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Advisory Group on Market Surveillance

Report of activities under the Advisory Group on Market Surveillance 2022–2023

Submitted by the subgroup Chair*

Summary

The Advisory Group on Market Surveillance (MARS) was established under the Working Party on Regulatory Cooperation and Standardization Policies (WP.6) in 2003. This document reports on the progress in the work of MARS for the period 2022–2023.

Mandate

At its thirty-second session, the Working Party on Regulatory Cooperation and Standardization Policies (WP.6) mandated the secretariat and MARS to report on an annual basis on its activities (ECE/CTCS/WP.6/2022/2, paragraph 17, decision 3).

Proposed decision

“The Working Party adopts the *Report of activities under the Advisory Group on Market Surveillance (MARS) 2022–2023*. It encourages member States to utilize the network of market surveillance agencies within MARS to exchange on best practices and identify emerging trends to contribute to reducing technical barriers to trade. It requests MARS to continue to report on an annual basis on its activities.”

* This document is submitted under the responsibility of the subgroup Chair and has not been subject to a substantive clearance procedure through the Economic Cooperation and Trade Division Director. This document has not been edited by a professional editor.

I. Introduction

1. Market surveillance and the chain of control of products which enter the market are pillars of quality infrastructure. Since its establishment in 2003, MARS brings together the players involved (public authorities, manufacturers, retailers, importers, consumers, etc.) to increase transparency and attract attention to the role and responsibilities of public authorities in the chain of control. It has developed comprehensive guidance and serves as a forum for the development of best practice and of recommendation guidelines.
2. During the twenty-first annual meeting of MARS which took place during the second WP.6 Forum on 26 May 2023, Mr. Jan Deconinck of Belgium was appointed chair of MARS. Ms. Lucy Salt of New Zealand was appointed vice-chair and Mr. Ivan Hendriks of Belgium was appointed vice-chair. The agenda, as well as presentations made at the meeting, are available online.¹ The annual meeting was attended by 28 experts, 14 were women.

II. Report on progress of activities 2022–2023

3. MARS has made good progress on the activities that were defined in the WP.6 Programme of work for 2023 (ECE/CTCS/WP.6/2022/12).
 - In support of paragraph 12(a), the project on revising ECE *Recommendation M on Use of Market Surveillance Infrastructure as a Complementary Means to Protect Consumers and Users against Counterfeit Goods* was initiated. The project envisages to update the recommendation in order to align it with the current General Assembly resolution on consumer protection and other relevant United Nations documents. The project also plans to use more assertive language and develop a brief guideline for consumer protection aligning with the Annex of the General Assembly resolution 70/186 on consumer protection (pages 4 to 18). A webinar was held on February 21 on the role of market surveillance in combatting counterfeit products;² the summary report of this webinar is available in document ECE/CTCS/WP.6/2023/4. This webinar was attended by 93 experts, 42 were women.
 - In support of paragraph 12(b), the MARS is conducting background research for the revision of *Recommendation N on Good Market Surveillance Policies and Practices*.
 - In support of paragraph 12(c) and 12(d), the MARS continued exchanges of experience in the area of market surveillance in order to identify and bring forward best practices in this field, while further developing the network of global and regional market surveillance entities. During the 26 May 2023 annual meeting, several agencies shared their practices which are presented below.
 - In support of paragraph 12(f), the *Market Surveillance Glossary* was finalized at the thirty-second annual session of WP.6, then formatted and published in early 2023 (ECE/TRADE/389/Rev.1).
 - In support of paragraph 10(c), the project on the revision of *Recommendation K on Metrological Assurance of Conformity Assessment and Testing* (ECE/CTCS/WP.6/2023/5) was completed. This recommendation establishes the basis of metrological assurance of conformity assessment and testing and its optimum use in international exchanges. The project team developed a guideline in order to help implementers comply with the recommended practices.

¹ <https://unece.org/info/Trade/WP.6-Meetings/events/375804>

² <https://unece.org/info/Trade/WP.6-Meetings/events/373523>

III. Impact and implementation

A. Return on experiences / best practices

4. The Estonian Consumer Protection and Technical Regulation Authority (CPTRA), Head of Product Safety Division shared information on their cooperation with customs in online market surveillance activities. The Estonian Tax and Customs Board (TCB) is involved in elaborating work plans and risk assessment activities at the border. It is also a member of the national market surveillance council that consists of representatives of all the authorities involved in market surveillance and the ministries that govern them. The CPTRA is involved in preparing annual risk profiles for the TCB. Also, in cooperation with the TCB, CPTRA imposes additional restrictions to the import / export of certain products and / or to specific companies. The CPTRA follows the European Union (EU) regulations on market surveillance authority, namely the four-day period for replying to all TCB requests. In order to resolve problems with declared goods, further direct communication between the TCB and the CPTRA takes place. The CPTRA also uses, in its daily work, a web-crawler tool called “SAFE” for searching dangerous products across the internet. This tool has been developed by the Danish Security Technology Authority. It is an artificial intelligence (AI) tool that is based on image and text recognition. Using relevant searches and images uploaded in EU databases for dangerous or deficient products, the SAFE scans the internet for identical sentences, words and images of products and similar types of patterns. The SAFE crawls the internet on a weekly basis for notifications from each, the Safety Gate, the European Rapid Alert System for Dangerous Products (RAPEX), and the Information and Communication System on Market Surveillance (ICSMS). The SAFE generates a list of relevant results, which participating authorities can access through their interfaces to the SAFE. The countries that participate in the SAFE are Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Romania, Slovakia and Spain.

