European Economic and Social Committee

INT/826
Goods package

OPINION

European Economic and Social Committee

a) Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - The Goods Package: Reinforcing trust in the single market
[COM(2017) 787 final]

b) Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council
[COM(2017) 795 final – 2017/0353 (COD)]

c) Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State
[COM(2017) 796 final – 2017/0354 (COD)]

Rapporteur: **Jorge Pegado Liz**

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Legal basis	a) Article 304 TFEU b) Article 114 TFEU c) Article 114 TFEU
Section responsible	Single Market, Production and Consumption
Adopted in section	27/04/2018
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Outcome of vote (for/against/abstentions)	184/2/5

1. Conclusions and recommendations

1.1 The EESC welcomes the magnificent, necessary and complex work that the Commission has put into producing this package, work which deserves recognition. The EESC regrets, however, the excessive "flexibility" of some of the provisions, giving the Member States too much leeway and failing to take more control.

1.2 The EESC endorses the Commission's choice of legal basis for the present proposals, its evaluations regarding subsidiarity and proportionality, and also the choice of legal instruments considered the most apt for achieving the stated aims.

1.3 It is surprised that the Commission does not give a clear explanation of what became of its previous 2013 proposal for a regulation on product surveillance: it is evidently not about to be adopted and the present proposal duplicates some of the provisions.

1.4 Likewise, the Commission does not explain why its proposals are not accompanied by a new regulation on general product safety, ensuring that all products, regardless of their characteristics, are covered by up-to-date, more effective rules.

1.5 The EESC considers, moreover, that the present proposal should include a rule tightening up on the market surveillance obligation on the part of Member States, including the obligation to report to the Commission (on a quarterly basis) on their activities and controls.

1.6 The EESC would again insist that the general principles governing market surveillance should include the precautionary principle as a key element of decisions in all cases where, despite there being no clear scientific evidence that the product in question does not pose a risk in this respect, there are reliable indications that consumer or environmental protection may be compromised.

1.7 In the absence of any such reference, the EESC emphasises the need to make it clear that the burden of proof always lies with the economic operators, meaning that the latter cannot claim that it is up to the authorities to demonstrate the lack of safety or any other risk presented by a product.

1.8 The EESC considers it a matter of priority not only for the European Commission to be required to present regular reports on RAPEX, but for consumers and businesses, as well as the organisations representing them, to have access to additional information to that which is made publicly available.

1.9 It also considers that this regulation should be the legal act setting out all the rules relating to the EU’s Rapid Exchange of Information System, including the definition, points of contact, arrangements and procedures for exchanging information, the external bodies that can participate in the system (also including consumer organisations) and the notification rules.

1.10 On the other hand, the EESC highlights the need to reinforce the common European customs strategy to ensure the optimum use of physical and human resources in developing the measures set out in the present proposal and, to this end, recommends stepping up mutual assistance agreements with all trade partners, including the World Trade Organisation (WTO) and in the framework of the partnership agreements recently negotiated with Japan and Canada.

1.11 It also stresses the need for an ambitious policy to allow Member States to cooperate in exchanging information in order to act more swiftly when product use causes serious undesirable effects.

1.12 As regards the evaluation by the EU of products controlled within its borders and subject to harmonisation legislation, the EESC considers it vital for the European Commission – without prejudice to the specific competences of the national authorities – to have the power to assess national measures implemented in respect of harmonisation policy.

1.13 On the other hand, the EESC believes that the issue of market surveillance of sales via online platforms, and an assessment of the new risks for consumers using internet-connected devices, should be considered in this proposal.

1.14 The EESC is in favour of including measures to create a pan-European Injuries Database (IDB) which would cover all types of injuries and recommends including a legal basis for this purpose, with the Commission providing support for coordinating the collection of data from the Member States and ensuring that the database operates efficiently.

1.15 Finally, the EESC recommends that the Commission consider its suggestions that some articles of the proposals be amended, as explained below in the specific comments.

2. **Goods package**

2.1 General objectives

2.1.1 In its communication[1], the first part of the Goods Package, the Commission defines the general, overarching objective of the initiative, namely that "all those involved – the general public, workers, consumers, businesses and authorities – need to be assured that they can act and acquire safe products in a transparent and fair environment where the rules apply in an equal manner to all".

