Commission Implementing Regulation (EU) 2020/1668 of 10 November 2020 specifying the details and functionalities of the information and communication system to be used for the purposes of Regulation (EU) 2019/515 of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1668

of 10 November 2020

specifying the details and functionalities of the information and communication system to be used for the purposes of Regulation (EU) 2019/515 of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008[(1)], and in particular Article 11(2) thereof,

Whereas:

(1) Pursuant to Article 11(1) of Regulation (EU) 2019/515, the information and communication system set out in Article 23 of Regulation (EC) No 765/2008 of the European Parliament and of the Council[(2)], known as the Information and Communication System for Market Surveillance ('ICSMS'), is to be used for the purposes of certain communications under Regulation (EU) 2019/515. Article 34 of Regulation (EU) 2019/1020 of the European Parliament and of the Council[(3)] is to replace Article 23 of Regulation (EC) No 765/2008, with effect from 16 July 2021.

(2) It results from Regulation (EU) 2019/515 that ICSMS is to be used, among others, by competent authorities and by Product Contact Points. Member States should therefore insert in ICSMS the identity of those competent authorities and Product Contact Points.

(3) To ensure that information needed by the Commission for the purposes of the evaluation and reporting referred to in Article 14 of Regulation (EU) 2019/515 is easily searchable and can be further processed in ICSMS, the competent authorities should, in addition to uploading the administrative decision or temporary suspension, be required to provide certain information about those decisions in a structured form.

(4) In order to ensure that the data contained in ICSMS is accurate and up-to-date, the competent authorities should enter in ICSMS any modification of an administrative decision notified pursuant to Article 5(9) of Regulation (EU) 2019/515 or of a temporary suspension notified pursuant to Article 6(2) of Regulation (EU) 2019/515.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1668. (See end of Document for details)*

(5) To ensure that personal data contained in the communications entered in ICSMS and personal data relating to natural persons designated as ICSMS users is erased as soon as it is no longer necessary for the purposes for which that data was inserted in the system, provisions regarding the periods of retention of such data should be set out.

(6) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[(4)] and delivered an opinion on 6 June 2020.

(7) The measures provided for in this Regulation are in accordance with the opinion of the committee established by Article 15(1) of Regulation (EU) 2019/515,

HAS ADOPTED THIS REGULATION:

Article 1

Content of the Information and Communication System for Market Surveillance ('ICSMS')

For the purpose of Regulation (EU) 2019/515, ICSMS shall cover:

(a) the notification of administrative decisions to the Commission and the other Member States as referred to in Article 5(9) of Regulation (EU) 2019/515;

(b) the notification of temporary suspensions to the Commission and the other Member States as referred to in Article 6(2) of Regulation (EU) 2019/515;

(c) the notification of the Commission's opinions to all Member States as referred to in Article 8(6) of Regulation (EU) 2019/515;

(d) the exchange of information between competent authorities and Product Contact Points of the various Member States as referred to in Articles 5(7), 10(1)(a) and 10(3) of Regulation (EU) 2019/515.

Article 2

Access to ICSMS

Member States shall identify and enter in ICSMS the identity of the competent authorities and of the Product Contact Points which have access to ICSMS in accordance with Regulation (EU) 2019/515.

Article 3

Notification of administrative decisions restricting or denying market access

When notifying an administrative decision pursuant to Article 5(9) of Regulation (EU) 2019/515, the competent authority, in addition to uploading an electronic copy of the administrative decision, shall enter the following information in ICSMS:

(a) the national technical rule on the basis of which the assessment was carried out;

(b) the name of the Member State in which the economic operator claims to be lawfully marketing the goods;

(c) the applicable legitimate public interest grounds covered by the national technical rule.

The competent authority shall enter in ICSMS any annulment or withdrawal of the administrative decision notified pursuant to Article 5(9) of Regulation (EU) 2019/515.

Article 4

Notification of temporary suspensions

When notifying a temporary suspension pursuant to Article 6(2) of Regulation (EU) 2019/515, the competent authority, in addition to uploading an electronic copy of the temporary suspension, shall enter the following information in ICSMS:

(a) the national technical rule on the basis of which the assessment will be carried out;

(b) the name of the Member State in which the economic operator claims to be lawfully marketing the goods;

(c) the legitimate public interest grounds for temporarily suspending market access as set out in Article 6(1) of Regulation (EU) 2019/515.

The competent authority shall enter in ICSMS any annulment or lifting of the temporary suspension notified pursuant to Article 6(2) of Regulation (EU) 2019/515.

Article 5

Retention periods of personal data contained in the communications entered in ICSMS

Personal data contained in the communications entered in ICSMS and kept in a form which permits the identification of data subjects shall be automatically deleted in ICSMS five years after:

(a) the notification of a temporary suspension pursuant to Article 6(2) of Regulation (EU) 2019/515; or

(b) the notification of an administrative decisions pursuant to Article 5(9) of Regulation (EU) 2019/515 if that administrative decision has not been submitted to SOLVIT; or

(c) the last exchange of information pursuant to Articles 5(7), 10(1)(a) and 10(3) of Regulation (EU) 2019/515; or

(d) the case submitted to SOLVIT has been solved.

The Commission shall ensure by technical means the deletion of personal data under the first paragraph.