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## Economic Commission for Europe

Committee on Trade

**Working Party on Regulatory Cooperation  
and Standardization Policies session**

**Twenty-fourth session**

Geneva, 24-26 November 2014

Item 9 of the provisional agenda

**Market surveillance**

### **Report of the Advisory Group on Market Surveillance on its activities and its meeting in Belgrade (23-25 April 2014)**

**Note by the Secretariat**

#### *Summary*

The report of the meeting of the “MARS” Group, held in Belgrade, Serbia, from 23 to 25 April 2014, is hereby submitted for adoption by the Working Party.

The main decisions taken – which the Working Party is asked to endorse – were: to continue the development of the general market surveillance initiative, to enhance activities related to cooperation between market surveillance authorities and customs authorities, and to explore the possibility for training of Market Surveillance authorities on issues related to counterfeit goods and product marks.

## **I. Introduction**

1. The 12th MARS-meeting was co-organized by UNECE and by the Ministry of Foreign and Internal Trade and Telecommunications of the Republic of Serbia supported by the IPA 2010 Project “Strengthening of the Serbian System of Market Surveillance” and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) “Open Regional Fund for South East Europe”.

2. The meeting was attended by more than 30 experts from fourteen UNECE member countries representing different organizations and stakeholders.

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3. A full list of participants, as well as presentations made at the meeting, are available at <http://www.unece.org/tradewelcome/areas-of-work/working-party-on-regulatory-cooperation-and-standardization-policies-wp6/sessions/wp6-meetings/wp6-other-events/2014/mars-group-meeting/doc.html>
4. The Assistant Minister, Ministry of Foreign and Internal Trade and Telecommunications of the Republic of Serbia opened the meeting. She emphasized the importance of market surveillance in a well-functioning economy and introduced the ongoing technical assistance project: “Strengthening of the Serbian system of market surveillance for non-food and food products” (see: <http://www.mss-serbia.org/home>) which had significantly enhanced the efficiency of the Serbian market surveillance system and the safety and compliance of products on the market.
5. The Chair of the UNECE Working Party on Regulatory Cooperation and Standardization Policies (WP. 6) briefly introduced the MARS Group achievements to participants. She also outlined her wishes for the future work of the Group. In particular, she hoped to see the MARS Group working more closely with national and regional market surveillance authorities, and to strengthen partnership between the MARS Group and other ongoing initiatives within the WP. 6.
6. The WP.6 Secretary reported on the recent achievements of the Working Party, outlining in particular the results of the last WP. 6 session and developments since then.
7. In the absence of the MARS Group Chairperson, the Deputy President of the Czech Office for Standards, Metrology and Testing reported on the last meeting of the MARS Group (Prague, September 2013).
8. Participants expressed their gratitude to the outgoing Chair of the MARS Group and expressed their wish that she should continue to contribute to the activities of the MARS Group and of the WP. 6.

## **II. Update on the Generic Market Surveillance Procedure**

9. The convener of the UNECE General Market Surveillance Procedure (GMSP) initiative presented a software simulation tool developed to optimize the development and operation of a market surveillance system.
10. The software, which had already been presented at the Prague MARS group meeting of September 2013, was used to simulate the effects of alternative actions by market surveillance authorities (MSAs) on two key parameters: 1) the budget allocated to the testing of samples selected from the market 2) the rate of non-conform products on the market (NCR) that authorities consider acceptable.
11. After products on the market are classified according their risk level – as per European Commission Decision 2010/15/EC – authorities could use the software to minimize the cost of sampling or to obtain an acceptable measurement uncertainty value. An example of a simulated case of a market surveillance action involving low risk household equipment was used to illustrate. The software mapped out the number of items tested against the annual costs of testing under two scenarios: one involving combined in-house and external testing and the other involving only external testing. The amount of equipment on the market (depending on whether the country was small, medium or large) allowed for substantial cost savings. Savings were higher for large countries. However, even for small countries, the combined in-house and external testing has a lower cost if the number of tests is higher than 300.

12. Additionally, the software proved that the precision of the testing is higher when a combination of in-house and external testing is used. In-house testing has a higher measurement error, but it is cheaper. So, more items can be tested for the same budget, which decreases the standard deviation error for the inspection exercise.

13. The main conclusions from the analysis are that:

- MSAs can make substantial savings by choosing an optimal mix of in-house and external testing;
- Staff know-how and good quality in-house test facilities are of key importance to sustain this optimal mix.

