

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 18-1800

24 May 2018

### SUBCOMMITTEE I ON THE FREE MOVEMENT OF GOODS

#### EEA EFTA COMMENT

**on the ‘Goods Package’ consisting of a proposal for a Regulation on the Mutual Recognition of Goods (COM(2017)796) and a proposal for a Regulation on Compliance and Enforcement (COM(2017)795)**

#### 1. EXECUTIVE SUMMARY

- *The EEA EFTA States welcome the ‘Goods Package’ as it aims to make it easier for companies to sell their products across Europe and to strengthen controls to prevent unsafe products from being sold to European consumers.*
- *The proposal for a Regulation on Compliance and Enforcement is supported by the EEA EFTA States as it will result in a more coordinated level of market surveillance in the EEA and a better cooperation between market surveillance and customs authorities.*
- *The EEA EFTA States welcome the extension of the Product Contact Points to the harmonised area. Common European guidelines on relevant sectoral legislation should be developed to ensure a coherent approach is taken across the EEA.*
- *The EEA EFTA States question the added value of the proposal to have a person responsible for compliance information established within the Union/EEA.*
- *The EEA EFTA States do not support the compliance partnership arrangement proposal as this could compromise the market surveillance authorities’ independence. Article 7 of the proposed Regulation for Compliance and Enforcement should be deleted.*
- *The EEA EFTA States support the proposal for a Regulation on the Mutual Recognition of Goods and believe that the proposed ‘mutual recognition declaration’ can help businesses demonstrate that their product meets the requirements of another Member State. However, certain clarifications are still needed under this section.*
- *The EEA EFTA States support the new commitment placed on the Commission to intervene when cases cannot be solved through the Internal Market Problem Solving Network (SOLVIT) mechanism.*

## **2. INTRODUCTION**

1. The EEA EFTA States have continuously and actively followed the European Union's work on market surveillance, compliance and enforcement as well as its work on the principle of mutual recognition in the field of goods. EEA EFTA Comments in these areas have been submitted on previous occasions, including a Comment on the evaluation of the market surveillance provisions of Regulation (EC) No 765/2008 and on actions to enhance enforcement and compliance in the Single Market for goods, which was submitted to the Commission on 21 December 2016.
2. The EEA EFTA States may provide additional national comments and this EEA EFTA Comment is without prejudice to the question of EEA relevance of the proposals. The required thorough assessment of EEA relevance will be conducted by the EEA EFTA States once the proposals are adopted by the EU legislator.

## **3. GENERAL REMARKS**

3. The EEA EFTA States share the Commission's assessment that Regulation (EC) No 765/2008 does not fully meet its strategic objectives of strengthening the protection of public interests and of ensuring fair trading conditions for economic operators by reducing the number of non-compliant products on the single market. Furthermore, the EEA EFTA states also share the view that the tools and procedural guarantees put in place by Regulation (EC) No 764/2008 failed in their aim of improving the application of the mutual recognition principle.
4. In this context, the EEA EFTA States welcome the Commission's initiative to launch a new "Goods Package", containing two legislative proposals and a Communication, which aim to comprehensively address the identified weaknesses for a better functioning single market for goods.
5. As a general observation, the EEA EFTA States would like to highlight the importance of developing user friendly and compatible IT systems at the European level to help ensure the success of the proposals. Both proposals currently refer to several IT systems for market surveillance authorities to cooperate – both at national level and cross border, as well as with economic operators and the public. Ideally, just one European IT system for market surveillance would exist which would also be compatible with existing national systems.

## **4. COMMENTS ON THE PROPOSED REGULATION FOR COMPLIANCE AND ENFORCEMENT**

6. The EEA EFTA States welcome the Commission's commitment to strengthen product compliance by providing the right incentives to economic operators, promoting closer national and cross-border cooperation among market surveillance authorities and increasing the cooperation between market surveillance and customs authorities.
7. Nevertheless, the EEA EFTA States are of the view that the proposed Regulation is not sufficiently clear on the fact that it is the economic operator's responsibility to comply

with relevant harmonised product legislation. Therefore, the focus should be more balanced between the obligations of the economic operator and the powers and resources of the market surveillance authorities, which are needed to better enforce the legislation.

