**

#### **Article 14 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

*3b. The corrective measures of the market surveillance authorities shall be proportionate to the seriousness of the non-compliance.*

## Amendment 90

### Proposal for a regulation Article 14 – paragraph 5

#### *Text proposed by the Commission*

5. In the case of perishable products, the authorities in charge of external border controls shall, as far as possible, **seek to** ensure that any requirements they may impose with regard to the storage of products or the parking of vehicles used for transport are not incompatible with the preservation of those products.

#### *Amendment*

5. In the case of perishable products, the authorities in charge of external border controls shall, as far as possible, **facilitate measures to** ensure that any requirements they may impose with regard to the storage of products or the parking of vehicles used for transport are not incompatible with the preservation of those products.

#### *Justification*

*Economic operators themselves have the possibility of organising the proper storage and preservation of perishable products using facilities on customs premises. The authorities in charge of external border controls are able to help facilitate the necessary measures but not ensure that they are actually taken.*

## Amendment 91

### Proposal for a regulation Article 15 – paragraph 1

#### *Text proposed by the Commission*

1. A product the release of which has been suspended by the authorities in charge of external border controls pursuant to Article 14 shall be released if, within three working days of the suspension of release, those authorities have not been requested by the market surveillance authorities to continue the suspension or they have been informed by the market surveillance authorities that the product does not present a risk, and provided that all the other requirements and formalities pertaining to such release have been fulfilled.

#### *Amendment*

1. A product the release of which has been suspended by the authorities in charge of external border controls pursuant to Article 14 shall be released if, within three working days of the **notification of** suspension of release, those authorities have not been requested by the market surveillance authorities to continue the suspension or they have been informed by the market surveillance authorities that the product does not present a risk, and provided that all the other requirements and formalities pertaining to such release have been fulfilled.

### *Justification*

*Article 14(4) of the proposed Regulation provides that the authorities in charge of external border controls shall immediately notify the market surveillance authorities of any suspension. It is therefore appropriate that the three working day period referred to in Article 15(1) would commence from the notification of suspension.*

## **Amendment 92**

### **Proposal for a regulation Article 15 – paragraph 3**

#### *Text proposed by the Commission*

3. Compliance with the requirements of any Union harmonisation legislation that apply to the product upon its release which relate to the potential risk under consideration, taking **full** account of test reports or certificates attesting conformity and issued by a conformity assessment body, shall raise a presumption on the part of market surveillance authorities that the product does not present a risk. However, this shall not prevent those authorities from instructing the authorities in charge of external border controls not to release the product where there is evidence that, despite such compliance, the product does in fact present a risk.

#### *Amendment*

3. Compliance with the requirements of any Union harmonisation legislation that apply to the product upon its release which relate to the potential risk under consideration, taking account of test, **inspection and calibration** reports or certificates attesting conformity and issued by a conformity assessment body **accredited in accordance with Regulation (EC) No 765/2008**, shall raise a presumption on the part of market surveillance authorities that the product does not present a risk. However, this shall not prevent those authorities from instructing the authorities in charge of external border controls not to release the product where there is evidence that, despite such compliance, the product does in fact present a risk.

### *Justification*

*It is proposed that, for the sake of clarity, the word ‘full’ be deleted, since it signifies ‘complete’ or ‘absolute’ and could give rise to confusion. Test reports and certificates are in any case taken into account in their entirety and not in part.*

## **Amendment 93**

### **Proposal for a regulation Article 16 – paragraph 6 – subparagraph 1**



*Text proposed by the Commission*

*Amendment*

6. Market surveillance authorities **may** charge fees which wholly or partly cover the costs of their activities, including testing carried out for the risk assessment, where they take measures in accordance with paragraph 1.

6. Market surveillance authorities **shall** charge fees **to the person declaring the product for free circulation** which wholly or partly cover the costs of their activities, including testing carried out for the risk assessment, where they take measures in accordance with paragraph 1.

#### **Amendment 94**

##### **Proposal for a regulation**

##### **Article 16 – paragraph 6 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The fees shall be calculated on the basis of the actual costs of each market surveillance activity, and applied to the person declaring the product for free circulation subject to such market surveillance activities. Such fees shall not exceed the actual costs of the market surveillance activity performed and may partly or entirely reflect the time taken by the staff of the market surveillance authorities to perform the market surveillance controls.***

#### *Justification*

*The practice of charging fees should be aligned in the Regulation to ensure harmonised application across the EU.*

#### **Amendment 95**

##### **Proposal for a regulation**

##### **Article 18 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Within **60** days of communication by the Commission to the Member States, pursuant to Article 20(4), of any refusal to

1. Within **30** days of communication by the Commission to the Member States, pursuant to Article 20(4), of any refusal to

release a product for free circulation by the original notifying Member State, a Member State may object to that refusal where it relates to a product subject to Union harmonisation legislation. The Member State shall state its reasons for objecting, indicate any difference in its assessment of the risk presented by the product and mention any special circumstances and any additional information relating to the product in question.

release a product for free circulation by the original notifying Member State, a Member State may object to that refusal where it relates to a product subject to Union harmonisation legislation. The Member State shall state its reasons for objecting, indicate any difference in its assessment of the risk presented by the product and mention any special circumstances and any additional information relating to the product in question.

#### *Justification*

*Clarification to ensure legal certainty.*

### **Amendment 96**

#### **Proposal for a regulation Article 18 – paragraph 3**

##### *Text proposed by the Commission*

3. Where an objection is raised by a Member State under paragraph 1 or the Commission considers that the refusal may be contrary to Union legislation, the Commission shall without delay enter into consultation with the relevant economic operator(s) and shall evaluate the **refusal**, taking account of all available scientific or technical evidence.

##### *Amendment*

3. Where an objection is raised by a Member State under paragraph 1 or the Commission considers that the refusal may be contrary to Union legislation, the Commission shall without delay enter into consultation with **the notifying Member State and** the relevant economic operator(s) and shall, **within 30 days**, evaluate the **national measures**, taking account of all available scientific or technical evidence.

#### *Justification*

*The adoption of two time frames is recommended to ensure that these provisions are not detrimental to economic operators: a short (15-day) deadline for objections to be entered, together with the Commission's (60-day) decision-making time frame. It is essential to consult the notifying Member State, given that it holds all the supporting documentation relating to the measure.*

### **Amendment 97**

**Proposal for a regulation**  
**Article 18 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. If an objection is entered within 30 days in accordance with paragraph 1 by the Commission or a Member State, the Commission shall inform all the Member States through the RAPEX contact points.***

*Justification*

*It is essential for the market supervisory authorities to be informed of any objections to measures adopted in respect of products deemed to be unsafe and notified through RAPEX .*

**Amendment 98**

**Proposal for a regulation**  
**Article 19 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Participation in RAPEX shall be open to applicant countries, third countries or international organisations within the framework of and in accordance with agreements between the Union and those countries or organisations. Any such agreements shall be based on reciprocity and include provisions on confidentiality corresponding to those applicable in the Union.

4. Participation in RAPEX shall be open to applicant countries, third countries or international organisations within the framework of and in accordance with agreements between the Union and those countries or organisations. Any such agreements shall be based on reciprocity and include provisions on confidentiality corresponding to those applicable in the Union ***as well as special provisions on personal data protection, as required by Article 25 of Directive 95/46/EC and Article 9 of Regulation (EC) No 45/2001.***

*Justification*

*In addition to the general provisions on confidentiality, also specific provisions on personal data protection must be adhered to.*

**Amendment 99**

**Proposal for a regulation**  
**Article 20 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***The first subparagraph shall not apply where the RAPEX contact point has reason to believe that the effects of the risk presented by a product do not go beyond the territory of its Member State.*** ***deleted***

*Justification*

*As the products move freely within the Single Market, this derogation should be deleted as unnecessary.*

## **Amendment 100**

### **Proposal for a regulation**

#### **Article 20 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

***(a) the nature and level of the risk, including a summary of the results of the risk assessment;***

***(a) the data necessary for product identification and traceability;***

## **Amendment 101**

### **Proposal for a regulation**

#### **Article 20 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) the nature of any non-compliance with Union harmonisation legislation;***

***(b) the nature and level of the risk and a summary of safety and risk assessment findings;***

*Justification*

*It is necessary to formulate safety and risk assessment rules applicable to the product.*

## **Amendment 102**

### **Proposal for a regulation**

#### **Article 20 – paragraph 2 – subparagraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

**(c) the data necessary to identify the product;**

**(c) the nature of any infringement of Union legislation;**

*Justification*

*It is not clear that non-compliance in respect of non-harmonised products must be identified and notified through RAPEX also. It is therefore proposed that general reference be made to EU legislation.*

### **Amendment 103**

#### **Proposal for a regulation**

#### **Article 20 – paragraph 2 – subparagraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

**(fa) whether the product is known to be counterfeit;**

### **Amendment 104**

#### **Proposal for a regulation**

#### **Article 20 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. On receiving a notification, the Commission shall communicate it **to** the other Member States. If the notification does not satisfy the requirements set out in paragraphs 1, 2 and 3, the Commission may suspend it.

4. On receiving a notification, the Commission shall communicate it **without delay to the relevant economic operator and** the other Member States. If the notification does not satisfy the requirements set out in paragraphs 1, 2 and 3, the Commission may suspend it.

