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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 **(first reading)**

- Adoption of the legislative act
- Statements

Statement by the Commission

The Commission takes note that the text agreed replaces the triple legal basis of the Commission proposal (Article 114 TFEU - internal market, Article 33 TFEU – customs cooperation, Article 207 – common commercial policy) by a double legal basis, through deletion of the common commercial policy legal basis. The Commission continues to consider that the triple legal basis is fully justified in relation to the provisions that regulate conditions for access to the EU market of products originating from third countries. Moreover, the common commercial policy legal basis is in line with the legal basis of Regulation (EC) 765/2008 of the European Parliament and of the Council of 9 July 2008 setting the requirements for accreditation and market surveillance relating to the marketing of products and repealing regulation (EEC) no 339/93. The Commission regrets the deletion of article 207 TFEU as legal basis of the Regulation.

Statement by the Commission

In order to strengthen controls on products at customs, the Regulation empowers the Commission to adopt implementing acts to determine benchmarks and techniques for checks on the basis of common risk analysis on the Union level. The Commission intends to make use of this empowerment.

Joint statement by Bulgaria, Luxembourg, Slovakia and the United Kingdom

Bulgaria, Luxembourg, Slovakia and the United Kingdom support the overarching aims of the Compliance and Enforcement proposal to strengthen market surveillance in order that products comply with Union legislation and the framework keeps pace with a modern economy with rapidly evolving technologies.

However, we believe that the impact of Article 4 (Tasks of economic operators regarding products subject to certain Union harmonisation legislation) has not been adequately assessed, that it is not sufficiently based on risk and will place an undue burden on small and medium businesses.

Whilst we, the signatories, agree with the principles of the proposal and are committed to a robust system of joined up market surveillance to protect consumers and ensure a level playing field for businesses, we are unable to give our full support to the proposal due to the significant risks of Article 4 that have not been adequately assessed.
