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MARKET SURVEILLANCE
UPDATES FROM REGIONAL GROUPINGS AND THE ADVISORY GROUP ON MARKET SURVEILLANCE ("MARS" GROUP)

Report of the Advisory Group on Market Surveillance, its activities and its meeting

Note by the secretariat [*]

Summary

The Advisory Group on Market Surveillance ("MARS" Group) was established in 2003, and recently had its mandate extended until 2011. The MARS Group hereby reports to the annual session of its parent body, as per the "Guidelines on establishment and functioning of Teams of Experts within ECE (see ECE/EX/2, point 3 (d)). The Group met in Bratislava (8-9 October 2009) to share information on recent developments in market surveillance, and review the General Market Surveillance Procedure and the document on Common Terminology for Market Surveillance. The Group made the following recommendations to the Working Party that: (a) the General Market Surveillance Procedure should be endorsed as a training document; (b) the Working Party should begin follow-up on Recommendation M; and (c) a compendium of market surveillance authorities in UNECE member States, setting out their respective areas of competence, should be created, and maintained on the UNECE website.

[*] The present document has been submitted late by the secretariat due to the timing of the "MARS" meeting, which was held after the official documentation deadline.

I. PARTICIPATION

1. The following countries, institutions and organization were represented at the meeting (The full list of participants is available at: www.unece.org/trade/wp6/SectoralInitiatives/MARS/Slovakia_Oct09/MARS_Oct09.html):

(a) Belarus: Centre for Standardization Metrology and Certification (GOSSTANDART) and State Institute for Standardization and Certification (BelGISS);

(b) Bosnia and Herzegovina: Market Surveillance of Bosnia and Herzegovina;

(c) Bulgaria: State Agency for Metrology and Technical Surveillance (SAMS);

(d) Czech Republic: Czech Standard Institute, Czech Office for Standards, Metrology and Testing (UNMZ), and Czech Trade Inspection Authority;

(e) Republic of Moldova: Ministry of Economy and Trade;

(f) Romania: Romanian Bureau of Legal Metrology (BRML), State Inspectorate for Constructions, and Romanian Labour Inspection;

(g) Serbia: Serbia: Ministry of Trade and Services;

(h) Slovakia: Ministry of Economy, Ministry of Labour, Social Affairs and Family, Slovak Office of Standards, Metrology and Testing (SOSMT), National Labour Inspectorate, Labour Inspectorate, Office for Public Health, Technical Inspection; Slovak Trade Inspection (SOI), Slovak Institute of Metrology; and the Telecommunications Office;

(g) Sweden: Swedish National Board of Trade;

(h) The former Yugoslav Republic of Macedonia: Ministry of Economy, State Market Inspectorate;

(i) European Commission (EC) Legal aspects linked to Internal Market", DG Enterprise, and EU researcher Market Surveillance;

(j) International Organization of Legal Metrology (OIML).

II. OPENING

2. The President of the Slovak Office of Standards, Metrology and Testing, and Vice-chairperson of the UNECE Working Party on Regulatory Cooperation and Standardization Policies, the Director General of the Ministry of Economy of Slovakia and the Chairperson of WP.6, opened the meeting by:

(a) Putting the event in the context of the general economic situation of Slovakia, characterized by the adoption of the euro and by the economic crisis;

(b) Explaining how market surveillance (MS) was one of the main WP.6 activities and the subject of one of its recent recommendations;

(c) Recalling that WP.6 activities are open to participation by all members of the United Nations, especially because it was the only United Nations body dealing with technical regulations and standardization;

(d) Introducing the main topics of the meeting, namely the implementation of the new regulatory framework and the development of the General Market Surveillance Procedure (GMSP);

(e) Reporting on how the Slovak Trade Inspectorate and the National Labour Inspectorate were effectively implementing the New Framework after its prompt transposition into national legislation, also thanks to reinforced powers granted to them upon the adoption of the euro in Slovakia.

III. REVIEW OF RECENT DEVELOPMENTS IN MARKET SURVEILLANCE

3. The General Director of the Slovak Trade Inspection (STI), the main MS authority in Slovakia, explained that the competencies of the STI were based on a large body of legislation. STI performed on average almost 24,000 controls annually. Only about a third of these were based on complaints; most, therefore, being proactive. In planning proactive controls the STI conducted a risk assessment based on the type and origin of the product, and on the credentials of the economic operator.