### **Amendment 105**

#### **Proposal for a regulation**

#### **Article 20 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. Information on a product in a RAPEX notification shall be updated, where appropriate.***

*Justification*

*Updating of RAPEX information on a notified product should be possible, for example, where that information is no longer valid.*

## **Amendment 106**

### **Proposal for a regulation**

#### **Article 21 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

The Commission shall maintain an information and communication system for market surveillance (ICSMS) for the collection and structured storage of information on issues relating to market surveillance, ***in particular the following information:***

The Commission shall maintain an information and communication system for market surveillance (ICSMS) for the collection and structured storage of information on issues relating to market surveillance. ***Member States shall collect and enter into ICSMS in particular the following information:***

## **Amendment 107**

### **Proposal for a regulation**

#### **Article 21 – paragraph 1 – subparagraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) the identification of risks and their characteristics;***

## **Amendment 108**

### **Proposal for a regulation**

#### **Article 21 – paragraph 1 – subparagraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

(e) any non-compliance with Union **harmonisation** legislation other than measures or corrective action notified under RAPEX in accordance with Article 20;

(e) any non-compliance with Union legislation other than measures or corrective action notified under RAPEX in accordance with Article 20;

*Justification*

*Information regarding the surveillance of both harmonised and non-harmonised products should be stored.*

**Amendment 109**

**Proposal for a regulation**

**Article 21 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The Commission shall provide an interface solution through which ICSMS can be connected to RAPEX for data interchange between those systems, where appropriate.***

**Amendment 110**

**Proposal for a regulation**

**Article 21 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

ICSMS **may** also be made available, where necessary or appropriate, for use by the authorities in charge of controls at the external borders.

ICSMS **shall** also be made available, where necessary or appropriate, for use by the authorities in charge of controls at the external borders.

*Justification*

*Improvement of sharing of information will encourage and strengthen cooperation with authorities in charge of controls at the external border.*

## Amendment 111

### Proposal for a regulation Article 21 – paragraph 3

*Text proposed by the Commission*

3. Market surveillance authorities shall recognise the validity and make use of test reports prepared by or for their counterparts in other Member States and entered into ICSMS.

*Amendment*

3. Market surveillance authorities shall recognise the validity and make use of test, ***inspection or calibration*** reports prepared by or for their counterparts in other Member States and entered into ICSMS.

## Amendment 112

### Proposal for a regulation Article 21 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 21a***

##### ***Pan-European Injuries Database***

***1. The Commission shall by ..... \* adopt delegated acts, in accordance with Article 32a, establishing a Pan-European Injuries Database which would cover all types of injuries, and in particular those related to products used at home and for leisure, transportation and work activities. The database shall be coordinated and operated by the Commission.***

***2. The relevant market surveillance authorities of the Member States shall contribute to the establishment of the Database and deliver comprehensive injury data. In consultation with the Member States, the Commission shall draw up and publish detailed guidance on the relevant data to be included in the Database, as well as the methods for electronic communication of the data.***

***Not later than two years after the establishment of the Database, the Commission shall report to the European Parliament and the Council on the***



*functioning of the Database.*

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*\* OJ: please insert the date: two years after the date of entry into force of this Regulation.*

## **Amendment 113**

### **Proposal for a regulation Article 22 – paragraph 1**

#### *Text proposed by the Commission*

The Commission and Member States may exchange confidential information, including information exchanged through RAPEX, with regulatory authorities of third countries or international organisations with which the Commission and the **Member State or group of** Member States have concluded bilateral or multilateral confidentiality arrangements based on reciprocity.

#### *Amendment*

The Commission, **together with the** Member States may exchange confidential information, including information exchanged through RAPEX, with regulatory authorities of **applicant countries**, third countries or international organisations with which the Commission and Member States have concluded bilateral or multilateral confidentiality arrangements based on reciprocity. **Any such arrangements shall include provisions on confidentiality corresponding to those applicable in the Union as well as special provisions on personal data protection, as required by Article 25 of Directive 95/46/EC and Article 9 of Regulation (EC) No 45/2001.**

#### *Justification*

*RAPEX data, including confidential data, belongs to all Member States. Accordingly, they should all be party to the relevant agreements. This will avoid the case arising where one Member State does not wish to conclude agreements with a given third country and another Member State would be willing to do so and is thereby able to obtain all information not provided by the first Member State. Any exchanges must take place through the Commission.*

## **Amendment 114**

### **Proposal for a regulation Article 23 – paragraph 1**

*Text proposed by the Commission*

1. There shall be efficient cooperation and exchange of information among the market surveillance authorities of the Member States, among the different authorities within *each* Member *State* and between market surveillance authorities and the Commission and the relevant Union agencies regarding market surveillance programmes and all issues relating to products presenting a risk.

*Amendment*

1. There shall be efficient cooperation and exchange of information among the market surveillance authorities of the Member States, among the different authorities within *and among the* Member *States* and between market surveillance authorities and the Commission and the relevant Union agencies regarding market surveillance programmes and all issues relating to products presenting a risk.

*Justification*

*Cooperation and exchange of information among various relevant authorities should be guaranteed not only within one single Member State but also among all the Member States, as this would contribute to enhanced cooperation and coordination among the relevant authorities.*

**Amendment 115**

**Proposal for a regulation**

**Article 24 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Where, in an exchange of information, personal data are exchanged, Directive 95/46/EC shall apply.***

**Amendment 116**

**Proposal for a regulation**

**Article 25 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The EMSF may invite experts and other third parties to attend meetings or provide written contributions.

5. The EMSF may invite experts and other third parties to attend meetings or provide written contributions ***on a regular and continuous basis. Business organisations, small and medium-sized enterprises, consumers, laboratories and conformity***

***assessment bodies at Union level may be consulted on the annual market surveillance programme.***

*Justification*

*Greater cooperation with the stakeholders fills a key gap of technical expertise, especially with complex technologies, experienced by Market Surveillance Authorities.*

**Amendment 117**

**Proposal for a regulation  
Article 25 – paragraph 6**

*Text proposed by the Commission*

6. The EMSF may establish standing or temporary sub-groups which shall include the administrative cooperation groups for market surveillance set up for the implementation of Union harmonisation legislation. Organisations representing the interests of industry, small and medium-sized enterprises, consumers, laboratories and conformity assessment bodies at Union level **may** be invited to participate in such sub-groups as observers.

*Amendment*

6. The EMSF may establish standing or temporary sub-groups which shall include the administrative cooperation groups for market surveillance set up for the implementation of Union harmonisation legislation. Organisations representing the interests of industry, small and medium-sized enterprises, consumers, laboratories and conformity assessment bodies at Union level **shall** be invited to participate in such sub-groups as observers **on a regular and continuous basis**.

**Amendment 118**

**Proposal for a regulation  
Article 27 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) to **organise** joint market surveillance and joint testing projects;

*Amendment*

(c) to **facilitate the organisation of** joint market surveillance and joint testing projects;

*Justification*

*The purpose of the EMSF is to facilitate the organisation of joint market surveillance, training programmes and information campaigns.*

## Amendment 119

### Proposal for a regulation

#### Article 27 – paragraph 1 – point e

*Text proposed by the Commission*

(e) to **organise** training programmes and exchanges of national officials;

*Amendment*

(e) to **facilitate the organisation of** training programmes and exchanges of national officials;

*Justification*

*The purpose of the EMSF is to facilitate the organisation of joint market surveillance, training programmes and information campaigns.*

## Amendment 120

### Proposal for a regulation

#### Article 27 – paragraph 1 – point g

*Text proposed by the Commission*

(g) to **organise** information campaigns and joint visit programmes;

*Amendment*

(g) to **facilitate the organisation of** information campaigns and joint visit programmes, **including controls at borders**;

*Justification*

*The purpose of the EMSF is to facilitate the organisation of joint market surveillance, training programmes and information campaigns.*

## Amendment 121

### Proposal for a regulation

#### Article 27 – paragraph 1 – point j

*Text proposed by the Commission*

(j) to contribute to the development of guidance to ensure the effective and uniform implementation of this Regulation, taking due account of the interests of business, in particular small and medium-sized enterprises, and other stakeholders;

*Amendment*

(j) to contribute to the development of guidance to ensure the effective and uniform implementation of this Regulation, taking due account of the interests of business, in particular small and medium-sized enterprises, **consumer protection**,

and other stakeholders;

*Justification*

*Business interests should not affect the effective and uniform application of this regulation and, this being so, the necessary adjustments must be made to take due account of consumer protection.*

**Amendment 122**

**Proposal for a regulation  
Article 27 – point I a (new)**

*Text proposed by the Commission*

*Amendment*

***(la) to organise specific and regular  
market surveillance actions on products  
that are distributed on-line;***

**Amendment 123**

**Proposal for a regulation  
Article 27 – paragraph 1 – point I b (new)**

*Text proposed by the Commission*

*Amendment*

***(lb) to ensure adequate involvement of  
and cooperation with customs authorities;***

**Amendment 124**

**Proposal for a regulation  
Article 27 – paragraph 1 – point I c (new)**

*Text proposed by the Commission*

*Amendment*

***(lc) to contribute to a streamlining of  
administrative and enforcement practices  
with regard to market surveillance in the  
Member States;***

## Amendment 125

### Proposal for a regulation

#### Article 28 – paragraph 2 – point d a (new)

*Text proposed by the Commission*

*Amendment*

***(da) be accredited pursuant to the provisions of Regulation (EC) No 765/2008.***

*Justification*

*The suggested EU reference laboratories should be accredited pursuant to Regulation (EC) 765/2008, to ensure they are placed on an equal footing with other accredited conformity assessment bodies.*

## Amendment 126

### Proposal for a regulation

#### Article 28 – paragraph 3 – point b

*Text proposed by the Commission*

*Amendment*

***(b) contributing to the resolution of disputes between the*** authorities of Member States, economic operators and conformity assessment bodies;

***(b) settling any disputes arising out of a divergent risk assessment among the market surveillance*** authorities of ***different*** Member States, ***the*** economic operators and ***the*** conformity assessment bodies;

## Amendment 127

### Proposal for a regulation

#### Article 31 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

The Member States shall lay down the rules ***on*** penalties applicable to infringements of the provisions of this Regulation that impose obligations on economic operators and to infringements of provisions of any Union harmonisation legislation on products covered by this Regulation that impose obligations on

***1.*** The Member States shall lay down the rules ***establishing appropriate*** penalties applicable to infringements of the provisions of this Regulation that impose obligations on economic operators and to infringements of provisions of any Union harmonisation legislation on products covered by this Regulation that impose

economic operators where that legislation does not provide for penalties, and shall take all measures necessary to ensure that they are implemented. ***The penalties provided for must be effective, proportionate and dissuasive.*** Member States shall notify those provisions to the Commission by ***[insert date - 3 months prior to the date of application of this Regulation]*** and shall notify it without delay of any subsequent amendment affecting them.

obligations on economic operators where that legislation does not provide for penalties, and shall take all measures necessary to ensure that they are implemented. Member States shall notify those provisions to the Commission by ... \* and shall notify it without delay of any subsequent amendment affecting them.

