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**Market Surveillance in the UNECE Region**



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## *PREFACE*

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This publication has been developed under the auspices of the United Nations Economic Commission for Europe (UNECE) Working Part on Regulatory Cooperation and Standardization Policies, an intergovernmental group of experts responsible for advice and practical recommendations to Governments on good practices/approaches in eliminating technical obstacles to trade, and on regulatory and standardization cooperation. It draws primarily on the deliberations of the International Forum on Market Surveillance, which was held in Geneva in October 2002.

The Forum was organized at the request of a number of countries in transition including countries of the Commonwealth of Independent States (CIS).

The restructuring of the regulatory and standardization framework in the countries in transition during the last decade has brought to light a major policy issue, this being how to ensure that legitimate requirements of governments (such as safety, health, environment) are met with the least possible restrictive consequences for trade.

The liberalization of trade and the transfer of focus in governmental controls from production phase and pre-market stage (e.g. by means of certification) to the post-market stage put a special emphasis on market surveillance. At the same time, as was raised at the Forum, the organization of market surveillance and related procedures vary significantly from country to country. In order to create a "level playing field" for business operators and other stakeholders, there is a need for international cooperation on this subject.

During the last decade, the UNECE region has seen many far-reaching changes – and 2004 has brought the most significant one: EU enlargement by ten new member countries. There are many open questions regarding the challenges, opportunities and implications that this historical enlargement entails for the entire region, particularly for countries of Eastern Europe, the Caucasus, Central Asia and the Western Balkans.

Ensuring safety of goods and services available on national markets (and particularly, imported goods and services), confidence building, coordinated responses to the protection of consumers/users, “educating” manufacturers/consumers and organizing a permanent dialogue with them were among the many concerns expressed by participants in the International Forum on Market Surveillance. These issues are now particularly important in view of EU enlargement and future economic cooperation and integration in a “wider Europe”.

The UNECE experience in market surveillance shows that common legislative and regulatory approaches are indispensable for further enhancing trade and economic cooperation within the UNECE region. The UNECE can offer help in contributing to this process by developing recommendations and regulatory instruments using its existing experience and expertise.

The UNECE acknowledges with thanks the contributions of speakers at the Forum whose contributions are summarized in this publication and of all delegates who took part in the Forum and in the follow-up meetings of the new UNECE Advisory Group on Market Surveillance (“MARS” Group) established at the recommendation of the Forum participants. The “MARS” Group is currently working on various issues of concern to governments with a view to providing guidelines to stakeholders in market surveillance. The latest meeting of the “MARS” Group and the workshop organized by it were held in Slovakia in April 2004.

We hope that this publication will be of interest to market surveillance authorities, companies and consumer organizations in the UNECE region and will contribute to creating a level playing field for business operators in this area.



Brigita Schmögnerová  
Executive Secretary  
United Nations Economic Commission  
for Europe (UNECE)



Christer Arvius  
Chairman  
UNECE Working Party on  
Regulatory Cooperation and  
Standardization Policies

The purpose of this series of trade and investment guides is to assist economies in transition, as well as economic actors in other countries, in becoming familiar with best practices in the areas of trade and investment and related legal and commercial practices and, thus, to contribute to the elimination of legal, administrative and technical barriers to trade and investment. The guides are developed under the aegis of the United Nations Economic Commission for Europe's Committee for Trade, Industry and Enterprise Development and its subsidiary bodies.

The present guide was prepared by the UNECE secretariat with substantial contributions from Ms. Eleanor Loukass and Mr. Xin Mi.

This is the eighth guide in the series. The preceding titles were:

1. *Trade Finance in Transition Economies: Practical Ways to Support Exports and Imports*
2. *Standards and Regulations in International Trade*
3. *Investment Promotion in Central and Eastern Europe and the CIS*
4. *The Polish Experience of Transition: Accomplishments and Problems*
5. *Eliminating Obstacles to Efficient Trade Finance in Transition Economies: Practical Aspects*
6. *Services in Transition Economies*
7. *Trade Finance for Small and Medium-sized Enterprises in CIS Countries*

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*Mr. D. Podhorsky, Chairman, UNECE Advisory Group on Market  
Surveillance ("MARS" Group)*

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*Market surveillance in the UNECE region*

**INTERNATIONAL FORUM ON  
MARKET SURVEILLANCE  
Summary of General Discussion**



***International Forum on Market Surveillance - Summary of General Discussion***

*Mr. Serguei Kouzmine, Secretary to the Working Party on Regulatory Cooperation and Standardization Policies, United Nations Economic Commission for Europe*

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The International Forum on Market Surveillance was organized in conjunction with the annual session of the UNECE Working Party on Regulatory Cooperation and Standardization Policies of the United Nations Economic Commission for Europe (UNECE). The Forum constituted part of UNECE activities aimed at pursuing economic and trade cooperation in the UNECE region through the elimination of technical obstacles to trade and the provision of assistance and advice to countries in transition on their market transformation reforms.

