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*Committee on International Trade*

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**2013/0048(COD)**

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

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## 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 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 coupe 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.

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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.

- 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*

(1) In order to guarantee the free

*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.

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*

(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.

*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 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

*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***

protection of certain public interests should be presumed not to present a risk to those public interests if it complies with those essential requirements.

***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*

*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

(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.

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 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.

*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 ***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*

(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, *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*

(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.

*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. ***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*

(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 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*

(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 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***

*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

*conduct a business and the right to property,*

*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

#### *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



the same objective.

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

##### *Amendment*

(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;

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 territory;

##### *Amendment*

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

*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 ***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*

*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 are not made available on the Union market and, where such products have been made available, effective measures are taken to remove the

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

risk presented by the product.

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

##### *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 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*

*Amendment*

***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.

***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*

*Amendment*

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

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

applicable, through the development of and adherence to codes of good practice.

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 surveillance activities.

*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.*** 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 he 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*

*Amendment*

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.

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*

*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 suspension of release, those authorities have not been requested by the market surveillance authorities to continue the suspension or they have been

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

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.

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 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.

#### *Amendment*

4. Participation in RAPEX shall be open ***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*

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 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*

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.

*Amendment*

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 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.

*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 [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*

*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

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***

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.

***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, María 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