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***\* OJ: please insert the date: three months prior to the date of application of this Regulation.***

## **Amendment 128**

### **Proposal for a regulation**

#### **Article 31 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

The penalties ***referred to in the first subparagraph shall have regard to the size of the undertakings and in particular to the situation of small and medium-sized enterprises.*** The penalties ***may be increased if*** the relevant economic operator has previously committed a similar infringement ***and may include criminal sanctions for serious infringements.***

*Amendment*

The penalties ***provided for shall be effective, proportionate and dissuasive.*** ***The penalties shall have regard to the seriousness, the duration and, where applicable, the intentional character of the infringement.*** ***In addition,*** the penalties ***shall take into account whether*** the relevant economic operator has previously committed a similar infringement.

## **Amendment 129**

### **Proposal for a regulation**

#### **Article 31 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Administrative penalties applicable to infringements shall at least offset the economic advantage sought through the***

*infringement, but shall not exceed 10 % of the annual turnover or an estimate thereof. The penalties imposed may be higher than 10 % of the annual turnover or an estimate thereof, where it is necessary to offset the economic advantage sought through the infringement. The penalties may include criminal sanctions for serious infringements.*

#### **Amendment 130**

##### **Proposal for a regulation**

##### **Article 31 – paragraph 1 b – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

*1b. The Member States shall inform the Commission of the type and the size of the penalties imposed under this Regulation, identify the actual infringements of this Regulation, and indicate the identity of economic operators for which penalties have been imposed. The Commission shall make that information available to the public without undue delay electronically and, where appropriate, by other means.*

#### **Amendment 131**

##### **Proposal for a regulation**

##### **Article 31 – paragraph 1 b – subparagraph 2 (new)**

*Text proposed by the Commission*

*Amendment*

*The Commission, on the basis of the information received under the first subparagraph, shall publish and update a blacklist of economic operators who are repeatedly found to intentionally infringe the provisions of this Regulation.*



## Amendment 132

### Proposal for a regulation Article 32 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 32 a***

##### ***Exercise of the delegation***

***1. The power to adopt the delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***

***2. The power to adopt delegated acts referred to in Article 21 a shall be conferred on the Commission for an indeterminate period of time from ...\*.***

***3. The delegation of power referred to in Article 21a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following its publication in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.***

***4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.***

***5. A delegated act adopted pursuant to Article 21 a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period may be extended by two months at the initiative of the European Parliament or of the Council.***

***\* OJ: please insert the date: the date of entry into force of this Regulation.***

## **Amendment 133**

### **Proposal for a regulation Article 33 – paragraph 1**

#### *Text proposed by the Commission*

No later than [five] years after the date of application, the Commission shall assess the application of this Regulation and transmit an evaluation report to the European Parliament and the Council. That report shall assess if this Regulation achieved its objectives, in particular with regard to ensuring more effective and efficient enforcement of product safety rules and Union harmonisation legislation, improving cooperation between market surveillance authorities, strengthening the controls of products entering the Union and better protecting the health and safety of persons in general, health and safety in the workplace, consumer protection, the environment, public security and other public interests, taking into account its impact on business and in particular on small and medium-sized enterprises.

#### *Amendment*

No later than [five] years after the date of application, the Commission shall assess the application of this Regulation and transmit an evaluation report to the European Parliament and the Council. That report shall assess if this Regulation achieved its objectives, in particular with regard to ensuring more effective and efficient enforcement of product safety rules and Union harmonisation legislation, improving cooperation between market surveillance authorities, strengthening the controls of products entering the Union and better protecting the health and safety of persons in general, health and safety in the workplace, consumer protection, the environment, ***energy efficiency***, public security and other public interests, taking into account its impact on business and in particular on small and medium-sized enterprises. ***In addition, that report shall explore new and innovative, market-based solutions that could effectively complement the market surveillance actions carried out by the market surveillance authorities, and shall include, but not be limited to, exploring the potential of compulsory third party auditing schemes.***

## EXPLANATORY STATEMENT

### Introduction

Free movement of goods is one of the four pillars of EU single market. This pillar and the proper functioning of the single market rests ultimately on consumer trust: European consumers must have the confidence that - irrespective where the product is manufactured and in which Member State they may buy it - the products they are using are both safe and compliant. Efficient and high-quality market surveillance should act as the ultimate guarantor for this. It should ensure products do not present a risk to health or safety of consumers nor persons in the workplace, but also guarantee that the products are compliant with the applicable Union legislation, such as the rules detailing energy efficiency, levels of noise or emission limits.

It is becoming ever clearer, however, that Member States' market surveillance is falling short of meeting the challenge posed by growing imports to the EU and increased number of products circulating within the single market. According to the Commission, only around 0.3% of all goods imported to or placed on the market in the EU are checked by the authorities. At the same time, the market surveillance authorities are expected to answer to new emerging challenges, such as growing e-commerce.

The situation has been aggravated by a complex legal structure, something that was also highlighted by the European Parliament in its Resolution of 8 March 2011 on the revision of the General Product Safety Directive and market surveillance<sup>1</sup>: The Resolution stated that "*current legislative framework for market surveillance does not provide enough coherence and should therefore be reviewed and further coordinated*". Currently, there is a lack of consistency of EU product safety requirements for harmonised products on the one hand and non-harmonised products on the other, as well as between consumer products and products intended for professional use. Another source of ambiguity stems from the lack of specific benchmarks for non-harmonised consumer products, and from the complexity caused by different layers of EU product safety rules.

Following this, the European Parliament proposed in its above-mentioned Resolution that the Commission should establish a common European framework for market surveillance that would concern all products circulating within the internal market, including the ones imported to the EU. The proposal at hand follows from this request. The proposal is part of a larger product safety package, which in addition to market surveillance, includes a proposal for General Product Safety Regulation as well as a Communication setting out a multi-annual plan for market surveillance.

Overall, your Rapporteur is very supportive of the Commission proposal and the aims it seeks to attain. However, there exist a number of issues where the Rapporteur wishes to strengthen the proposal, and also to highlight some of its key elements.

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<sup>1</sup> 2010/2085(INI)

## **Ensuring safety but also level playing field amongst market operators**

Your Rapporteur welcomes the fact that market surveillance as established in this Regulation should safeguard health and safety but also, more generally, enforcement of Union legislation which seeks to uphold other public interests, such as the environment or energy efficiency. Honest market players put considerable effort and devote a significant amount of resources into ensuring they are compliant with various Union safety, environment and other requirements; the role of market surveillance is to ensure that players who do not abide by the rules do not gain advantageous position on the market vis-à-vis compliant operators. It is the job of market surveillance authorities to make sure unsafe or otherwise harmful products as well as non-compliant products are identified and kept or taken off the market. This is in the interest of consumers as well as trustworthy manufacturers, importers and distributors.

Your Rapporteur in her various amendments, wishes to clarify that market surveillance captures all of the different aspects described in this Regulation.

As one of the biggest challenges is the limited resources the Member States can grant to market surveillance, especially vis-à-vis the growing volumes of trade, your Rapporteur suggests the Commission should, as part of looking for long term solutions, explore new, innovative market-based solutions that would complement the market surveillance actions currently solely undertaken by the authorities. Your Rapporteur highlights third party auditing of economic operators' quality control systems as well as of the end products as one of these possible solutions. The Commission should include these deliberations into the evaluation report it is to write in accordance with Article 33.

## **Closer, stronger, better functioning cooperation between Member States' surveillance authorities**

Currently, one of the problems stems from the weak coordination, cooperation and information exchange among the product safety market surveillance authorities of different Member States. The Commission proposal seeks to rectify this through provisions aiming at enhancing information- and work-sharing as well as mutual assistance among the authorities of different Member States as well as with competent authorities of third countries.

The exchange of information rests mainly on two pillars: the already well established rapid alert system for products presenting a risk (RAPEX), and the *Information and Communication System for Market Surveillance* (ICSMS) for exchanging information of a more general nature. The exchange through ICSMS enables the market surveillance authorities to benefit from each other's experience and work, and save the scarce resources as they e.g. do not have to repeat the tests and assessments that have already been done in some other Member State. Your Rapporteur finds these proposals deserving full support, and proposes only to clarify some of the wording of the relevant articles.

One of the key provisions for better cooperation and information exchange is the establishment of *European Market Surveillance Forum*. The Forum should serve as a platform for cooperation not only between the authorities but also between the authorities and the economic operators as well as other stakeholders such as consumer groups. Your Rapporteur wishes to highlight the importance of continued, structured cooperation under the

auspices of this to-be established Forum, and would wish to strengthen its role further in the future by proposing that it should be considered that the Forum is given - when the Regulation is next reviewed - the power to give binding recommendations when the Forum agrees these are needed to further improve and strengthen the practices of market surveillance in Member States and especially at the EU external borders.

In addition, the role of different stakeholders in the Forum should be strengthened and their regular participation ensured. Different stakeholders can add valuable insights as they possess a lot of market information, and contribute to defining specific problem areas and potential solutions.

### **Deterrent penalties**

In its 2011 Resolution, the Parliament also stressed the importance of deterrent penalties, including heavy fines, for economic operators who deliberately introduce dangerous or non-compliant products into the single market.

Fair and level playing field must be ensured for the economic operators; the ones who play by the rules should not be penalised by the system's inability to punish the ones that deliberately do not. In addition, the system is always only as strong as its weakest link, and the regime would benefit from more harmonisation in this area.