It was organized in response to requests from several countries (including from some CIS States and their regional umbrella standardization organization, the CIS Interstate Council on Standardization, Metrology and Certification) to provide an information exchange on market surveillance issues. Similar interest had also been expressed by the eastern European countries that participated in the UNECE Workshop on Standardization and Conformity Assessment Matters in Transition Economies, held in Bratislava in December 2001.

The main purpose of the Forum was to present national experiences with market surveillance systems and practices with a view to ensuring the fulfilment of legitimate objectives such as the protection of human health and safety, animal and plant life and health, and the environment, while at the same time avoiding the emergence of technical obstacles to trade. In addition to general conceptual and theoretical issues, the Forum analysed market surveillance procedures and practices that public authorities use in concrete sectors. At the proposal of delegations, three sectors or products were discussed in detail: electrical household appliances, machinery (for private and professional use) and cosmetics.

Taking part in the discussions were representatives of regulatory and market surveillance authorities, international, regional and national bodies engaged in standardization and conformity assessment activities, consumers and business associations, private companies from western, central and eastern Europe, CIS States and North America. discussions.

The Forum was opened by Mr. Paolo Garonna, Deputy Executive Secretary of UNECE. He informed delegates of UNECE activities in the development of international standards, guidelines and recommendations with a view to facilitating and fostering cooperation and trade in the UNECE region.

The importance of a continued dialogue towards achieving regulatory convergence in the area of conformity assessment procedures (including market surveillance) was stressed by Mr. Christer Arvius, Chairman of the Working Party on Regulatory Cooperation and Standardization Policies.

Discussions were structured so as to allow both policy makers and “practitioners” from specific sectors to examine ways to improve the general framework for market surveillance on national and regional levels and at the same time to examine concrete problems faced by inspectors in their work with particular products or groups of goods.

The first session was devoted to global issues, including an overview of the concept of market surveillance and its general practices, with a view to clarifying the differences between conformity assessment procedures (pre-market control) and market surveillance activities and to discussing the respective roles and functions of market surveillance authorities, conformity assessment bodies and consumer organizations.

Background papers for this session were submitted: on national legal and institutional frameworks by the United States and Croatia (TRADE/WP.6/2002/2/Add.2 and Add.7 respectively); on the general concept of market surveillance (TRADE/WP.6/2002/2/Add.6) and on the views of industry (TRADE/WP.6/2002/2/Add.5).

At the first session the following issues were considered:

- Conceptual and specific features of market surveillance;
- Vision of the market surveillance system in Russia and its reform;
- Experience with market surveillance in the European Union, and national experiences in Finland and Germany;

- Market control approaches used in the United States (role of the United States Consumer Product Safety Commission);
- Views and concerns of industry and consumers regarding market surveillance.

The debate showed a number of different approaches to the concept of market surveillance, its scope, legal and institutional framework and organization and its implementation, which demonstrated the importance of interaction between all players concerned, including public authorities, manufacturers, retailers, importers and consumers/users.

Most delegations agreed that market surveillance should include all controls over a product from the moment that product is placed on the market to the time it reaches the consumer or user.

Significant discussions took place on the concept and scope of market surveillance and on what the major tasks of public authorities should be in this area. In particular, the question was raised as to whether quality issues should form a part of market control.

Experts from western countries were strongly in favour of market surveillance concentrating on safety matters, leaving quality to consumers. A number of delegates from transition economies drew attention to the seriousness of the problem of product quality on their markets, and pointed out that quality was often linked to safety requirements. In the CIS region substandard goods still constitute a serious and unsolved problem for consumers (data was provided showing that, in Russia, in certain sectors from 20 to 40 % of inspected goods were non-compliant for various reasons). The weakness of consumer organizations in these countries obliges market surveillance bodies to consider quality matters as one of their tasks in the protection of consumers/users.