2.1.2 To this end, the Commission considers that two remaining structural weaknesses in the single market for goods must be rapidly addressed if it is to reap its full potential and warrant the trust of consumers, businesses and the authorities.

2.1.3 The first structural weakness of the single market for goods relates to the enforcement of EU harmonised product safety rules.

1 http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2017%3A787%3AFIN.

2.1.4 The second structural weakness relates to products that do not fall under EU harmonised product safety rules, or fall only partially under these rules. Such products may be considered safe and in line with the public interest in one Member State, but run into difficulties in gaining access to the market in another Member State.

2.1.5 In order to address these two "weaknesses", the Commission is proposing two legislative initiatives and a number of additional measures.

2.1.5.1 The first legislative initiative aims to strengthen compliance with and enforcement of EU product rules, whilst the second is intended to revamp and facilitate the use of mutual recognition in the single market.

2.1.5.2 The additional measures include:

a) a report on the operation of Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services from 2014 to 2015[2]; and
b) a report on the implementation of Regulation (EC) No 765/2008[3].

2.2 Specific objectives

2.2.1 The specific objectives of these initiatives can be summarised as follows:

a) Compliance Proposal

2.2.2 With respect to the first legislative proposal – the proposal for a regulation laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products[4], henceforth referred to as the "Compliance Proposal" – the objective is to gain confidence in the effective implementation of EU rules on products, thereby ensuring:

a) smart enforcement of the rules in a borderless single market;
b) enforcement of legislation at external borders.

2.2.3 The main specific objectives are to:

a) consolidate the existing framework for market surveillance activities;
b) encourage joint actions by market surveillance authorities from several Member States;
c) improve the exchange of information and promote the coordination of market surveillance programmes;
d) create a strengthened framework for controls on products entering the Union market and for improved cooperation between the customs authorities and market surveillance authorities.

2 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0788&qid=1519385332001.

3 http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519385589015&uri=CELEX:52017DC0789.

4 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A379%3AFIN.

b) Recognition Proposal

2.2.4 As regards the second legislative initiative – the proposal for a regulation on the mutual recognition of goods lawfully marketed in another Member State[5], henceforth referred to as the "Recognition Proposal" – the objective is to ensure efficient and effective enforcement of the principle of mutual recognition, by:

a) ensuring the effective functioning of the mutual recognition principle;
b) building cooperation and trust;
c) guaranteeing the operation of the internal market for non-harmonised products.

2.2.5 The main specific objective of this proposal is to improve the functioning of mutual recognition through a raft of measures designed to ensure compliance with existing rights and obligations based on the mutual recognition principle, including the following:

a) clarifying the scope of mutual recognition, by clearly defining when it is applicable;
b) introducing a self-declaration to facilitate the demonstration of a product being already lawfully marketed and a problem-solving system to deal with decisions denying or restricting market access;
c) setting up administrative cooperation and putting in place an IT tool that will enhance communication, cooperation and trust among national authorities, and thus facilitate the functioning of mutual recognition.

c) Additional texts

2.2.6 In addition, the Commission presents two reports that form the basis of its legislative proposals, namely:

2.2.7 Report by the Commission on the operation of Directive (EU) 2015/1535 (abbreviated to the "Transparency Directive") from 2014 to 2015[6], in which it comes to the following main conclusions:

a) it confirms its usefulness in terms of transparency, administrative cooperation and prevention of technical barriers in the internal market, demonstrated by the broad stakeholder interest in the notification procedure, which makes it possible to identify areas where harmonisation at EU level could be an option;
b) it recognises, nevertheless, that there is still room for improvement in the application of the procedure, namely concerning the number of notifications from some Member States and their compliance with the notification obligations;

5 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A379%3AFIN.

6 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0788&qid=1519385332001.

c) it considers that a higher number of notifications and more active participation of the Member States in the procedure would facilitate the prevention of new technical barriers and the identification of systemic issues in each Member State and across the EU;
d) it deems it crucial to further promote the Directive and step up its implementation, whilst establishing a stronger link with follow-up policy and legislative action, in order to fully achieve its objectives.