Thus, in order to make sure that legislation has a truly deterrent effect across the EU, your Rapporteur proposes to introduce EU-wide, harmonised administrative penalties. To add to the deterrent effect sought with the penalties, the penalties imposed under the Regulation should also be made public. In addition to this your Rapporteur proposes establishing a public blacklist of operators who repeatedly breach this Regulation.

## **ANNEX - LIST OF SUBMISSIONS BY STAKEHOLDERS**

### **Disclaimer**

The following list of stakeholders is collected on the basis of meetings, mails and position papers since having been appointed the Rapporteur until the deadline for this draft report in June 2013.

It must be noted that this list is non-exhaustive, as it is difficult to list all the implicit contributions and advocacy work that have inspired the report. It must also be noted that this draft Report marks only the beginning stage for the work in the Parliament, with discussions and legislative work continuing until the final adoption of this legislation. Stakeholders give their input at later stages as well; hence, the listing here can only be seen as incomplete.

However, the ambition of this lobby footprint is for the Rapporteur to show in an open manner where the inspiration for this draft report originates.

### **List of stakeholders**

- ANEC
  - BEUC
  - BUSINESSEUROPE
  - Caterpillar
  - CECE (Committee for European Construction Equipment)
  - CECIMO (European Association of the Machine Tool Industries)
  - Confederation of Finnish Industries
  - Cosmetics Europe
  - DG SANCO
  - DG ENTR
  - DigitalEurope
  - EPEE (European Partnership for Energy and the Environment)
  - Eurocommerce
  - European Federation of lighter manufacturers
  - European Tyre & Rubber Manufacturers' Association
  - Finnish Ministry for Employment and Economy (TEM)
  - Incoming Lithuanian presidency of the Council of the European Union of autumn 2013
  - Irish presidency of the Council of the European Union of spring 2013
  - LEGO, Nordic toys and TIE (Toy Industries Europe)
  - Orgalime
  - VDMA (German Engineering Federation)
- 
- In addition, the IMCO committee organised a hearing on the market surveillance and product safety package on the 29th of May 2013. For the list of speakers and further information, please see the Committee's webpage.

18.9.2013

## **OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE**

for the Committee on the Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council on market surveillance of products and amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC, 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council

(COM(2013)0075 – C7-0043/2013 – 2013/0048(COD))

Rapporteur: George Sabin Cutaş

### **SHORT JUSTIFICATION**

The European Parliament called in its resolution of 8 March 2011<sup>1</sup> on the Commission to establish a common European framework for market surveillance, thereby, replacing the current increasingly complex and cumbersome sector-specific market surveillance regime.

Taking account of this request, the Commission presented on 13 February 2013 the so-called "Product Safety and Market Surveillance Package", which also includes a proposal for a regulation on consumer product safety and a multi-annual action plan for market surveillance covering the period 2013-2015. The regulation on market surveillance of products aims at clarifying the regulatory framework for market surveillance in the field of non-food goods by merging the rules on market surveillance of various, sometimes sector-specific legislation into a single legal instrument, which is applied horizontally in all sectors. The proposal, hence, simplifies and strengthens current market surveillance legislation.

Market surveillance has increasingly become an issue of concern. While the number of non-compliant products on the Union Market can not be neglected, and is possibly increasing, concerns have been raised that some Member States may not have allocated appropriate resources to market surveillance authorities to carry out their tasks. The concern has a clear trade dimension to it: As the EU is further opening up its markets for goods from third countries in the framework of concluding Free Trade Agreements; consumer products placed

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<sup>1</sup> General product safety and market surveillance - European Parliament resolution of 8 March 2011 on the revision of the General Product Safety Directive and market surveillance.

on the European internal market are coming increasingly from third countries. In an important number of cases, it has not been possible to identify the manufacturer of the non-compliant product imported from third countries. At the same time, European manufacturers invest substantially in compliance with EU legislation, whereby competitors from third countries not in compliance with EU legislation do not only undermine the achievement of various EU public policy objectives, but also jeopardise the competitiveness of European industry.

In this context, your rapporteur would like to make a couple of suggestions:

- Cooperation with market surveillance authorities from third countries, in particular with those enjoying preferential access to the European internal market, needs to be enhanced;
- Cooperation of market surveillance authorities should be addressed in trade negotiations by the European Commission;
- Member States must allocate sufficient resources to market surveillance and customs authorities to carry out their tasks, in particular, as there is an issue that authorities in major entry points (ports) to the European internal market have to bear the main burden of this tasks, while the risks affect the entire Union;
- The Commission should have a more active role to strengthen cooperation on this matter to ensure a level playing field in terms of implementing the EU market surveillance regime and avoid rogue traders to seek for the weak point in the market surveillance system;
- The Commission should critically assess the functioning of the cooperation mechanisms between Member States and with third countries.
- A Pan-European Injuries Database (IDB) should be set up and coordinated by the European Commission in order to support enforcement of market surveillance measures by the relevant authorities.

## AMENDMENTS

The Committee on International Trade calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a regulation Citation 1

*Text proposed by the Commission*

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33, 114 and 207 thereof,

*Amendment*

Having regard to the Treaty on the Functioning of the European Union, in particular Articles 33, 114, **169** and 207 thereof,



## Amendment 2

### Proposal for a regulation Citation 3 a (new)

*Text proposed by the Commission*

*Amendment*

**- Having regard to the European Parliament resolution of 8 March 2011 on the revision of the General Product Safety Directive and market surveillance (2010/2085(INI))**

## Amendment 3

### Proposal for a regulation Recital 1

*Text proposed by the Commission*

*Amendment*

(1) In order to guarantee the free movement of products within the Union, it is necessary to ensure that they fulfil requirements providing a high level of protection of public interests such as health and safety in general, health and safety in the workplace, protection of consumers, protection of the environment and public security. Robust enforcement of these requirements is essential to the proper protection of these interests and to create the conditions in which fair competition in the Union goods market can thrive. Rules are therefore necessary on market surveillance and on controls of products entering the Union from third countries.

(1) In order to guarantee the free movement of products within the Union, ***the rights of workers and consumers in the EU and in third countries trading with the EU, as well as improving the functioning of the internal market*** it is necessary to ensure that ***products being put on the EU market*** fulfil requirements providing a high level of protection of public interests such as health and safety in general, health and safety in the workplace, ***fair trading practices***, protection of consumers ***and workers***, protection of the environment, ***protection of intellectual property right*** and public security. Robust enforcement of these requirements is essential to the proper protection of these interests and to create the conditions in which fair competition in the Union goods market, ***online and offline***, can thrive. Rules are therefore necessary on market surveillance, ***online and offline*** and on controls of products entering the Union from third countries.

## **Amendment 4**

### **Proposal for a regulation Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) Taking account of the latest data provided by Eurobarometer that indicates a decrease in confidence of consumers in the safety of products sold in the EU, the Union should strengthen its market surveillance regulatory framework to gain the trust of European consumers.***

## **Amendment 5**

### **Proposal for a regulation Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) Given the EU's importance as a global trading bloc, it is necessary to use this position to enhance the protection of public interests such as health and safety, the protection of workers' rights and the environment in the countries the EU is trading with.***

## **Amendment 6**

### **Proposal for a regulation Recital 8**

*Text proposed by the Commission*

*Amendment*

(8) This Regulation should therefore integrate the provisions of Regulation 765/2008, Directive 2001/95/EC and several sector-specific acts of Union harmonisation legislation relating to market surveillance into a single regulation which covers products in both the

(8) This Regulation should therefore integrate the provisions of Regulation 765/2008, Directive 2001/95/EC and several sector-specific acts of Union harmonisation legislation relating to market surveillance into a single regulation which covers products in both the

harmonised and non-harmonised areas of the Union legislation, regardless whether they are intended for use, or are likely to be used, by consumers or professionals.

harmonised and non-harmonised areas of the Union legislation, regardless whether they are ***traded online or offline***, intended for use, or are likely to be used, by consumers or professionals.

## Amendment 7

### Proposal for a regulation Recital 15

#### *Text proposed by the Commission*

(15) Market surveillance should be based on the assessment of the risk presented by a product taking all relevant data into account. A product that is subject to Union harmonisation legislation which lays down essential requirements relating to protection of certain public interests should be presumed not to present a risk to those public interests if it complies with those essential requirements.

#### *Amendment*

(15) Market surveillance should be based on the assessment of the risk presented by a product taking all relevant data into account, ***and on a duty of care for all relevant economic operators, especially intermediaries, regardless of whether the products are traded online or offline.*** A product that is subject to Union harmonisation legislation which lays down essential requirements relating to protection of certain public interests should be presumed not to present a risk to those public interests if it complies with those essential requirements.

## Amendment 8

### Proposal for a regulation Recital 17 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(17a) In the case of non-harmonised products, market surveillance authorities should take into account documentation provided by economic operators as per (EU) No [.../...] [on consumer product safety].***

## *Justification*

*More linkages need to be made between the market surveillance regulation and the CPSD.*

### **Amendment 9**

#### **Proposal for a regulation**

#### **Recital 18**

##### *Text proposed by the Commission*

(18) For the purposes of this Regulation risk assessment should be carried out to identify products which have the potential to affect adversely the public interests protected by [Regulation (EU) No xxxx (on consumer product safety)], sector-specific Union harmonisation legislation and other Union legislation on products that are subject to this Regulation. It should include, where available, data on risks that have materialised previously with respect to the product in question. Account should also be taken of any measures that may have been taken by the economic operators concerned to alleviate the risks. The particular potential vulnerability of consumers, as opposed to professional users, should be taken into account as should the increased vulnerability of certain categories of consumer such as children, the elderly or the disabled.