14. In the ensuing question and answer session, authorities discussed their experience in conducting in-house testing. Several reported that because of the lower cost of in-house testing, this was a method of choice to quickly determine whether a product required further specialized external testing. One authority remarked that the low quality of in-house testing could prove difficult to uphold in case the economic operator chose to challenge the testing results in court.

### **III. Use of risk assessment in market surveillance actions in the non – food area**

15. The representatives of the GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit), Open Regional Fund for Southeast Europe presented their project “Improving Coordination and Cooperation of Market Surveillance Institutions in South-East Europe”. The project included a component aimed at raising the efficiency and effectiveness of the market surveillance institutions of Albania, Bosnia-Herzegovina, UNMIK-Kosovo, FYR Macedonia, Montenegro and Serbia. They also introduced two ongoing activities: supporting the network of market surveillance institutions and the “Joint Risk Assessment Actions”

- The “Network of Market Surveillance Institutions” enabled joint learning and information exchange, trainings of inspectors, cooperation with customs authorities as well as awareness-raising for consumers and economic operators. The Network also allowed the exchange of annual market surveillance plans, lists of certified laboratories, guidelines and check lists, and information on unsafe and dangerous products that had been identified (along the lines of RAPEX).
- The “Joint Market Surveillance Actions” were based on the EU – PROSAFE methodology and on the EU Commission's risk assessment tool available at: [europa.eu/sanco/rag](http://europa.eu/sanco/rag).

16. These actions involved sampling products that may be non-compliant, assessing them for compliance, and if they were found to be non-compliant, then assessing out how risky they were to the consumer. The assessment was based on: the injury scenario, the probability of the scenario occurring and the severity of harm it would cause.

17. They also presented a project plan to publish a compilation of “standard scenarios” for common non-compliances of similar products so as to promote convergence in the assessment of risks. The experts explained that even when the assessment was the same, market surveillance actions by different countries could differ (for example because of different legal requirements due to differences in the progress of transposition of EU directives).

18. Authorities then discussed how they used risk assessment methodologies in their activities. One of the experts reported that training in risk assessment was needed for the

staff to be able to quickly determine which products needed testing. Another expert said that in some cases risk assessment was less important, because if a product was found not to comply with CE marking regulations, for example, it would be removed from the market even if it was a low-risk product. Risk assessment was instead more important for non-harmonized products and non-regulated products where measures could be imposed based on the “General Product Safety Directive (GPSD).

19. Experts then discussed cooperation between market surveillance authorities and customs in their respective jurisdictions.

#### **IV. Best practice and cooperation in market surveillance**

20. Presentations were made by each of the market surveillance authorities present both from South East Europe and from outside the sub-region.

21. The director of Market Surveillance Agency of Bosnia and Herzegovina (B&H) updated participants on the current status of horizontal and sectorial legislation in the country. The market surveillance system in B&H consists of a Market Surveillance Agency at the state level, which coordinates overall activities concerning product safety, and of the inspection authorities of the Republic of Srpska, Federation of B&H and Brčko District, which carry out inspection controls (on-site control, sampling and taking measures). She presented the Annual Market Surveillance Plan for 2014 and the results measured by number of withdrawn products from the market in the period from 2009 until 2014.

22. She emphasized the public awareness activities conducted by the Agency. These included: notifications of unsafe products on the B&H market on the website of the Agency; the publication of different kinds of brochure for consumers and economic operators; as well as of the annual Bulletin with information about unsafe products, results of market surveillance activities and advice for consumers and economic operators. Several experts present expressed their appreciation for the Bulletin from B&H.

23. The Inspector of the State Market Inspectorate of the FYR of Macedonia also gave an update of legislative developments in his country. He explained that in the FYR of Macedonia there was since 2011 a Coordinative Body for Market Surveillance which ensured coordination among the sectoral inspectorates and with the customs administration. The Coordinative Body was responsible for preparing the national strategy for market surveillance, the bi-annual program for joint controls and the reports of activities to the Government. Also since 2011 a Memorandum for Cooperation between MSAs and the customs administration had enabled trainings and seminars for the members of three chambers of commerce, customs officers, and inspectors as well as the publication of brochures.

24. The Deputy Director of the Inspection Directorate of Montenegro gave an overview of the legal and institutional frameworks that supported market surveillance activities in her country, their respective administrative capacity and mechanisms for cooperation among them. These are: the Memorandum of Understanding between the Market Inspection and the Customs Administration – signed in 2012 – and the upcoming signing of MoU between the Administration for Inspection Affairs and the Customs Administration. She also emphasized the mechanisms for information exchange, including the National System for Rapid Exchange of Information on Dangerous Products and the Regional network for exchange of information. She concluded by showing the results of the market surveillance actions for the past biennium and outlining existing challenges, namely: the need to further harmonize national legislation with the EU acquis and the need for education and specialization of inspectors.

