



EMOTA Position on Goods Package

In brief

- EMOTA broadly supports the stated objectives of the Goods Package i.e. an EU internal market free from unsafe and dangerous products, as well as moving towards a level playing field between EU and third country sellers.
- It is essential that all manufacturers not only know of the EU's product rules and standards, but also comply with them, to increase consumer safety.
- The powers of the Market Surveillance Authorities should contain adequate safeguards to protect the reputation and confidential information of sellers, especially if those sellers are later proved compliant.
- Market surveillance must be risk-based, particularly considering that e-commerce is an industry which is built upon speed of delivery.
- Market Surveillance Authorities should carry out their activities and sellers should not be charged for activities not rendered.
- Labelling requirements concerning the responsible person should be technologically neutral and not create a monopoly to an individual solution provider.
- The Goods Package should be aligned to the existing e-commerce Directive.
- The envisioned product compliance network should include stakeholders.
- It should be avoided that third countries adopt protectionist measures in response to the Goods Package, which will impact EU exporters.

Background

This position paper reflects the concerns of the e-Commerce industry regarding the upcoming release of the Goods Package. The Goods Package is expected to consist of three instruments: (i) Communication with Action Plan on Mutual Recognition & Actions on Compliance and Enforcement; (ii) Compliance and Enforcement of EU Product Legislation; and (iii) Mutual Recognition in the Field of Goods. It will also revise several Regulations and Directives, with the aim of combating non-compliance and creating a level-playing field between EU and third country sellers.

General Remarks

EMOTA strongly supports the European Commission's aim and efforts to combat unsafe products on the EU market and for ensuring a level playing field between EU and third country sellers. We also support attempts by the EU to close any enforcement gaps endangering customer safety and for stronger coordination of the market surveillance and customs authorities across the individual member states. However, only if the proposals lead to greater enforcement against rogue traders, should additional layers of regulation be considered. Otherwise this will only create additional burdens for compliant sellers and impact the speed of delivery which consumers expect.

A Risk-Based Approach to Market Surveillance

EMOTA is concerned whether the concept of 'responsible person' will lead to greater enforcement and tackle unsafe products and the issue of rogue traders. Creating a wider-scope risks less scrutiny/screening of those manufacturers that are not following the rules and importing products which pose a substantive safety risk. For example, it is well-known that customs screening for goods is limited. Therefore, we question how an additional label on a postal consignment and increasing the scope of the responsible person will lead to a decrease in unsafe

products on the EU market. In addition, we question how authorities will be able to check if these responsible persons exist. Thus, we urge the Commission to think of a risk-based approach which focuses on scalable means of furthering customer safety (e.g. e-labelling versus formal checks of language, using data to identify problems instead of checking every box for a CE mark) and on high-risk products.

- *The European Commission must introduce a risk-based approach to market surveillance to tackle non-compliance.*

Liability for Non-Compliance

Today, sellers trading across Europe face extensive compliance obligations. The current proposal should therefore not undermine the current legal framework, including the careful balance established by the e-commerce Directive.

- *The goods package should not undermine the careful balance established under the e-commerce Directive.*

Powers & Measures of Market Surveillance Authorities

Market surveillance authorities have extensive powers, although there is no clear guidance on how to enforce them. This may impact upon the reputation of legitimate sellers without significant safeguards (i.e. suspension of a website). For example, the regulation includes several powers from the current Consumer Protection Cooperation Regulation such as the powers to suspend websites, as well as additional powers like the power to take samples free of charge etc. without guidance on how such powers should be exercised in a fair and proportionate manner. Moreover, the draft enables restrictive measures to be taken by the market surveillance authority without the economic operator being afforded a chance to be heard. This can be highly prejudicial, as this can lead to reputational damage to legitimate sellers and a situation where compliant goods are restricted.

- *EMOTA calls for adequate safeguards against potential damaging actions by market surveillance authorities*

Labelling on Postal Consignments

The draft Regulation will introduce an obligation to indicate the responsible person on the postal consignment, when the goods have been purchased online and the responsible person is an authorised representative. Failure to indicate this person on a postal consignment can also be a ground for withholding and restricting goods at customs. EMOTA questions how this obligation to indicate should be done in practice. For example, when sending or receiving postal consignments from outside the EU through the postal network the sender must complete a customs declaration (CN23 or CN22). This is fixed to the package. These forms are designed and agreed in the Universal Postal Union (UPU) (an intergovernmental UN specialised agency) and ratified by the World Customs Union (WCO) in order to facilitate a manual postal customs process. These paper-based forms contain a field for the sender, but they do not tell postal operators/public authorities who the responsible person is, the data is limited and of poor quality. This makes it difficult, if not impossible, to meet the requirements under the draft article 4(4). In addition, we also have questions concerning how the Commission expects this obligation to work when multiple goods are sent in a single parcel with several responsible persons.

- *It is difficult, if not impossible, to meet the requirement to indicate the responsible person on the postal consignment. Solutions will need to be developed at the global level, to ensure any solution is practical and technologically neutral. Moreover, it should not lead to a monopoly.*

Product Compliance Network

To foster greater cooperation between market surveillance authorities, the European Institutions and businesses, business groups must be given a permanent seat on the envisioned Product Compliance Network.

- *The Product Compliance Network should have permanent stakeholder members to foster greater cooperation between the private sector and market surveillance authorities.*

Cooperation between Business Authorities & Market Surveillance Authorities



We welcome the inclusion of provisions which recognise and initiates greater cooperation between the market surveillance authorities and business representatives, including M.O.U's and proposed written partnership agreements between a market surveillance authority and an economic operator established on a specific territory. However, we would also call for these M.O. U's to be concluded at the EU-level. Additionally, communications between business and the Commission/Market Surveillance Authorities should remain protected from disclosure to foster voluntary engagement aimed at enhancing public safety.

- *EMOTA calls for clarity on the scope upon which an M.O.U. can be established by a Business Representation and MSAs.*

Financing & Recovery of Costs for MSAs

Market surveillance authorities may charge administrative fees on the economic operator concerned, to enable them to recover the costs of their overall activities (rather than in relation to pure instances of non-compliance) by the economic operator. These costs can include the testing carried out for the purposes of the risk assessment and the costs of their activities relating to products found to be non-compliant and subject to corrective action prior to the release for free circulation. Webshops have reported that MSA's have charged an operator in the past for the costs for an inspection without actually performing one. Therefore, EMOTA calls upon the Commission to monitor the activities of MSAs and for a redress mechanism to be built into the legislation.

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Domino Effect

The proposed 'goods package' will be viewed by the EU's trading partners as a significant protectionist measure. Various elements of the 'goods package', such as the need to appoint a responsible person for goods placed upon the EU market and to label each package with the name of that person, may lead to third countries adopting retaliatory measures. As a result, the legislation could create a domino effect, by which EU exporters face additional costs and burdens exporting to third countries in the longer-term.

- *The European Commission should consider the effects on bi-lateral trade.*

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