##### *Amendment*

(18) For the purposes of this Regulation risk assessment should be carried out to identify products which have the potential to affect adversely the public interests protected by [Regulation (EU) No xxxx (on consumer product safety)], sector-specific Union harmonisation legislation and other Union legislation on products that are subject to this Regulation. It should include, where available, data on risks that have materialised previously with respect to the product in question. Account should also be taken of any measures that may have been taken by the economic operators concerned, ***applying a duty of care***, to alleviate the risks. The particular potential vulnerability of consumers, as opposed to professional users, should be taken into account as should the increased vulnerability of certain categories of consumer such as children, the elderly or the disabled. ***Market surveillance authorities shall continue to apply the precautionary principle in cases where scientific evidence does not give certainty of the safety of a product.***

## *Justification*

*The precautionary principle is explicitly mentioned in the present directives and regulations on product safety and market surveillance.*

## Amendment 10

### Proposal for a regulation Recital 19

#### *Text proposed by the Commission*

(19) Both new and second hand products originating outside the Union may be placed on the market only after they have been released for free circulation. Effective controls are required at the external borders of the Union to suspend the release of products that may present a risk if placed on the market in the Union pending evaluation and a final decision by market surveillance authorities.

#### *Amendment*

(19) Both new and second hand products originating outside the Union may be placed on the market only after they have been released for free circulation.  
***Respecting the principle of uniformity of the Common Commercial Policy***, effective controls are required at the external borders of the Union to suspend the release of products that may present a risk if placed on the market in the Union pending evaluation and a final decision by market surveillance authorities. ***The Commission should assess the effectiveness of these controls, in order to ensure that the same standards are applied at all entry points to the Union market so that goods and rogue traders do not divert trade to entry points to the Union market with a less stringent implementation of the EU market surveillance regulatory regime.***

#### *Justification*

*It has been found that imported goods have a higher risk of non-compliance with EU legislation. There is a risk that rogue traders divert their goods to entry points with weak implementation of the Union's market surveillance regime. The Commission must ensure that the regime is consistently applied all over the Union.*

## Amendment 11

### Proposal for a regulation Recital 20

#### *Text proposed by the Commission*

(20) Obliging the authorities responsible for the control of products entering the Union market to carry out checks on an adequate scale therefore contributes to a safer Union market for products. In order

#### *Amendment*

(20) Obliging the authorities responsible for the control of products entering the Union market to carry out checks on an adequate scale therefore contributes to a safer Union market for products. In order

to increase the effectiveness of such checks, cooperation and exchange of information between those authorities and market surveillance authorities concerning products presenting a risk should be enhanced.

to increase the effectiveness of such checks, cooperation and exchange of information between those authorities and market surveillance authorities concerning products presenting a risk should be enhanced ***significantly. The Commission should monitor the cooperation between these market surveillance authorities and make recommendations to further improve their cooperation. Given the increasing importance of imports into the EU and worries expressed by stakeholders about insufficient border controls, the Commission will monitor and assess the overall functioning of external border controls and will address recommendations to Member States in case of relevant shortcoming.***

#### *Justification*

*It is not enough to pledge for enhancing cooperation between the competent authorities, the Commission must take an active role as facilitator and mentor of this cooperation.*

## **Amendment 12**

### **Proposal for a regulation Recital 21**

#### *Text proposed by the Commission*

(21) Market surveillance authorities should be given the power to destroy products, render inoperable or order their destruction by the relevant economic operator, if they deem it necessary and proportionate to ensure that such goods cannot pose any further threats.

#### *Amendment*

(21) Market surveillance authorities should be given the power to destroy products, render inoperable or order their destruction ***or withdrawal*** by the relevant economic operator, ***operating online or offline***, if they deem it necessary and proportionate to ensure that such goods cannot pose any further threats ***or to avoid making illicit products available on the market.***

## Amendment 13

### Proposal for a regulation Recital 23

#### *Text proposed by the Commission*

(23) There should be effective, speedy and accurate exchange of information among the Member States and between the Member States and the Commission. It is therefore necessary to provide for effective tools for such exchange. The Union rapid information system (RAPEX) has proved its effectiveness and efficiency. RAPEX enables measures to be taken across the Union in relation to products that present a risk beyond the territory of a single Member State. To avoid unnecessary duplication, this system should be used for all alert notifications required by this Regulation relating to products presenting a risk.

#### *Amendment*

(23) There should be effective, speedy and accurate exchange of information among the Member States and between the Member States and the Commission. It is therefore necessary to provide for effective tools for such exchange. The Union rapid information system (RAPEX) has proved its effectiveness and efficiency. RAPEX enables measures to be taken across the Union in relation to products that present a risk beyond the territory of a single Member State. To avoid unnecessary duplication, this system should be used ***and constantly updated*** for all alert notifications required by this Regulation relating to products presenting a risk.

## Amendment 14

### Proposal for a regulation Recital 25

#### *Text proposed by the Commission*

(25) Given the size of the Union market for goods and as there are no internal borders, it is imperative that the market surveillance authorities of the Member States are willing and able to cooperate with each other effectively and to coordinate joint support and action. Accordingly, mechanisms for mutual assistance should be established.

#### *Amendment*

(25) Given the size of the Union market for goods and as there are no internal borders, it is imperative that the market surveillance authorities ***(including customs authorities at the border point's of the European Union)*** of the Member States are willing and able to cooperate with each other effectively and to coordinate joint support and action. Accordingly, mechanisms for mutual assistance should be established ***and enforced. Member States should ensure that these mechanisms are adequately financed.***

### *Justification*

*It is not sufficient to apply the same rules in the EU internal market, but it is essential that their enforcement is consistent within the Union, since a non-compliant product placed in the market in one Member State can circulate freely all over the Union. For this purpose, cooperation mechanisms between market surveillance authorities need to be enhanced.*

### **Amendment 15**

#### **Proposal for a regulation Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

***(25a) The Commission should ensure the multi-annual action plan for market surveillance covering the period 2013-2015 "20 actions for safe and compliant products for Europe: a multi-annual action plan for the surveillance of products in the EU" is effectively implemented. By the end of 2015, the Commission should report on the results achieved through the foreseen 20 actions and examine the need for legislative and non-legislative actions to reduce the number of unsafe or non-compliant products and ensure effectiveness of the surveillance of products both within the Union and on entry into the Union.***

### **Amendment 16**

#### **Proposal for a regulation Recital 26 a (new)**

*Text proposed by the Commission*

*Amendment*

***(26a) The Commission should take into account the capacity and readiness of market surveillance authorities from third countries to cooperate with market surveillance authorities of Member States in the conduct of its Common Commercial Policy. For this purpose, the***



***Commission should address and encourage cooperation of market surveillance authorities in its bilateral, pluri and multilateral trade negotiations.***

*Justification*

*It is of outermost importance that the issue of cooperation between market surveillance authorities is already addressed by the Commission in trade negotiations, in particular as the Commission has embarked on an ambitious agenda of bilateral trade negotiations. As preferential access is likely to increase the flow of goods from these third countries into the Union market, it must be ensured that this does not put an additional challenge to the Member State's market surveillance authorities.*

**Amendment 17**

**Proposal for a regulation  
Recital 31 a (new)**

*Text proposed by the Commission*

*Amendment*

***(31a) The Commission should ensure that the respect for confidentiality provisions, including for manufacturing and trade secrets, does not prevail on issuing warnings to the public on dangerous products that could have an impact on health, personal safety and the quality of the environment.***

**Amendment 18**

**Proposal for a regulation  
Recital 33**

*Text proposed by the Commission*

*Amendment*

(33) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.

(33) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive, ***in order to discourage the rogue traders to deliberately introduce dangerous or non-compliant products on the internal***

*market.*

*Justification*

*Lack of resources for carrying out market surveillance has led to trade divergences, whereby rogue traders choose deliberately entry points into the internal market with least effective market surveillance and lowest penalties. It needs to be ensured that sufficient resources are available for market surveillance without putting an over-proportionate burden on the national budget of the Member States responsible for its implementation.*

**Amendment 19**

**Proposal for a regulation**  
**Recital 33 a (new)**

*Text proposed by the Commission*

*Amendment*

***(33a) In order for the penalties imposed on economic operators by the Member States to be effective, they should be introduced in a coordinated manner.***

**Amendment 20**

**Proposal for a regulation**  
**Recital 34**

*Text proposed by the Commission*

*Amendment*

(34) Market surveillance should be financed at least in part by fees charged to economic operators where they are required by market surveillance authorities to take corrective action or where those authorities are obliged to take action themselves.

(34) Market surveillance should be financed at least in part by fees charged to economic operators where they are required by market surveillance authorities to take corrective action or where those authorities are obliged to take action themselves. ***Those fees should not be borne by the consumer and therefore should have no bearing on the retail price of a product.***

## Amendment 21

### Proposal for a regulation Recital 34 a (new)

*Text proposed by the Commission*

*Amendment*

***(34a) The revenues collected from the infringement of this regulation should be earmarked for market surveillance activities.***

*Justification*

*Lack of resources for carrying out market surveillance has led to trade divergences, whereby rogue traders choose deliberately entry points into the internal market with least effective market surveillance and lowest penalties. It needs to be ensured that sufficient resources are available for market surveillance without putting an over-proportionate burden on the national budget of the Member States responsible for its implementation.*

## Amendment 22

### Proposal for a regulation Recital 41

*Text proposed by the Commission*

*Amendment*

(41) Since the objective of this Regulation, namely to ensure that products on the market covered by Union legislation fulfil the requirements providing a high level of protection of health and safety and other public interests while guaranteeing the functioning of the internal market by providing a framework for coherent market surveillance in the Union, cannot be sufficiently achieved by the Member States as the attainment of this objective requires a very high degree of cooperation, interaction and uniformity of operation among all of the competent authorities of all Member States, and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in

(41) Since the objective of this Regulation, namely to ensure that products on the market, ***online and offline***, covered by Union legislation fulfil the requirements providing a high level of protection of health and safety and other public interests while guaranteeing the functioning of the internal market, ***both online and offline***, by providing a framework for coherent market surveillance in the Union, cannot be sufficiently achieved by the Member States as the attainment of this objective requires a very high degree of cooperation, interaction and uniformity of operation among all of the competent authorities of all Member States, and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the

Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

## Amendment 23

### Proposal for a regulation Recital 42

#### *Text proposed by the Commission*

(42) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. in particular this Regulation seeks to ensure full respect for obligation to ensure a high level of human health protection **and consumer protection** as well as full respect **of the freedom to conduct a business and the right to property**,

#### *Amendment*

(42) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. in particular this Regulation seeks to ensure full respect for obligation to ensure a high level of human health protection **and protection of intellectual property rights**, as well as full respect **for consumers' and workers' rights**,

## Amendment 24

### Proposal for a regulation Article 1

#### *Text proposed by the Commission*

This Regulation lays down a framework for verifying that products meet requirements which safeguard, at a high level, the health and safety of persons in general, health and safety in the workplace, consumer protection, the environment, public security and other public interests.