2.2.8 Report by the Commission on the enforcement of Regulation (EC) No 765/2008[7] setting out the requirements for accreditation and market surveillance relating to the marketing of products, under the Conformity Regulation (COM(2017) 789 final), in which the main comments are as follows:

a) there is a need for reliable and competent "conformity assessment bodies" that operate correctly in order to verify whether products meet certain standards before they are put on the market;
b) for this reason, the EU has established a system of accreditation of conformity assessment bodies;
c) the Commission is of the view that the EU accreditation infrastructure set up under Regulation (EC) No 765/2008[8] provides added value, not only for the single market but also for international trade;
d) the report confirms that accreditation has the strong backing of EU industry and the community of conformity assessment bodies;
e) the challenge, however, is to ensure that the whole accreditation system keeps pace with recent developments and is always applied with the same stringency;
f) the report also confirms that businesses are aware of the important role of CE marking of products in the single market, introduced between 2013 and 2017.

d) Soft law measures

2.2.9 Finally, the Commission acknowledges – without going into detail – that there is still scope for soft law measures designed to build trust in the single market, as provided for in its own original communication, such as making use of the existing SOLVIT mechanisms or the adoption of a clear and unambiguous “single market clause”, “train-the-trainer” programmes on mutual recognition, exchanges of officials, etc. (appendix to the communication).

7 OJ L 218, 13.8.2008, p. 30.

8 OJ L 218, 13.8.2008, p. 30.

3. **General comments**

3.1 It has to be acknowledged that the Commission has carried out magnificent work, which is necessary, complex and worthwhile, and deserves recognition.

3.2 However, it does not provide a proper explanation of what has become of its 2013 proposal for a regulation on product surveillance. There is no indication that the regulation was published, and the present proposal would seem to duplicate and amend some of its provisions, without, however, stating that the previous proposal has been shelved.

3.2.1 Furthermore, the EESC considers it vital for there to be a clear link between the Directive on General Product Safety and the present proposal so that all products (and not just those listed in the appendix) are included within its scope.

3.2.2 The EESC considers that it would have been indispensable for the proposal to be accompanied by a new regulation on general product safety, ensuring that all products, regardless of their characteristics, are covered by up-to-date, more effective rules.

3.2.3 Indeed, the EESC continues to take the view that the market surveillance measures are fragmented and overlapping, leading to confusion between the rules on surveillance *per se* and the obligations of economic operators.

3.2.4 The EESC is concerned that, by fielding simultaneous discussions on two proposals with similar content but different elements, the Commission is not doing enough to resolve this issue.

3.3 In view of the current discussions on the Product Safety and Market Surveillance Package, the EESC considers that the present proposal should include a rule to reinforce the market surveillance obligation on the part of the Member States, requiring them to report (on a quarterly basis) to the Commission on their activities and controls, particularly regarding statistics and decisions.

3.4 Furthermore, surveillance measures taken by the authorities should be published, including in the form of activity reports and on their respective websites.

3.5 On the other hand, the EESC endorses the choice of legal basis for the present proposals, the evaluations regarding subsidiarity and proportionality and also the choice of legal instruments considered the most apt for achieving the stated aims. Its only objection is the excessive "flexibility" of some of the provisions, giving the Member States too much leeway and failing to take more control, something that would have been possible had the EU opted instead for other courses of action.

3.6 The EESC stresses that the general principles governing market surveillance should include the precautionary principle as a key element of decisions in situations where consumer or environmental protection may be compromised but where there is no clear scientific evidence that the product in question does not pose a risk in this respect.

3.6.1 The EESC is once again obliged to voice criticism of the Commission for the total lack of reference to this principle and reiterates that the precautionary principle – one that is always used by Member State authorities in the area of risk management – is crucial for all bodies which have to make decisions on whether or not to withdraw a product from the market.

3.6.2 In the absence of any reference to the precautionary principle, the EESC advocates nevertheless making it clearer that the burden of proof always lies with the economic operators, meaning that the latter cannot claim that it is up to the authorities to demonstrate the lack of safety or any other risk presented by a product.

