

Name of Cabinet Member: Kristian Hedberg

Name of the Director who has cleared the briefing: Joaquim Nunes de Almeida

BASIS request ID: 1021 Room, time: Participants:

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### MINI BRIEFING NOTE

## Goods package - Market surveillance / Enforcement proposal

### Scene setter/Context of the meeting/ Objective of the meeting:

The meeting was requested by Amazon with the purpose to discuss the Goods Package, in particular the Enforcement and Compliance proposal encompassing provisions of relevance for Amazon, such as the requirement of having a person responsible for compliance information established in the EU, strengthened controls at the external borders and improved assistance and cooperation with economic operators. Although not mentioned on the agenda, defensives on Geo-blocking are added in case it is raised by Amazon.

### KEY messages

- There is a lot of room for improvement in the existing market surveillance system. Non-compliant goods are still present in the internal market. The Good Package is now scheduled for adoption on 20 December. The Package should strengthen market surveillance authorities' capability to detect and sanction traders of non-compliant goods, including from 3rd countries.
- One of the possible proposals is the obligation to have a person responsible for the product compliance information for products to be sold on the EU market that market surveillance authorities can turn to. This will create a level playing field for all market actors – within and outside the EU. The person responsible for compliance information should be established in the EU and can be the manufacturer himself, the importer or any other person designated by the manufacturer.
- In the same remit, control at the external borders will be strengthened to ensure that unsafe or non-compliant products are detected before they are released for free circulation in the Union market.

### Defensives / Q&A

### **What is the role and the responsibility of the person responsible for compliance information?**

A contact person established in the Union would be someone market surveillance authorities can address regarding all information necessary to demonstrate the conformity of the product, and to cooperate with market surveillance authorities on actions to eliminate or mitigate a risk. There is no liability per se assigned to the person responsible for compliance information in this very capacity of interlocutor to market surveillance authorities. However, the degree of cooperation of the person responsible

for compliance information with the concerned market surveillance authority determines measures taken against the product (suspension or refusal to release for free circulation, recall, and withdrawal).

### **Can fulfilment houses be the person responsible for compliance information?**

Yes, to the extent to which there is a contractual agreement with the manufacturer (who has the ultimate responsibility for compliance). The proposal leaves this open to contractual liberty among the manufacturer and various actors in the supply chain, including fulfilment houses.

### **Will the proposal contain provisions on fulfilment houses and online market players?**

To the extent to which fulfilment service providers offer services in the course of a commercial activity, whether in return for payment or free of charge, and pursue the activities of making a product available to end users they should be considered distributors in the supply chain. This approach already presented in the Blue Guide is not challenged. The proposal is without prejudice to the development of e-commerce. No general obligation is imposed on service providers to monitor the information which they transmit or store, nor should a general obligation be imposed upon them to actively seek facts or circumstances indicating illegal activity. Furthermore, hosting service providers are not held liable as long as they do not have actual knowledge of illegal activity or information and are not aware of the facts or circumstances from which the illegal activity or information is apparent (exemptions of liability provided for the Directive 2000/31/EC on electronic commerce are not affected).

### **Will the controls at the external borders be strengthened?**

Yes. It is clear that the controls at the external borders are not as effective as they should or could be. We need to strengthen these controls, but we need to do it in a balanced way. Global supply chains and trusted businesses should not be hampered.

### **Geo-blocking**

#### **Does the geo-blocking proposal give the customer right to have after-sale services where he/she resides?**

No. Nothing under this proposal changes the current provisions of after-sale services.

#### **Will traders have to comply with foreign consumer law?**

The current proposal does not amend or overwrite applicable rules on consumer law and jurisdictions. The proposal provides assurances to traders that mere compliance with these new rules will not trigger the application of foreign consumer law.

#### **Are you obliging traders to accept any type of payment means?**

No. Traders remain free to decide which means of payment they accept provided that they treat local and foreign customers in the same way. This non-discrimination rule is based on progress made on payment services, including safety and cost of transactions.

## **Background information**

### **Person responsible for compliance information – current state of the proposal**

There are no indications that the provision on having a person responsible for compliance information causes excessive burdens or obstacles to trade from 3<sup>rd</sup> countries.

The proposal takes into account the following:

- 1) E-commerce market is growing very rapidly within the overall retail sector;
- 2) Market surveillance measures are very difficult to enforce when the product was placed on the market by a manufacturer outside the EU without an importer, an authorised representative and without the involvement of a distributor in the EU, i.e. in cases where the product is bought on line from a supplier established outside the EU.

Where the manufacturer remains outside the jurisdiction of European authorities, it could easily ignore any measures taken against them and their products. Moreover, the very short supply chain between the supplier and the consumer and the high number of small parcels that are used to ship the products to the consumers in the EU diminish the likelihood of market surveillance controls.

The proposed solution is a risk management system for products placed on the market by a business outside the EU when there is no importer or authorised representative and when the product is not subject to any prior approval procedures, with a responsible person in the EU. This person could be the fulfilment centre or any other legal or natural person appointed by the manufacturer.

The 'person responsible for compliance information' should be established in any EU jurisdiction and represents the manufacturer (in particular those established outside the EU) for the implementation of the Regulation.

The tasks of the responsible person are limited to the following:

- Keeping the EU declaration of conformity and the technical documentation at the disposal of national surveillance authorities and cooperate with them at their request;
- Providing a competent national authority , upon a reasoned request, with all the information and documentation necessary to demonstrate the conformity of a product;
- Cooperating with the competent national authorities, at their request, on any action taken to eliminate the risks posed by products covered by their mandate.

The contact details of the responsible person should be made available on the manufacturer's website and, where appropriate, in the EU declaration of conformity. In addition, the manufacturer may also decide to put these contact details on the packaging and/or in the accompanying documentation.

The mere fact that the 'responsible person' should be the person representing the manufacturer established outside the EU for the implementation of the Regulation implies that there would be no need for a 'responsible person' in the following cases:

- 1) When there is an importer or an authorised representative;

- 2) Where the manufacturer needs to obtain type-approval (motor vehicles) or needs to register a chemical substance (REACH);
- 3) When Union harmonisation legislation already provides for an obligatory authorised representative (medical devices) or a mandatory responsible person (cosmetics and Regulation (EU) No 2017/1369 on energy efficiency labelling;
- 4) Where the product needs to be registered before being placed on the market (e.g. the registration of radio equipment types within some categories, as set out in Article 5 of the Radio Equipment Directive 2014/53/EU).

The requirement to have a responsible person established in the EU will create a level playing field for all manufacturers as regards the enforcement of EU harmonised legislation on products. The annual costs to businesses concerned would range between about €360 and €1500 per year and per business, depending on the complexity of products. According to available data, such requirement will not have an adverse effect on trade of licit products.

#### *Further possible measures*

Furthermore, a closer cooperation between national market surveillance authorities throughout the EU and economic operators is needed. Several measures aimed at assisting economic operators could be put in place: one stop shop for information (Product Contact Points), compliance partnership agreements between concluded by a market surveillance authority and an economic operator within its jurisdiction, memoranda of understanding with stakeholders.

#### **CV's**