#### *Amendment*

This Regulation lays down a framework for verifying that products placed on the market, **either online or offline, and entering the EU market for release**, meet requirements which safeguard, at a high level, the health and safety of persons in general, health and safety in the workplace, **the protection of workers' and consumer rights, fair trading practices**, consumer protection, the environment, **the protection of intellectual property right** public

security and other public interests.

*Justification*

*It should be made clear that the role of market surveillance and customs authorities is to ensure that only products compliant with EU legislation enter and circulate the Union market.*

**Amendment 25**

**Proposal for a regulation**  
**Article 2 – paragraph 1**

*Text proposed by the Commission*

1. Chapters I, II, III, V and VI of this Regulation shall apply to all products that are subject to Regulation (EU) No [...] on Consumer Product Safety] or Union harmonisation legislation, including to products assembled or manufactured for the manufacturer's own use, and to the extent that Union harmonisation legislation does not contain a specific provision with the same objective.

*Amendment*

1. Chapters I, II, III, V and VI of this Regulation shall apply to all products that are subject to Regulation (EU) No [...] on Consumer Product Safety] or Union harmonisation legislation, including to products assembled or manufactured for the manufacturer's own **exclusive** use, and to the extent that Union harmonisation legislation does not contain a specific provision with the same objective.

*Justification*

*'Exclusive use' means use within the production facilities of the manufacturer of the products which are then placed on the market for sale.*

**Amendment 26**

**Proposal for a regulation**  
**Article 3 – paragraph 1 – point 2**

*Text proposed by the Commission*

(2) 'making available on the market' means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

*Amendment*

(2) 'making available on the market' means any supply **or presentation** of a product for distribution, consumption or use on the Union market, **online or offline**, in the course of a commercial activity, whether in return for payment or free of

charge;

## **Amendment 27**

### **Proposal for a regulation**

#### **Article 3 – paragraph 1 – point 3**

*Text proposed by the Commission*

(3) ‘placing on the market’ means the first making available of a product on the Union market;

*Amendment*

(3) ‘placing on the market’ means the first making available of a product on the Union market, ***either online or offline***;

## **Amendment 28**

### **Proposal for a regulation**

#### **Article 3 – paragraph 1 – point 11**

*Text proposed by the Commission*

(11) ‘market surveillance’ means the activities carried out and measures taken by public authorities to ensure that products do not endanger health, safety or any other aspect of public interest protection and, in the case of products falling within the scope of Union harmonisation legislation, that they comply with the requirements set out in that legislation;

*Amendment*

(11) ‘market surveillance’ means the activities carried out and measures taken by public authorities to ensure that products ***available either online or offline*** do not endanger health, safety or any other aspect of public interest protection and, in the case of products falling within the scope of Union harmonisation legislation, that they comply with the requirements set out in that legislation;

## **Amendment 29**

### **Proposal for a regulation**

#### **Article 3 – paragraph 1 – point 12**

*Text proposed by the Commission*

(12) ‘market surveillance authority’ means an authority of a Member State responsible for carrying out market surveillance on its

*Amendment*

(12) ‘market surveillance authority’ means an authority of a Member State responsible for carrying out market surveillance, ***either***

territory;

*online or offline*, on its territory;

## Amendment 30

### Proposal for a regulation

#### Article 3 – paragraph 1 – point 13

##### *Text proposed by the Commission*

(13) ‘product presenting a risk’ means a product **having** the potential to affect adversely health and safety of persons in general, health and safety in the workplace, consumer protection, the environment and public security as well as other public interests to a degree which goes beyond that considered reasonable and acceptable under the normal or reasonably foreseeable conditions of use of the product concerned, including the duration of use and, where applicable, its putting into service, installation and maintenance requirements;

##### *Amendment*

(13) ‘product presenting a risk’ means a product **which has** the potential to affect adversely health and safety of persons in general, **including those involved in the manufacturing process**, health and safety in the workplace, **workers' rights through non- compliance with fundamental ILO conventions**, consumer protection, the environment, **protection of intellectual property rights** and public security, **including in the country where the product was produced and/or processed**, as well as other public interests to a degree which goes beyond that considered reasonable and acceptable under the normal or reasonably foreseeable conditions of use of the product concerned, including the duration of use and, where applicable, its putting into service, installation and maintenance requirements;

## Amendment 31

### Proposal for a regulation

#### Article 3 – paragraph 1 – point 13 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

**(13a) ‘product presenting a regulatory risk’ means a product which fails to comply with applicable Union legislation;**

## Amendment 32

### Proposal for a regulation

#### Article 3 – paragraph 1 – point 18

*Text proposed by the Commission*

(18) ‘Union harmonisation legislation’ means Union legislation harmonising the conditions *for the marketing of products*;

*Amendment*

(18) ‘Union harmonisation legislation’ means Union legislation harmonising the conditions *to make products available on the market both online or offline*;

## Amendment 33

### Proposal for a regulation

#### Article 4 – paragraph 2

*Text proposed by the Commission*

2. Market surveillance shall be organised and carried out in accordance with this Regulation with a view to ensuring that products presenting a risk are not made available on the Union market and, where such products have been made available, effective measures are taken to remove the risk presented by the product.

*Amendment*

2. Market surveillance shall be organised and carried out in accordance with this Regulation with a view to ensuring that products presenting a risk *and products that are not compliant with the applicable Union legislation*, are not *placed or* made available on the Union market and, where such products have been made available, effective measures are taken to remove the risk presented by the product.

## Amendment 34

### Proposal for a regulation

#### Article 4 – paragraph 3

*Text proposed by the Commission*

3. The implementation of market surveillance activities and external border controls shall be monitored by the Member States which shall report on these activities and controls to the Commission every year. The information reported shall include statistics regarding the number of controls carried out shall be communicated all

*Amendment*

3. The implementation of market surveillance activities and external border controls shall be monitored by the Member States which shall report on these activities and controls to the Commission every year. The information reported shall include statistics regarding the number of controls carried out, *explanations of how checks*



Member States. Member States may make a summary of the results accessible to the public.

***and risk evaluations have been carried out and available resources. This information shall be communicated by all Member States. Member States shall make a summary of the results accessible to the public. The Commission shall assess the consistent implementation as well as the effectiveness of these activities and controls and, if necessary, make recommendations to the market surveillance authorities to ensure consistent and effective implementation across the Union.***

#### *Justification*

*It is not enough that Member States report on their activities, the Commission shall assess their activities on the basis of the information received, and make recommendation, if needed, to ensure a consistent and effective implementation of the EU's market surveillance regime.*

### **Amendment 35**

#### **Proposal for a regulation Article 5 – paragraph 2**

##### *Text proposed by the Commission*

2. Market surveillance authorities shall be given the powers and entrusted with the resources and means necessary for the proper performance of their tasks.

##### *Amendment*

2. Market surveillance authorities shall be given the powers and entrusted with the resources and means necessary for the proper performance of their tasks. ***Member States will inform the Commission annually about the resources allocated to market surveillance authorities. On this basis the Commission will evaluate the appropriateness of resource endowment and will send recommendations to the Member States in case of insufficient resources.***

## Amendment 36

### Proposal for a regulation Article 5 – paragraph 3

*Text proposed by the Commission*

3. Each Member State shall establish appropriate mechanisms to ensure that the market surveillance authorities that it has established or designated exchange information, cooperate and coordinate their activities both among themselves and with the authorities in charge of controls of products at the external borders of the Union.

*Amendment*

3. Each Member State shall establish appropriate mechanisms to ensure that the market surveillance authorities that it has established or designated exchange information, cooperate and coordinate their activities both among themselves and with the authorities in charge of controls of products at the external borders of the Union. ***Each Member State shall ensure that the market surveillance authorities it has designated or established dispose of appropriate resources to carry out this cooperation. Each Member State shall inform the Commission about these information exchange and cooperation mechanisms.***

*Justification*

*It is not sufficient to require that Member States ask their market surveillance authorities to set-up cooperation mechanisms; it must also be ensured that they are implemented and function properly. As prerequisite for well-functioning cooperation mechanisms, the market surveillance authorities need to be endowed by appropriate resources to put them in place.*

## Amendment 37

### Proposal for a regulation Article 5 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. The market surveillance authorities shall undertake to fast track and fully contribute to stepping up the harmonisation of customs control systems with the support and in cooperation with the national authorities.***

### *Justification*

*The harmonisation of customs procedures would facilitate import control, especially for those products which pose a greater risk in relation to their origin or components.*

#### **Amendment 38**

##### **Proposal for a regulation**

##### **Article 6 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Where appropriate*, market surveillance authorities shall alert users in their territories within an adequate timeframe of products that those authorities have identified as presenting a risk.

*Amendment*

***In case of known or emerging risk pursuant to Article 6(1)***, market surveillance authorities shall alert users in their territories within an adequate timeframe of products that those authorities have identified as presenting a risk.

#### **Amendment 39**

##### **Proposal for a regulation**

##### **Article 6 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

They shall cooperate with economic operators to prevent or reduce risks caused by products made available by those operators. For this purpose, they shall encourage and promote voluntary action by economic operators including, where applicable, through the development of and adherence to codes of good practice.