3.7 The EESC recognises that Member States have an obligation to draw up a general market surveillance strategy at least every three years.

3.7.1 The EESC does, however, think that measures adopted by the Member States should be regularly monitored by the European Commission.

3.8 The EESC considers it fundamental for the RAPEX rapid alert system to operate in a coordinated and efficient manner regarding the exchange of information between the Member States. It notes, however, that in recent years, when a Member State notifies the Commission of a dangerous product, neither the authorities of that country nor the Commission itself generally inform consumers, or even their representative organisations, except when the necessary measures are taken, especially product recall requiring action on the part of the consumer. The same goes for situations when the authorities of one Member State agree with the economic operator for a product to be withdrawn from the market, but do not inform the other Member States of this agreement, even jeopardising the precautionary principle on many occasions.

3.8.1 The EESC also stresses the need for the mechanism to be coordinated when it comes to situations where the product needs to be destroyed, thus promoting greater integration and consumer information with regard to these situations.

3.8.2 In this respect, the EESC considers it a matter of priority, without prejudice to the need to safeguard the precautionary principle and protect business secrets, not only for the European Commission to be required to present regular reports on RAPEX, but for consumers and businesses, as well as the organisations representing them, to have access to additional information to that which is made publicly available, given how difficult it can often be for consumers to become aware of the fact that a product has been identified as unsafe and behave accordingly.

3.8.3 It also considers that this regulation should be the legal act setting out all the rules relating to the EU's Rapid Exchange of Information System, including the definition, points of contact, arrangements and procedures for exchanging information, the external bodies that can participate in the system (also including consumer organisations) and the notification rules.

3.9 Moreover, in line with its previous opinions, the EESC stresses the need to reinforce the common European customs strategy to ensure the optimum use of physical and human resources in developing the measures set out in the present proposal, including exploring the

new technologies and innovation, in full compliance with the privacy of personal data and with particular attention to SMEs and consumers.

3.9.1 With this in mind, it recommends stepping up mutual assistance agreements with the EU's trade partners, including with the WTO and the partnership agreements recently negotiated with Japan and Canada.

3.9.2 The EESC also points to the issue of tackling fraud, counterfeiting and adulteration, particularly as regards imports into the EU, as these have a significant impact on general product safety.

3.9.3 In this connection, it points to the need for an ambitious policy enabling the Member States to cooperate on the exchange of information so that they can act more swiftly to combat serious undesirable effects with regard to product use, in that the growing number of fraudulent and adulterated products, coupled with the limited resources on the part of the Member States to control them, pose an increased risk to consumer health and safety.

3.9.4 Finally, as stated in a previous opinion, the EESC considers that "members or employees of surveillance and customs authorities should provide guarantees of their honesty and independence and be protected from possible pressure or attempts to corrupt them in the exercise of their duties"[9].

3.10 As regards the evaluation by the EU of products controlled within its borders and subject to harmonisation legislation, the EESC considers it vital for the European Commission – without prejudice to the specific competences of the national authorities – to have the power to assess national measures implemented in respect of harmonisation policy, thereby avoiding legal uncertainty which could call into question the free movement of safe products.

3.11 Again, as stated in its previous opinion, the EESC continues to advocate the inclusion of measures to set up a pan-European Injuries Database (IDB) which would cover all types of injury and serve to:

a) assist market surveillance authorities to make more informed risk assessment decisions;
b) provide a basis for preventive action and public awareness-raising campaigns, and allow standardisers to develop better product standards;
c) help manufacturers to adapt the design of new products to include safety aspects; and
d) evaluate the effectiveness of preventive measures and set priorities in policymaking.

3.12 Once again, the EESC would suggest establishing a legal basis for the IDB, with the European Commission providing support for coordinating the collection of data from the Member States and ensuring that the database operates efficiently.

9 OJ C 271 of 19.9.2013, p. 86, point 1.6..

4. **Specific comments**

4.1 Compliance Proposal (COM(2017) 795 final)

4.1.1 Article 1

4.1.1.1 The EESC welcomes that fact that, in addition to the protection of the health and safety of persons, protection is also extended to the environment and to the public interest.