5. The Belgium Directorate-General on Quality and Safety, Head of Metrology Department informed the meeting on how the main goals of the EU market surveillance – creating a level playing field for free circulation of safe products and goods – are implemented in Belgium. In the European legal framework, the producers are obliged to place only safe products on the market. Within the harmonized sectors (of products that are subject to common EU rules across Europe),³ the EU directive establishes only the essential minimum requirements with which the products must comply. Only products conforming to these minimum requirements must be allowed by the various Member States on their respective markets. He also explained the conformity assessment obligations of the manufacturers and their use of harmonized standards in order for the products to be presumed conformant to these essential requirements. Standards are not mandatory and must offer a guarantee of quality with regards to the essential requirements of the directives / regulations. He presented the conformity assessment flow with different test reports, certificates, declarations of conformity and other documents and processes that this involves.

6. The Swedish Board for Accreditation and Conformity Assessment (SWEDAC) explained their mission. It acts as the regulatory authority and the supervisory authority for legal metrology and precious metals and coordinated market surveillance activities in Sweden. The Market Surveillance Council (MSC) of Sweden consists of about seventeen organizations and functions as a forum for cooperation between customs and market surveillance agencies. Among other tasks, it has a working group on e-commerce, intelligence and market analysis. It also plans joint control operations and prioritizes an increase in operational cooperation. The e-commerce group of the MSC is responsible for cooperation between the various market surveillance agencies and promotes best practice in online control. It also organizes joint market surveillance activities, different communication campaigns and meetings with the Swedish marketplaces. Coordination

³ https://single-market-economy.ec.europa.eu/single-market/goods/free-movement-sectors_en

and working methods are described in the European Commission notice on the market surveillance of products sold online⁴ providing overall guidance and introducing new approaches to market surveillance practices in light of AI tools and automated tools for indexing web content for search results.

7. An expert from the European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) Market Surveillance Division presented the market surveillance of e-commerce activities in the EU. He explained that the EU Regulation 1020/2019 defines the economic operator in the EU as the interlocutor for Member States' authorities vis-à-vis market surveillance. This regulation applies to nineteen EU laws on products, including Directives 2014/31 (on new, non-automatic weighing instruments when they are placed on the market) and 2014/32 (on new measuring instruments when they are placed on the market). The economic operator can include any manufacturer, importer, authorized representative or fulfilment service provider when placing a product on the EU market (including the online sale of products when the target end-user is in the EU). The economic operator must provide information (declaration of conformity, technical documentation) when requested by the market surveillance authorities. During this process the economic operator has to cooperate with the authorities and its identity has to be indicated either on the product or on an accompanying document when not possible to print on the product itself. Offering any product for sale to an EU end-user is not allowed until an importer, authorized representative or fulfilment service provider in the EU is arranged for.

B. Implementations

8. During the conference on "Market surveillance role in combatting counterfeit products" on 21 February 2023, the revision of *Recommendation M* was discussed and examples of current implementation of this recommendation were provided. Experts from Denmark, Serbia and the United Kingdom of Great Britain and Northern Ireland all underlined the cooperation and coordination of market surveillance activities on the national level between market surveillance, customs and other authorities concerned. Market surveillance authorities assist to identify suspected counterfeit goods made available on the domestic market (in cooperation with other relevant authorities) during market surveillance activities, including, where appropriate, resorting to laboratories to test the goods. The full report of these implementations is available in the document ECE/CTCS/WP.6/2023/4.

IV. Pertinence of the topic today

9. During the 21 February 2023 conference, the World Trade Organization (WTO) reported on the pertinence of *Recommendation M*. It reminded that *Recommendation M* is complementing the WTO Agreements on Trade Facilitation (TFA), on Technical Barriers of Trade (TBT) and on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This recommendation can help contribute to fight against illicit trade especially in case its further revision would address the following:

- Fostering greater coordination within and among members and building members' capacities to fight illicit trade
- Harnessing e-commerce opportunities and tools to support licit trade and fight against illicit trade
- Ensuring supply chain integrity in times of crisis
- Using opportunities for technical assistance, coordination at the international and regional levels

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2017:250:FULL>

10. E-commerce remains a topic of importance for market surveillance because with the growth of online sales of products, the consumer needs assurances against illegal and fraudulent products offerings. Market surveillance is crucial for the smooth functioning of the online marketplace. It helps protect consumers and workers against unsafe products and general non-compliance and helps protect businesses from unfair competition by those who ignore the rules.

V. Future directions

11. The MARS suggests continuing in the same direction, with all of the activities in the current Programme of work 2023. The main focus for the coming period will be to continue exchanges of experience in the area of market surveillance in order to identify and bring forward best practices in this field while further developing the network of global and regional market surveillance entities. The MARS plans to finalize the *Recommendation M* during this period and launch the revision of *Recommendation N*, then subsequently revise the *Market Surveillance Model Initiative Guide to the Use of the General Market Surveillance Procedures*.