4. The main sources of information used were past experience, notifications from RAPEX system and consumer complaints recorded in the national database “ECHO”, which gathered information on accidents caused by any non-food products and encouraged consumers to notify accidents. ECHO had been active since 2008: the number of dangerous products found based on those complaints had increased from 17 per cent in 2008 to 42 per cent in 2009.

5. The main outstanding difficulties related to cases in which:

(a) There was no method of risk assessment;

(b) The language in the relevant regulation was vague and/or did not allow for complete bans;

(c) There was no unified procedure to test products;

(d) It was difficult to establish cooperation with sectoral market surveillance authorities from other member States.

6. STI is also entitled to seize goods that are counterfeit or bear false labelling. In these cases, it seizes the products and cooperates with customs authorities and the judiciary, as well as with the rightful intellectual property rights owners.

7. A representative of the Slovak National Labour Inspectorate reported on the work it did which was complementary to that of the STI. In particular, because some products were for consumers but were also used in production, these were under the supervision of both bodies and cooperation was therefore important. The Labour Inspectorate mainly checked whether products met safety requirements when put on the market or put into operation. When non-compliance was detected, the inspection body imposed a duty to harmonize the product or if that was not feasible took measures to have the product withdrawn.

8. A representative of the European Commission recalled the main elements of the New Legislative Framework, as laid out in two complementary instruments (regulation 765/2008/EC and decision 768/2008/EC available at: http://ec.europa.eu/enterprise/newapproach/index_en.htm , which had been presented at the 6th "MARS" meeting (ECE/TRADE/C/WP.6/2008/11).

9. The European Commission had subsequently prepared detailed information guidelines to assist Member States in fulfilling their obligations under the New Legislative Framework, in particular concerning establishing national market surveillance programmes (NMSPs). These programmes, –which were to be established both at a sectoral and at a general level by 1 January 2010, needed to provide for effective measures for any product category covered by the legislation of the European Union (EU).

10. The European Commission had also established a specific subgroup of the EU Group of Senior Officials for Standardization and Conformity Assessment Policy (SOGS), which would be responsible for coordinating implementation. EU Member States were also discussing possibly adapting the Rapid Information Exchange system (RAPEX), creating another, ad hoc, database, the need for more cooperation with customs, and the definition of "serious risk". It was acknowledged that resources were scarce for market surveillance authorities to perform controls on an adequate scale.

11. The subsequent discussion focused on:

(a) The importance of coordination among sectoral market surveillance authorities;

(b) The need to strengthen international exchange of data on serious cases so as to be better prepared to establish litigable facts. In fact, currently manufacturers that were well established worldwide had substantial resources for litigation and could easily end up winning contentious cases;

(c) The difference between the RAPEX and the ICSMS databases (see ECE/TRADE/C/WP.6/2008/11);

(d) The changes in the scope of the application of the General Product Safety Directive after the implementation of regulation 765;

(e) The provisions applicable when, despite fulfilling the requirements of the Directive, a product still posed a serious risk;

(f) The information sources used by bodies responsible for controls on the EU borders act, which included RAPEX as well as internal systems;

(g) The obligations of different economic operators, in particular producers and distributors.

12. The Coordinator for Liaison with Market Surveillance Bodies of the Commonwealth of Independent States (CIS) thanked the organizers of the meeting for providing a Russian translation of the most important documents for discussion. She made a brief presentation on the Interstate Council for Standardization, Metrology and Certification of the Commonwealth of Independence States (EASC). The Council was responsible for formulating and carrying out coordinated policy in standardization, metrology and certification.

13. She also introduced the "Rules of Interstate Standardization", which had been adopted by the Working group on Market Surveillance of the Interstate Council for Standardization, Certification and Metrology of the CIS in Yerevan in October 2008, and had been revised at a subsequent meeting in Minsk in June 2009.

14. The Rules set out a basis for coordinated action both on products imported from partners and from third countries. They prescribed that authorities should contact producers to establish if the product was genuine or not, and should exchange information among themselves on dangerous products via an electronic network.