Many experts pointed out that an efficient market surveillance system should be based not only on strong public control authorities but also on a system of consumer associations and manufacturer associations. A representative of a German consumer organization said that their activity was partially supported with subsidies from the public budget, which showed that the Government supports work in the field of consumer protection. The Government provides this support because

it is aware that an effectively functioning system of consumer protection is an essential and integral part of the market economy, and that effective consumer protection is not feasible without strong and independent consumer non-governmental organizations. The same or similar situations prevail throughout all the Member States of the European Union.

There was a common interest in having a permanent dialogue between market surveillance entities and consumers/users and manufacturers. A number of participants emphasized the importance of the role of Governments in this, as well as in “educating” not only consumers but also manufacturers.

Representatives of the private sector drew attention to the hindrances that excessive market surveillance controls can pose for economic operators. At the same they agreed that, in principle, controls on the market are more “business friendly” than pre-market controls (certification).

Businesses suggested that market surveillance procedures of companies should be tailored on the basis of the proportionality-of-risks principle and thus could be different for large corporations with well-established safety management systems and for small companies, which often are not aware of regulatory requirements. Market surveillance should also contribute to fair competition by establishing rules of play and by controlling economic operators that do not respect them (who, for example, put substandard goods on the market).

A distinction should, therefore, be drawn between manufacturers who were not aware of specific market surveillance requirements and those deliberately placing seriously non-compliant products on the market.

National presentations showed that the institutional framework for market surveillance differs from country to country. Examples of a decentralized system with emphasis on local authorities and municipalities showed that such an approach seems to provide for more flexibility. But, at the same time, a concern was raised about the difficulty of coordinating the activities of various authorities.



Special emphasis was devoted to sectoral approaches, so as to exchange views on experiences with different market surveillance systems and practices. Delegates repeatedly drew attention to the importance of identifying good practices to be followed in market surveillance activities.

In the session devoted to “Sectoral Approaches”, experiences in the areas of electrical goods, machinery and cosmetics were presented. During the debate on electrical goods, speakers presented the work experience of market surveillance agencies in Denmark and Russia. The position of CENELEC (European Committee for Electrotechnical Standardization) was also presented.

During the debate it was stated that electrical goods constituted one of the major areas of concern for all countries in the UNECE region and that, in spite of the activities of market surveillance bodies, State controllers continued to find on the market a number of goods that do not meet mandatory requirements. The presentation by Russia highlighted a particularly serious situation in this respect.

Referring to the market surveillance work in Denmark and to the responsibilities of the relevant body (in particular to the “proportionality of risks” principle), it was noted that to prohibit a product from entering the market it must be proven not only to be non-compliant with standards but also to be dangerous.

A big problem for market control activities in the countries of the former Soviet Union was the number of unorganized sellers and of flea markets where consumers could buy products at lower prices. At the same time, the largest number of non-compliant and dangerous goods came from these markets. An additional problem for market inspectors was to find the manufacturer or seller who put the non-compliant product on the market. These are often either not properly registered or represented by fake, non-existent companies. This issue went beyond the competences of market surveillance bodies and showed the importance of having a proper legal framework in a country, including product liability laws and efficient instruments for enforcing them.

Similar problems were being experienced in other transition economies. For instance, the issue of traceability of electrical equipment by market surveillance authorities was raised. There was a

general concern that equipment found to be non-compliant could not be traced to the manufacturer in order to ensure corrective actions, and ultimately its removal from the market place.

Representatives of industry took an active part in the discussion and, particularly, from from EICTA (European Information and Communications Technology Industry Association), which brings together 22 national ICT associations from 16 European countries and 31 large ICT corporations with major operations in Europe.

The position of EICTA's members was that the New Approach Directives should be consistent in respect of traceability for market surveillance. It means that the definition of who has the responsibility for non-conforming products should be that used in the "New Approach" guide. This states that where a manufacturer is not established in the Community and has no authorized representative in the Community the responsibility is placed on the importer, the person responsible for placing the equipment on the market.

With respect to market controls it means that, in order to trace the original manufacturer, the person who places the product on the European market must, on request, identify to the Surveillance Authority the company, manufacturer or trader from which they obtained the product, if they are not the original manufacturers.

With these provisions the traceability of products should be ensured by the authorities and take account of evolving market needs.