25. The Senior Advisor in the area of market surveillance Ministry of Foreign and Internal Trade and Telecommunications-Market Inspection Sector of the Republic of Serbia introduced the Market Surveillance Strategy of the country from 2010 to 2014 as well as the legal framework, emphasizing the importance of the Law on market Surveillance from 2011 with the provisions regarding: the implementation of MS activities; the cooperation of MSA's and Customs Authority; information exchange and communications with stakeholders; general principles and application of mark of conformity, planning and monitoring the activities and Coordination in the field of Market Surveillance. In 2013 a Product Safety Council had been established. Its main tasks were: to monitor communication and cooperation mechanisms among market surveillance authorities and with the customs authority; to make recommendations for effective implementation of these mechanisms, to consider and give opinions on draft procedures and reports relating to risks of products; to monitor accidents and damage to health and undertake corrective measures. Another important function is to administer the System of Exchange of Information on dangerous products. A new "Management Information System" – for use by both MSAs and Customs Authorities – was under development to record the number of measures for each product group. The Advisor also highlighted the scope and importance of cooperation in the Regional Network and specified all authorities which are included actively in the network.

26. A similar tool existed in Bulgaria under the supervision of the Market Surveillance Council which had a procedure in place for controls on products coming from outside the country with a detailed checklist for critical products, with procedures for warnings, communications, and for undertaking actions.

27. A recent project, funded by the EU, had allowed setting up a system for continuous professional development that had trained more than 400 participants.

28. A representative from the Open Regional Fund for Southeast Europe-Foreign Trade Promotion presented the Project and Network of Market Surveillance Authorities in the SEE.

29. The Team Leader of a project on Quality Infrastructure in the Western Balkans and Turkey Funded by the European Union and EFTA EU/EFTA-funded IPA 2011. It is a multi-beneficiary quality infrastructure project for the Western Balkans and Turkey delivered by the European Committee for Standardization (CEN) and it provides support to quality infrastructure institutions including market surveillance authorities in EU candidate and potential candidate countries. The project had started activities in 2011 and was going to conclude in June 2014.

30. At the start of the project, experts had assessed the effectiveness of the market surveillance systems of beneficiaries in 2011. A template was devised, and populated with the data from the initial assessment. Market surveillance authorities have regularly reported their progress using these templates. The latest progress reports were provided in April 2014 and will be included in the final report of the project which was expected in June 2014. The reports show:

- the extent to which applicable harmonised EU legislation (New Approach Directives, Regulation 765/2008/EC, General Product Safety Directive) is transposed into national legislation and the degree to which it has been implemented;
- the coverage of market surveillance activities;
- the methods used by national authorities for market surveillance (and/or inspection);
- the powers and resources of authorities and handling of non-compliances;

- co-ordination and co-operation between market surveillance authorities;
- information exchange (nationally / internationally);
- future plans with respect to market surveillance.

31. Substantial improvements in market surveillance were made in the reporting period. Relevant legislation has been transposed in most countries, but was not fully implemented. Market surveillance organisational structures have substantially improved: market surveillance strategies and national programmes exist; working methods are defined and determined in a proper manner and legal powers of most authorities appear to be sufficient. National coordination of market surveillance structures could be further improved.

32. Despite these positive trends, weak points remain, including: the lack of human and financial resources, overlapping responsibilities among enforcement 'agencies', less than fully effective information exchange within and across borders, etc. Based on these findings, the project has made the following recommendations:

- To raise awareness by consumers and civil society about quality and safety issues;
- To strengthen market surveillance activities, in the first place, by having a sufficient number of qualified inspectors working within a legal framework that incorporates as many aspects of best practice as possible;
- To enhance accredited testing facilities and enable easier access for market surveillance authorities to perform necessary checks;
- To improve cooperation between all stakeholders (economic operators, consumers, authorities etc.) at the national and regional levels;
- To create a partnership among all market surveillance stakeholders in order to define sustainable long term policy objectives regarding product safety using best practice in policymaking, enforcement and implementation;
- To continue efforts to improve Regional Market Surveillance network and dialogue.

33. The market surveillance coordinator at the Swedish Board for Accreditation and Conformity Assessment (Swedac) presented an overview of the different roles and tasks of her agency. Ongoing international development projects and training programmes with the aim to support countries in their work to achieve an infrastructure for conformity assessment were mentioned.