15. The Rules had not to date achieved the expected results because:

(a) Not all countries had ratified them;

(b) There was no common definition of dangerous products;

(c) It was difficult to gather sufficient evidence that a product is dangerous.

16. The Working group on Market Surveillance of the Interstate Council for Standardization, Certification and Metrology of the CIS had expressed a need for training and capacity-building and wanted to build on the collaboration with the "MARS" Group.

17. The Chief of the Department of Governmental Surveillance and Inspection made a presentation on the State Committee for Standardization of Belarus (GOSSTANDART). This Committee reported directly to the Council of Ministers and supervised a number of specialized, sectoral and regional institutions.

18. The activity of GOSSTANDART was regulated by laws and other legal instruments, based on the following: World Trade Organization Agreements, including the Code of good practice for the preparation, adoption and application of standards; and, the International Organization of Legal Metrology documents. In market surveillance, GOSSTANDART

collaborated with several ministries (Health, Labour, Agriculture, Emergency situations, Taxation), as well as customs authorities.

19. An ordinance of the President of the Republic was about to be approved. It would detail the functions and competencies of bodies that conducted surveillance activities, list matters subject to control, and detail criteria for the definition and inspection requirements of products belonging to different risk groups. In particular:

(a) High-risk products, defined as those posing an inadmissible risk of harm to human life, health and heredity, property and environment during production, exploitation, storage, transportation and selling or provision of services, would be subject to a planned inspection every year;

(b) Medium-risk products, defined as those posing a risk for assurance requirements for technical and information compatibility, products interchangeability, national safety and rational use of the resources would be subject to planned inspection every three years;

(c) Low-risk products, defined as those not falling in the first two categories, would be subject of planned inspections every five years.

20. Unplanned inspections were also carried out regularly. When inspections revealed infringements, the responsibility could engage the economic entities but also the personal responsibility of employees.

21. Several systems were used for exchanging information: the «ASU-state surveillance» (which had national scope); the Dangerous Goods Database of the CIS countries, and an information exchange system among surveillance bodies concerning dangerous products. The Dangerous Goods database of the CIS should be extended to exchange not only among market surveillance authorities but also among ministries of health, especially for sensitive information that should not be further disseminated.

22. The discussion focused on the difficulties of identifying counterfeit products when producers were unwilling to provide samples and in enforcing penalties such as the order to cease production of a particular good.

23. The Market Surveillance Agency of Bosnia and Herzegovina is an independent administrative unit, established by law, directly responsible to the Council of Ministers. It is a young institution still in the phase of capacity building and receiving assistance especially by the EU and the Product Safety Enforcement Forum of Europe (PROSAFE).

24. The agency is responsible, inter alia, for:

(a) Coordinating and harmonizing the activities of the Market Surveillance Systems of Bosnia and Herzegovina;

(b) Ensuring uniform enforcement of the product safety legislation on the territory which is especially difficult because the territory is divided in 10 cantons and 2 entities;

(c) Ensuring uniform procedures for handling the consumer complaints regarding product safety;

(d) Centralized record keeping;

(e) Information to the public;

(f) Cooperation with the EU, its Member States and the World Trade Organization (WTO).

25. A key area of work is currently the transposition of new approach directives in the context of pre-accession. The transposition of the GPSD had already been completed. Transposition of directives on Low Voltage Equipment 73/23/EEC, Machinery 98/37/EC, Electromagnetic Compatibility 89/336/EEC, Lifts 95/16/EC should be completed by end 2009. Transposition of directives on toys, ATEX, PPE, gas appliances, non-weighing instruments, pressure equipment) should be completed in early 2010.

26. As regards dangerous products, inspection authorities are authorised to:

(a) Temporarily ban supply, offer to supply or display of any product that could be dangerous:

(b) Ban placing on the market of any dangerous product;

(c) Order or organize the actual and immediate withdrawal/recall/destruction of any dangerous product already on the market.

27. The Chairperson of the "MARS" Group presented information on a recent EC information campaign regarding the CE marking. The goal of the campaign was to ensure increased involvement from business and consumers and fight counterfeit marks. The problem of counterfeit marks was not limited to the CE mark. Indeed even bar codes were falsified, radio-controlled bar codes were also falsified, and firms were currently using nanotechnology to trace the products throughout their entire lifecycle. However, this could cause an infringement of personal freedom.