4.1.2 Article 5

4.1.2.1 In the case of most consumer products, the EESC is critical of the declarations of conformity as they generally consist of a unilateral declaration by the producer recognising that the product complies with European law on product safety. The declaration frequently gives rise to misunderstandings on the part of end-users, who confuse product origin with product authorisation.

4.1.2.2 Recently, a number of consumer organisations have voiced a range of concerns over these systems of conformity, which are the same as those experienced with regard to the CE marking declaration. The EESC stresses here that the declaration of conformity needs to be placed on the actual product website, on the page containing the technical documentation related to the product. The declaration of conformity should therefore not create confusion or be misleading for end-users.

4.1.3 Articles 10 and 14

4.1.3.1 The EESC welcomes the fact that the proposal seeks to set up a coherent market surveillance system in each Member State. However, whilst the proposal lays down rules on the duties, powers and organisation of market surveillance, it makes no reference to the capacity and discretionary powers of the Member States in terms of technical, human and financial resources, something that could lead to inconsistencies in product surveillance in the European Union.

4.1.3.2 Without prejudice to the powers conferred on the authorities, the EESC notes that very few obligations are imposed upon them, with the document referring primarily to prerogatives, including the power merely to alert users in their country, within an appropriate timeframe, to products identified as a risk.

4.1.4 Article 18

4.1.4.1 The EESC does not know why, in this article, the Commission omitted the previous rule proposed in 2013, namely the listing of specific criteria regarding decisions taken by the authorities, and all subsequent measures such as obligations incumbent on the economic operator and further action on the part of the authorities. From the point of view of economic operators, it has not been clearly established whether notifications to RAPEX are monitored in practice and whether operators actually withdraw the products concerned from the market.

4.1.4.2 As regards the recall procedure, consumer information is paramount, in the EESC's view, and this is why it stresses that such information must be clearly specified and the authorities required to publish it. Furthermore, the information procedure related to product recall must also be defined in such a way as to prevent consumers from confusing it with product marketing information.

4.1.5 Article 26

4.1.5.1 The Committee considers it essential for the proposal to include a specific requirement that Member State authorities have at their disposal the powers and resources needed to perform their tasks, including physical and laboratory controls on products.

4.1.6 Article 27

4.1.6.1 The EESC considers that, without prejudice to the points mentioned, there should be a general clause enabling market surveillance authorities to ask the control authorities at the external border to prevent products that present an actual risk to health, safety, the environment or the public interest from being released into free circulation.

4.1.7 Article 32

4.1.7.1 The EESC highlights the need for civil society organisations, and particularly consumer organisations, to be involved in the network so as to ensure greater transparency regarding the results achieved by the Member States in the area of market surveillance policy.

4.1.8 Article 61

4.1.8.1 The EESC welcomes the proposal to draw up a specific rule on penalties to dissuade economic operators from placing dangerous products on the market.

4.1.8.2 It is therefore pleased to see that Article 61(3) states that penalties may be increased in the event of a repeated infringement.

4.2 Recognition Proposal (COM(2017) 796 final)

4.2.1 Article 4

4.2.1.1 The EESC has doubts about the effectiveness of this principle, particularly where in Article 4(3) it establishes that it is the responsibility of economic operators to affix the declaration, as it could have the same effect on consumers as the CE marking, which has never prevented products considered to be dangerous from circulating in the internal market regardless of their declaration.

4.2.1.2 The EESC considers that if the economic operator fails to supply the required declaration, and without prejudice to Article 4(8), a reasonable timeframe must be established to allow the authorities to verify the information concerning compliance.

4.2.2 Article 5

4.2.2.1 The EESC would point out, once again, that the precautionary principle must be included in the product assessment requirements, particularly in respect of Article 5(5).

4.2.3 Article 6

4.2.3.1 With regard to consumer rights, in particular the right to health and safety, and to the protection of the environment and of the public interest, the EESC does not agree with the presumption of safety established in this provision. It considers that even when the assessment has been conducted as specified in Article 5, a product cannot be put into circulation until a final decision has been taken by the Member State authority.

Brussels, 23 May 2018

Luca Jahier
President of the European Economic and Social Committee