34. Swedac has a role to coordinate market surveillance on a national level and holds the chairmanship and secretariat of the Market Surveillance Council gathering about 15 market surveillance authorities, the National Board of Trade and Customs. Observers from the Ministry of Foreign Affairs and the Ministry for Justice and business and consumers organizations are also regularly invited. The Market Surveillance Council supervises the national market surveillance plan, while sector specific market surveillance plans are drawn up by the authorities. Several tools for cooperation with Customs were presented, e.g. the permanent forum for customs related issues that meets twice a year, a model for cooperation and a template for planned control operation.

35. In addition, the authority works as a national contact point for horizontal market surveillance issues, represents Sweden in working groups both on a European and international level regarding horizontal market surveillance issues and administrates ICMS.

36. In the framework of the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation, common mandatory requirements for certain products are set (for example for packaging, for products for children and adolescents,

perfumery and food products). A total of 66 products are included in the Unified list of products. Other products are regulated by the national legislation of the Member states.

37. The implementation of state control (surveillance) of compliance with requirements is carried out by control bodies of the Member states according to their competences. Currently the system of market surveillance is being created in the Customs Union, forming common approaches. The draft of the Agreement on Common Principle and Rules of State Control (Surveillance) has been introduced in the CU Member states this year. The main purposes of the agreement are:

- harmonizing Parties' legislation according to common principles and rules of state control (surveillance) of compliance with the Customs Union technical regulations requirements;
- carrying out of state control (surveillance) of compliance with the CU technical regulations requirements according to Parties' legislation;
- informing the CU member states on state control (surveillance) bodies and their competences;
- common principles of state control (surveillance);
- implementing state control (surveillance) through scheduled and unscheduled inspections;
- interaction and information exchange, including identification of dangerous products.

## **VI. Challenges for market surveillance authorities**

38. A market surveillance inspector from the United Kingdom gave a presentation on the challenges for regulatory authorities in his country, which included additional regulatory requirements, including new provisions mandating that regulators should:

- Carry out their activities in a way that supports the growth and compliance of those they regulate.
- Provide simple and straightforward ways to engage with those they regulate and hear their views.
- Base their regulatory activities on an assessment of risks which they should be prepared to share along with information on compliance.
- Ensure that their approach to regulatory activities is transparent.

39. The biggest challenge currently faced by regulators concerns funding. They increasingly have to do more with less. Other current challenges mentioned included: regulators moving from output to outcome measures of performance, having a flexible sanctioning regime and improving coordination and cooperation with other government agencies. An example of how this is achieved in the UK was explained using a 'Primary Regulatory Authority' scheme involving a single inspection authority and inspector acting as a central point of contact for an economic operator for all regulatory matters.

40. Another important new regulatory development was presented by the Senior Adviser of the Swedish National Board of Trade. The proposed Transatlantic Trade and Investment Partnership (TTIP) has carried out a study on Regulatory Co-operation and Technical Barriers to Trade that had been published in April 2014. The study covers an analysis of both horizontal and sector specific matters related to creating greater regulatory convergence between the EU and the U.S. through TTIP (see: <http://www.kommers.se/In->

English/News-archive/Technical-Barriers-to-Trade-core-issue-in-the-Transatlantic-Trade-and-Investment-Partnership-TTIP).

41. Another key challenge for MSAs comes from counterfeit products. The convener of the GMSP initiative further provided a presentation on “Hidden costs of counterfeited products”. The presentation provided some practical cases of counterfeit products and their effects on the market. For example:

- An unsafe, counterfeit toaster or deep fat fryer can set fire in a building;
- An unsafe phone charger can cause electrocution;
- Counterfeit plug-in cards resulted in a fire incident but also caused economic loss to the law-abiding manufacturer.

42. It may be concluded that counterfeited products not only may be dangerous to users, not complying to safety standards but they may also induce economic loss to manufacturers whose products have been counterfeited and may even put the latter out of business.

43. The representative of the Danish Patent and Trademark Office explained the threat of counterfeit products to society and presented tools that are available to assist market surveillance authorities fight the counterfeit trade. This presentation highlighted the impact of counterfeit products on the global economy, the involvement of organized crime in the counterfeit trade and the potential threat of counterfeit goods to consumer health. The presentation also identified tools that can assist market surveillance teams fight the counterfeit trade and emphasized the need for transnational cooperation among authorities.

## **VII. Any other business**

44. The Chairperson of the UNECE Working Party 6 encouraged participants to reflect on possible topics for discussion at the next Working Party Session. Topics that experts proposed included:

- Cooperation between Customs and MSAs;
- Market surveillance for electronic commerce.

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