III. REVIEW OF THE GENERAL MARKET SURVEILLANCE PROCEDURE AND THE DOCUMENT ON TERMS AND DEFINITIONS

28. The Coordinator of the General Market Surveillance Procedure (GMSP) initiative presented a third version of the GMSP document (see ECE/TRADE/C/WP.6/2009/12). The changes had been made to ensure that the Procedure could be applied internationally. For this reason, several changes had been made to the flow charts and the text. The document now included explanatory text as well, which made it easier to understand.

29. Participants agreed that this version satisfied the concerns that had been expressed during the discussion of the previous version of the GMSP in Stockholm. They also observed that:

(a) A revision of Recommendation L to add the protection clause could be envisaged;

(b) There was a need to further develop this procedure;

(c) Instead of the term “designated body”, the term conformity assessment body could be used to avoid confusion, and instead of the term “standards”, “applicable standards” could be used;

(d) The GMSP should be perhaps renamed “general market surveillance methodology”

30. Adopting the current version as a recommendation of WP.6 is now premature. The priority should be to use the GMSP as a training document, and when it has been applied and tested by MSAs and inspection authorities then it should be developed it into a recommendation.

31. The representative of OIML presented the second draft of the document on “Terms and definitions” (ECE/TRADE/C/WP.6/2009/12). He explained that this was the only comprehensive glossary of market surveillance terms that would be available at an international level. He said that the document was mostly based on World Trade Organization, International Organization for Standardization and EC tools but a few terms not contained in these texts had been added, such as “country”. The reason for this was that to make the terms in the document “international” rather than grounded in a specific national or regional context.

32. In working further on the “Terms and definitions” document, there are two priorities:

(a) To add some additional terms (recall procedures, concept of producer/manufacturers);

(b) To start collecting different national definitions and try to arrive at a common understanding.

33. The Group agreed that further work was necessary before the text could be adopted as a recommendation.

IV. PREPARATION OF THE ANNUAL SESSION AND THE CONFERENCE ON RISK ASSESSMENT AND MANAGEMENT

34. The Secretary of the Working Party summarized the discussions on Market Surveillance that had taken place at the Bureau meeting in Stockholm in May 2009 (see ECE/TRADE/C/WP.6/2009/17 paras 18-21). She then introduced the issues that would be discussed at the forthcoming annual session of the Working Party. That session would be held back to back with an International Conference on Risk Assessment and Management.

35. The Coordinator of the organizing committee of the Conference explained that the event set out to explore the relationship among the relevant stakeholders concerned with risks on the markets and in the workplace. These stakeholders were the regulatory authorities, consumers,

workers and business. The Conference would a high-level event and a number of speakers had already confirmed their participation. The Secretariat had prepared a dedicated website www.unece.org/trade/wp.6/2009/2009_ConferenceRisk.htm which contained all background papers received so far as well as pictures and short biographies of the speakers.

36. The delegation of Belarus had prepared a detailed list of specific issues that they would like to have addressed at the Conference. The questions had been carefully noted and would be relayed to the speakers to ensure that they were properly responded to. However, a single event could not ensure an exhaustive review of the issues related to risks in the context of standardization and regulatory policies. It would therefore be necessary to discuss how to follow up to the Conference.

37. The Chairperson of the Working Party noted that the questions raised by Belarus focused on the key issue of when to regulate and why. The development of European Community (EC) legislation depends mainly on negotiations among different initial positions in member States. Nevertheless, the EC Commission has the power to draw upon scientific evidence and risk analysis and assessment, and the importance placed on these findings is growing.

38. It should be noted that a lot of products on the market are not subject to specific EC legislation. Many of them are subject to national legislation, voluntary standards, or company specifications.

V. CLOSING

39. In closing the meeting, the secretariat invited all participants to the forthcoming annual session of the WP.6 and the Conference. The Chairperson summarized the main conclusions of the meeting as follows.

40. The Advisory Group recommended to the Working Party that:

(a) The General Market Surveillance Procedure should be endorsed as a training document;

(b) The Working Party should begin follow-up on Recommendation M;

(c) A compendium of market surveillance authorities in UNECE member States, setting out their respective areas of competence, should be created, and maintained on the UNECE website.

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