8. The EEA EFTA States have reservations about the added value of the proposal to have a person responsible for compliance information established within the Union/EEA as a necessary condition for making the products available on the market. Whilst it could be favourable for the market surveillance authorities to have a person to contact when no importer is present in the EEA to request relevant information, the lack of responsibility assigned to this person for the compliance of the product raises doubts about the benefits of this function from a market surveillance perspective.
9. The EEA EFTA States underline the need for an increased level of market surveillance for products sold online. The rapid expansion of e-commerce has come with some important compliance challenges and it would therefore be essential for the draft Regulation to explicitly address this type of market surveillance.
10. The role of market surveillance authorities as independent authorities should not be compromised. The proposal for compliance partnership arrangements could create grey zones for when the authority is acting as an adviser that can charge fees, and when it is executing its power as a market surveillance authority. Furthermore, private consultancies already offer such services and national market surveillance authorities should not create a competitive situation. Although the Commission's proposal does not make the setting up of such arrangements obligatory, the EEA EFTA States believe that Article 7 should be deleted from the proposal.
11. The proposal suggests that one way for EEA States to provide assistance to economic operators regarding applicable harmonisation legislation would be to extend the concept of the Product Contact Points, currently used for non-harmonised goods, to the harmonised area. This extension makes sense as the public does not necessarily perceive the distinction between harmonised and non-harmonised legislation for products and Product Contact Points today already receive requests concerning harmonised legislation. Common European guidelines on relevant sectorial product legislation drawn up by the Commission, preferably online through a common database, would however be very welcome. This would help minimise the risk that national authorities provide diverse and even contradictory guidance on harmonised product legislation.
12. The EEA EFTA States support the Commission's proposals to ensure a deeper and more seamless cooperation and coordination of market surveillance activities within the EEA States. Both the proposal for establishing a national Single Liaison Office and establishing a Union Product Compliance Network will promote a more effective market surveillance within the EEA.
13. The EEA EFTA States welcome the enhanced cooperation between customs authorities and market surveillance authorities to strengthen product compliance as proposed in Chapter VII of the Regulation. The EEA EFTA States are committed to implementing these provisions whilst taking into account the customs provisions of the EEA

agreement, and to finding the right practical solutions to increase the exchange of risk related information on products entering the internal market.

14. The EEA EFTA States share the Commission's view that market surveillance authorities should have effective means of investigating and applying sanctions, and that they should be similar throughout the EEA. This is especially important when dealing with so-called 'rogue traders'.

## **5. COMMENTS ON THE PROPOSED REGULATION FOR MUTUAL RECOGNITION OF GOODS**

15. The EEA EFTA States find that the Commission proposal on a new regulation on mutual recognition has achieved an improved level of clarity, compared to the current legal framework. We welcome that the proposed regulation contains definitions of key terms and that the scope of the regulation is clarified on some points.
16. It is also positive that the burden of reporting obligations is reduced by not requiring a yearly report on the application of the regulation.
17. The proposed 'mutual recognition declaration', c.f. the proposed Article 4, can help businesses demonstrate that their product already meets the requirements of another Member State and thereby reduces the administrative burden. It should however be clarified that when a voluntary mutual recognition declaration is presented by an economic operator, market surveillance authorities are not prevented from assessing the validity of it and they can request relevant additional information in that regard.
18. The EEA EFTA States propose that the following wording is added to Article 4, possibly as a new subsection 6 or 10: "*The market surveillance authorities may at their own initiative assess the validity of a mutual recognition declaration, and to this end request relevant additional information or documentation from the economic operator.*"
19. On the other hand, a clarification should also be considered, in cases where an economic operator does not submit a mutual recognition declaration. The economic operator should be prevented from being met by extensive requirements of information based on Article 4(8), indirectly making the declaration mandatory.
20. The EEA EFTA States presume that submitting a declaration will have no impact on what information market surveillance authorities find necessary and can request from economic operators during the next step when carrying out the assessment laid down in Article 5. This could be stated explicitly to avoid any uncertainty.
21. Regarding the proposed Article 5 section five, subsection (c), the EEA EFTA States are of the view that this requirement should not oblige Member States to justify the national, technical rule itself, but rather the application of that rule with respect to a product lawfully marketed in another Member State, in accordance with the Preamble No. 23.
22. The EEA EFTA States support the introduction of a problem solving procedure where solutions will be sought by making use of the existing Internal Market Problem Solving

Network (SOLVIT) mechanisms. The new commitment placed on the Commission to intervene on the matter by giving the relevant legal arguments in the specific case when requested by SOLVIT, is crucial when it comes to the ability to solve cases.

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