*Amendment*

They shall cooperate with economic operators ***and trade unions*** to prevent or reduce risks caused by products made available by those ***economic*** operators. For this purpose, they shall encourage and promote voluntary action by economic operators including, where applicable, through the development of and adherence to codes of good practice.

#### **Amendment 40**

##### **Proposal for a regulation**

##### **Article 6 – paragraph 5 – point a**

*Text proposed by the Commission*

(a) provide consumers and other interested parties with the opportunity to submit complaints on issues relating to product safety, market surveillance activities and risks arising in connection with products and follow up those complaints as appropriate;

*Amendment*

(a) provide consumers and other interested parties, ***including trade unions***, with the opportunity to submit complaints on issues relating to product safety, market surveillance activities and risks arising in connection with products and follow up those complaints as appropriate;

**Amendment 41**

**Proposal for a regulation  
Article 7 – paragraph 1**

*Text proposed by the Commission*

1. Each Member State shall draw up a general market surveillance programme and shall review that programme, and update it ***if necessary***, at least every four years. The programme shall cover market surveillance organisation and related activities and take into account the specific needs of business generally, and SMEs in particular, when implementing Union harmonisation legislation and Regulation (EU) No [.../...] [on consumer product safety], and provide for guidance and assistance. It shall include the following:

*Amendment*

11. Each Member State shall draw up a general market surveillance programme and shall review that programme and update it at least every four years. The programme shall cover market surveillance organisation and related activities and take into account the specific needs of business generally, and SMEs in particular, when implementing Union harmonisation legislation and Regulation (EU) No [.../...] [on consumer product safety], and provide for guidance and assistance. It shall include the following:

**Amendment 42**

**Proposal for a regulation  
Article 7 – paragraph 2**

*Text proposed by the Commission*

2. Each Member State shall draw up sector-specific programmes and shall review these programmes, and update them if necessary, every year. These programmes shall cover all sectors in which authorities conduct market

*Amendment*

2. Each Member State shall draw up sector-specific programmes and shall review these programmes, and update them every year, ***notably taking account of increased entry to the Union market of certain goods due to the application of EU trade agreements with third countries.***

surveillance activities.

These programmes shall cover all sectors in which authorities conduct market surveillance activities.

*Justification*

*As the entry into force of new trade agreements is likely to lead to an increase in goods from certain third countries, whose producers may not yet be as familiar with compliance with EU law, Member States shall particularly take account of these products, when establishing the sector-specific market surveillance programmes.*

**Amendment 43**

**Proposal for a regulation**

**Article 8 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Manufacturers and importers shall ensure that their products are placed on the market and approved in accordance with the requirements set out in the EU legislation that fall in the scope of this Regulation and safe for use***

**Amendment 44**

**Proposal for a regulation**

**Article 8 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1c. Manufacturers and importers shall indicate their name, registered trade name or registered trade mark and the address in the Union at which they can be contacted on or with the product that is placed in the market.***

**Amendment 45**

**Proposal for a regulation**

## Article 8 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2b. Importers shall have the authorisation of the manufacturer established outside the EU to act as an authorised representative of the manufacturer for the purposes of market surveillance.***

## Amendment 46

### Proposal for a regulation

#### Article 9 – paragraph 1 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***In the case of products that are not subject to Union harmonisation legislation, market surveillance authorities will take in due consideration protocols, checklists and other relevant documents that economic operators will have provided with regard the to risk assessment of products as per Directive [...] on consumer products safety.***

#### *Justification*

*It is necessary to define on which basis market surveillance authorities may have sufficient reason to believe that products made available on the market could present a risk. Article 9 provides such a definition for products subject to Union harmonisation legislation, but it does not for other products. In the case of non-harmonised products, it is necessary to make the link with the CPSD where criteria for risk assessment are laid down. Due to the increasing import of products that may not be covered by harmonisation legislation into the EU, it is necessary to strengthen the criteria market surveillance authorities should base their judgments on.*

## Amendment 47

### Proposal for a regulation

#### Article 9 – paragraph 2 – subparagraph 1 – point a a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) the product or any presentation of the product bears without authorisation a trade mark that is identical or similar to a registered trade mark for this product, thereby not allowing to guarantee its authenticity or origin.***

#### **Amendment 48**

##### **Proposal for a regulation**

##### **Article 9 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

The economic operator shall ensure that all necessary corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union.

*Amendment*

The economic operator, ***applying a duty of care***, shall ensure that all necessary corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union.

#### **Amendment 49**

##### **Proposal for a regulation**

##### **Article 10 – paragraph 1**

*Text proposed by the Commission*

1. Where the identity of the relevant economic operator cannot be ascertained by the market surveillance authorities or where an economic operator has not taken the necessary corrective action pursuant to Article 9(3) within the period specified, market surveillance authorities shall take all necessary measures to deal with the risk presented by the product.

*Amendment*

1. Where the identity of the relevant economic operator cannot be ascertained by the market surveillance authorities or where an economic operator ***failed in its duty of care or*** has not taken the necessary corrective action pursuant to Article 9(3) within the period specified, market surveillance authorities shall take all necessary measures to deal with the risk presented by the product.

## Amendment 50

### Proposal for a regulation

#### Article 13 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

Risk assessment shall be based on available scientific or technical evidence.

*Amendment*

Risk assessment shall be based on available scientific or technical evidence ***and, when there is a suspected risk of causing harm to public health in spite of lack of scientific consensus, the precautionary principle shall be invoked.***

*Justification*

*The precautionary principle is explicitly included in the present market surveillance and consumer product safety legislation; therefore, it should remain an explicit reference in the future legislation, especially in light of the present and future trend of increasing import into the EU as well as of the broad quantity of non harmonised products.*

## Amendment 51

### Proposal for a regulation

#### Article 13 – paragraph 2 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) any ILO conventions signed and ratified by the countries involved in the manufacturing and/or processing of the product;***

## Amendment 52

### Proposal for a regulation

#### Article 14 – paragraph 3 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***In the case of products that are not subject to Union harmonisation legislation, authorities in charge of external border controls will take in due***



*consideration protocols, checklists and other relevant documents that economic operators will have provided with regard the to risk assessment of products as per Directive (EU) No [.../...] [on consumer products safety], and which market surveillance authorities will have made available to them, in order to assess product risks.*

#### *Justification*

*It is necessary to improve communication and cooperation between market surveillance authorities and authorities in charge of external border controls, notably in the case of products that are not covered by Union harmonisation legislation, EU standards or relevant national legislation for which safety checks are more difficult to perform. This is necessary in the present and future context of increasing imports.*

#### **Amendment 53**

##### **Proposal for a regulation**

##### **Article 14 – paragraph 3 – subparagraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

*(ba) the product or any presentation of the product bears without authorisation a trade mark that is identical or similar to a registered trade mark for this product, thereby not allowing to guarantee its authenticity or origin.*

#### **Amendment 54**

##### **Proposal for a regulation**

##### **Article 14 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

*6a. The Commission should ensure that authorities in charge of the control of products at external borders carry out checks in a uniform manner across the EU. The Commission should also*

*evaluate whether authorities dispose of the necessary resources to execute their function effectively. To this purpose, Member States should send annually to the Commission a report explaining how national authorities have carried out checks and risk evaluations, reporting about available resources and including statistics regarding the number of controls carried out. On the basis of this reporting mechanism, the Commission may send recommendations to the Member States in case of important discrepancies and shortcomings.*

## **Amendment 55**

### **Proposal for a regulation Article 15 – paragraph 1**

*Text proposed by the Commission*

1. A product the release of which has been suspended by the authorities in charge of external border controls pursuant to Article 14 shall be released if, within **three** working days of the suspension of release, those authorities have not been requested by the market surveillance authorities to continue the suspension or they have been informed by the market surveillance authorities that the product does not present a risk, and provided that all the other requirements and formalities pertaining to such release have been fulfilled.

*Amendment*

1. A product the release of which has been suspended by the authorities in charge of external border controls pursuant to Article 14 shall be released if, within **five** working days of the suspension of release, those authorities have not been requested by the market surveillance authorities to continue the suspension or they have been informed by the market surveillance authorities that the product does not present a risk, and provided that all the other requirements and formalities pertaining to such release have been fulfilled.

## **Amendment 56**

### **Proposal for a regulation Article 19 – paragraph 4**

*Text proposed by the Commission*

4. Participation in RAPEX shall be open to

*Amendment*

4. Participation in RAPEX shall be open

applicant countries, third countries or international organisations within the framework of and in accordance with agreements between the Union and those countries or organisations. Any such agreements shall be based on reciprocity and include provisions on confidentiality corresponding to those applicable in the Union.

***and encouraged*** to applicant countries, third countries or international organisations within the framework of and in accordance with agreements between the Union and those countries or organisations. ***For third countries the Commission is engaging in trade negotiations to provide preferential access for goods to the Union's market, the Commission shall encourage these countries to participate in RAPEX and take account of the third countries' capacity to participate, when negotiating provisions on market access.*** Any such agreements shall be based on reciprocity and include provisions on confidentiality corresponding to those applicable in the Union.

#### *Justification*

*Cooperation between market surveillance authorities of Member States and third countries is of outmost importance, if the Union provides preferential market access to third countries in the framework of a free trade agreement. Therefore, RAPEX should not only be open for third countries, but the Commission should encourage these countries to participate.*

#### **Amendment 57**

##### **Proposal for a regulation Article 22 a (new)**

*Text proposed by the Commission*

*Amendment*

##### ***Article 22a***

***A Pan-European Injuries Database (IDB) shall be set up and coordinated by the European Commission to support enforcement of market surveillance measures by the relevant authorities.***

#### *Justification*

*As a result of international trade, the consumer safety issues are gaining in complexity and are difficult to tackle. Setting up a Pan-European Injuries Database (IDB) will facilitate the sharing of information on injuries, will render policy-making more efficient and will help the enforcement of market surveillance measures.*

## Amendment 58

### Proposal for a regulation Article 22 b (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 22b**

***The relevant market surveillance authorities established by the Member States shall contribute to the establishment of the database and regularly deliver injury data to the Commission that is comprehensive and in accordance with harmonised methodology and classification.***

## Amendment 59

### Proposal for a regulation Article 23 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. There shall be efficient cooperation and exchange of information among the market surveillance authorities of the Member States, among the different authorities within each Member State and between market surveillance authorities and the Commission and the relevant Union agencies regarding market surveillance programmes and all issues relating to products presenting a risk.

1. There shall be efficient cooperation and exchange of information among the market surveillance authorities of the Member States, among the different authorities within each Member State and between market surveillance authorities and the Commission and the relevant Union agencies regarding market surveillance programmes and all issues relating to products presenting a risk, ***whether it be connected to the product's origin or its components. The Member States shall ensure that these procedures are fully consistent with the Union's external border management.***

#### *Justification*

*Cooperation between the authorities and the customs is crucial in order to ensure that there are appropriate import control procedures in all EU Member States.*

## Amendment 60

### Proposal for a regulation

#### Article 23 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. The Commission shall ask market surveillance authorities to report on their cooperation activities. In case the Commission identifies major shortcomings in mutual assistance provided by market surveillance authorities, it may make recommendations to further improve cooperation.***

*Justification*

*It is not enough to set up requirements for mutual assistance, the Commission must have a role in facilitating and monitoring the effectiveness of this mutual assistance to avoid trade divergence to Member States with less stringent implementation of the market surveillance regime.*

## Amendment 61

### Proposal for a regulation

#### Article 24 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Market surveillance authorities may cooperate with the competent authorities of third countries with a view to exchanging information and technical support, promoting and facilitating access to Union information exchange systems including the RAPEX system in accordance with Article 19(4), and promoting activities relating to conformity assessment and market surveillance.

1. Market surveillance authorities ***shall be encouraged to*** cooperate with the competent authorities of third countries with a view to exchanging information and technical support, promoting and facilitating access to Union information exchange systems including the RAPEX system in accordance with Article 19(4), and promoting activities relating to conformity assessment and market surveillance.

*Justification*

*Cooperation with market surveillance authorities of third countries is key to lower the number of non-compliant products imported to and released for circulation in the European*

*Union's market, therefore, cooperation should be encouraged.*

## **Amendment 62**

### **Proposal for a regulation Article 25 – paragraph 6**

#### *Text proposed by the Commission*

6. The EMSF may establish standing or temporary sub-groups which shall include the administrative cooperation groups for market surveillance set up for the implementation of Union harmonisation legislation. Organisations representing the interests of industry, small and medium-sized enterprises, consumers, laboratories and conformity assessment bodies at Union level **may** be invited to participate in such sub-groups as observers.

#### *Amendment*

6. The EMSF may establish standing or temporary sub-groups which shall include the administrative cooperation groups for market surveillance set up for the implementation of Union harmonisation legislation. Organisations representing the interests of industry, small and medium-sized enterprises, consumers, laboratories and conformity assessment bodies at Union level **should** be invited to participate in such sub-groups as observers, ***their opinions should be taken into consideration as far as possible.***

## **Amendment 63**

### **Proposal for a regulation Article 31 – paragraph 1**

#### *Text proposed by the Commission*

The Member States ***shall lay down the rules on*** penalties applicable to infringements of the provisions of this Regulation that impose obligations on economic operators and to infringements of provisions of any Union harmonisation legislation on products covered by this Regulation that impose obligations on economic operators where that legislation does not provide for penalties, and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the

#### *Amendment*

The Member States ***determine the*** penalties applicable to infringements of the provisions of this Regulation that impose obligations on economic operators and to infringements of provisions of any Union harmonisation legislation on products covered by this Regulation that impose obligations on economic operators where that legislation does not provide for penalties, and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by

Commission by [insert date - 3 months prior to the date of application of this Regulation] and shall notify it without delay of any subsequent amendment affecting them.

[insert date - 3 months prior to the date of application of this Regulation] and shall notify it without delay of any subsequent amendment affecting them.

## **Amendment 64**

### **Proposal for a regulation**

#### **Article 31 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***The Commission shall establish the minimum penalties amounts as well as the conditions for collection of these penalties, including special provisions for small and medium-sized enterprises. The penalties shall be earmarked for market surveillance activities in the Member States concerned.***

## **Amendment 65**

### **Proposal for a regulation**

#### **Article 31 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***The types of infringements which are subject to a penalty shall include at least the following:***

***(a) products presenting a risk according to Article 9(2) until indent (d) or non compliant with the criteria referred to in points (a), (b) and (c) of Article 13(2);***

***(b) making false declaration during approval procedures leading to a recall;***

***(c) falsifying test results for type-approval;***

***(d) refusal to provide access to information***

## Amendment 66

### Proposal for a regulation Article 33

#### *Text proposed by the Commission*

No later than [five] years after the date of application, the Commission shall assess the application of this Regulation and transmit an evaluation report to the European Parliament and the Council. That report shall assess if this Regulation achieved its objectives, in particular with regard to ensuring more effective and efficient enforcement of product safety rules and Union harmonisation legislation, improving cooperation between market surveillance authorities, strengthening the controls of products entering the Union and better protecting the health and safety of persons in general, health and safety in the workplace, consumer protection, the environment, public security and other public interests, taking into account its impact on business and in particular on small and medium-sized enterprises.

#### *Amendment*

No later than [five] years after the date of application, the Commission shall assess the application of this Regulation and transmit an evaluation report to the European Parliament and the Council. That report shall assess if this Regulation achieved its objectives, in particular with regard to ensuring more effective and efficient enforcement of product safety rules and Union harmonisation legislation, ***ensuring that the same standards are applied at all entry points to the Union market***, improving cooperation between market surveillance authorities ***among Member States as well as with third countries, notably with those, which benefit from preferential access to the Union's market***, strengthening the controls of products entering the Union and better protecting the health and safety of persons in general, health and safety in the workplace, consumer protection, the environment, public security and other public interests, taking into account its impact on business and in particular on small and medium-sized enterprises.

#### *Justification*

*The Commission should put a particular emphasis on improving cooperation of market surveillance authorities of third countries enjoying preferential access to the Union market with Member State's market surveillance authorities. As this aspect should be also be given particular attention in trade negotiations, the Commission should assess in its report, whether it has been effective in pursuing this objective.*



## PROCEDURE

<b>Title</b>	Market surveillance of products
<b>References</b>	COM(2013)0075 – C7-0043/2013 – 2013/0048(COD)
<b>Committee responsible</b> Date announced in plenary	IMCO 12.3.2013
<b>Opinion by</b> Date announced in plenary	INTA 12.3.2013
<b>Rapporteur</b> Date appointed	George Sabin Cutaş 21.3.2013
<b>Discussed in committee</b>	24.4.2013                      17.6.2013                      5.9.2013
<b>Date adopted</b>	17.9.2013
<b>Result of final vote</b>	+:                      29 -:                      1 0:                      0
<b>Members present for the final vote</b>	William (The Earl of) Dartmouth, Laima Liucija Andrikiienė, Maria Badia i Cutchet, Maria Auxiliadora Correa Zamora, Andrea Cozzolino, George Sabin Cutaş, Marielle de Sarnez, Yannick Jadot, Metin Kazak, Bernd Lange, David Martin, Vital Moreira, Paul Murphy, Cristiana Muscardini, Franck Proust, Godelieve Quisthoudt-Rowohl, Niccolò Rinaldi, Helmut Scholz, Peter Šťastný, Robert Sturdy, Henri Weber, Jan Zahradil
<b>Substitute(s) present for the final vote</b>	Amelia Andersdotter, Josefa Andrés Barea, Salvatore Iacolino, Elisabeth Köstinger, Emma McClarkin, Mario Pirillo, Jarosław Leszek Wałęsa
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Jean-Pierre Audy, Krzysztof Lisek


## PROCEDURE

<b>Title</b>	Market surveillance of products			
<b>References</b>	COM(2013)0075 – C7-0043/2013 – 2013/0048(COD)			
<b>Date submitted to Parliament</b>	13.2.2013			
<b>Committee responsible</b> Date announced in plenary	IMCO 12.3.2013			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	INTA 12.3.2013	BUDG 12.3.2013	ECON 12.3.2013	ENVI 12.3.2013
	ITRE 12.3.2013	AGRI 12.3.2013	JURI 12.3.2013	LIBE 12.3.2013
<b>Not delivering opinions</b> Date of decision	BUDG 4.3.2013	ECON 18.6.2013	ENVI 26.2.2013	ITRE 18.3.2013
	AGRI 19.3.2013	JURI 20.2.2013	LIBE 21.2.2013	
<b>Rapporteur(s)</b> Date appointed	Sirpa Pietikäinen 20.2.2013			
<b>Discussed in committee</b>	7.5.2013	29.5.2013	9.7.2013	25.9.2013
	14.10.2013			
<b>Date adopted</b>	17.10.2013			
<b>Result of final vote</b>	+: 32 -: 4 0: 2			
<b>Members present for the final vote</b>	Pablo Arias Echeverría, Adam Bielan, Preslav Borissov, Sergio Gaetano Cofferati, Birgit Collin-Langen, António Fernando Correia de Campos, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Thomas Händel, Małgorzata Handzlik, Eduard-Raul Hellvig, Philippe Juvin, Sandra Kalniete, Edvard Kožušník, Hans-Peter Mayer, Franz Obermayr, Sirpa Pietikäinen, Robert Rochefort, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Gino Trematerra, Emilie Turunen, Barbara Weiler			
<b>Substitute(s) present for the final vote</b>	Raffaele Baldassarre, Regina Bastos, Jürgen Creutzmann, Ashley Fox, Ildikó Gáll-Pelcz, María Irigoyen Pérez, Morten Løkkegaard, Sylvana Rapti, Patricia van der Kammen			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Takis Hadjigeorgiou, Jolanta Emilia Hibner, Linda McAvan, Patrizia Toia			
<b>Date tabled</b>	22.10.2013			