Delegations also discussed how standardizers or regulators could contribute to making market controls efficient and at the same time the least restrictive as possible for economic operators.. During discussions on conformity assessment in the electro-technical sector CENELEC presented its position on market surveillance issues. It noted the importance of establishing an adequate market surveillance (including cross-border) network. The wider use of CENELEC standards as a basis for assessment conformity and safety of goods requires the establishing of a fast-track infrastructure to interpret CENELEC standards by market surveillance authorities, as well as the need for defining competence standards for bodies engaged in market surveillance in the electro-technical field.

With regard to the machinery sector (discussions concentrated on appliances for both domestic and professional use), delegates from Germany, Slovakia and Turkey presented case studies. The position of CEN on the use of harmonized standards in market surveillance was also highlighted.

Background papers on machinery (TRADE/WP.6/2002/2/Add.4) provided information on the use of harmonized standards in this sector in the EU and in France (TRADE/WP.6/2002/INFORMAL/1).

During discussions, the importance of transboundary cooperation (for example through the RAPEX and TRAPEX networks) was stressed. The delegation of Slovakia, for instance, noted that their market surveillance bodies repeatedly found on the market dangerous products with identical design and type but bearing different names and labelling.

Market surveillance agencies should, therefore, use a wide range of instruments and approaches - from regulatory to consultative - depending on each particular case of non-compliance. It was also suggested that public authorities should be particularly strict and not tolerate cases of deliberate placing on the market of non-compliant goods.

The paper by France on machinery drew attention to the existing procedure when a manufacturer could withdraw a non-conforming product from the market and in this case no notification either to the European Commission or to other EU Member States is made. The drawback here is that non-conforming goods shipped earlier to other States could appear on the market.

It was also noted that in 1999 a series of visits had been organized by the EC to check how five "New Approach" directives were implemented in the Member States. The Commission noted that only a minority of States conducted market surveillance activities on a regular basis to control the practical implementation of the requirements of such directives. Further cooperation on this at an EU level was therefore important.

Industry representatives spoke about an interest from serious marker players in having transparent and fair "rules of play" and noted that in some cases weak market control could in effect "stimulate" the

appearance of non-compliant products on certain markets if dishonest manufacturers know that responsible market surveillance bodies have no financial means or technical competence to carry out necessary controls.

Particular emphasis was placed on the need to enhance the market surveillance competence of customs authorities in order to strengthen their capacity to detect severely non-compliant goods and to prevent the entry of such products at borders of neighbouring countries.

Discussions on cosmetics were based on presentations by experts from France, the Czech Republic and the Republic of Moldova. Business associations from this sector also took part in the debate. The background papers (TRADE/WP.6/2002/2/Add.1) described the experience of Czech and French (TRADE/WP.6/2002/INFORMAL/2) market surveillance authorities in this area.

The French paper addressed the issues of: the definition of a “cosmetic product”, the requirements to be met to put it on the market, and follow-up controls.

Discussions showed that specific country conditions could result in additional requirements for market surveillance bodies and for manufacturers to adapt their goods to particular markets. For example, information submitted by the CIS delegates on labelling issues for cosmetics (expiry date, etc.) seemed to justify the importance of further cooperation between public authorities and manufactures in the protection of consumers against misleading or fraudulent claims made by dishonest economic operators.

Thus, one of the problem areas for countries in the CIS region was the absence of “expiry” or “best before” dates on many cosmetic products and related potential hazards for the consumer due to the quality degradation of imported cosmetics after a certain time (inter alia damaging the reputation of manufacturers) .

The delegation of the Czech Republic talked about a positive experience of cooperation between their public health authorities and manufacturers (for example, with COLIPA- the European Cosmetic Toiletry and Household Chemistry Association).

The issue of cooperation between public agencies engaged in safety and other types of controls (organized by geographical or sectoral principle) on the market, including customs both on a national level and between countries, was frequently raised during the Forum. The special session on information exchange and cooperation provided an opportunity for in-depth discussions of these issues based on presentations on the experience of market surveillance authorities working with the information systems RAPEX and TRAPEX (used in the EU; respectively for EU Member States and EU acceding countries). Also introduced was a new Internet-based information system on product safety (a joint project of industry and government).

During the presentations it was recalled that existing networks on product safety include PROSAFE (Product Safety Forum Europe), ICPHSO (International Consumer Product Health and Safety Organization), RAPEX (EU's Rapid Alert Information system on Dangerous Products).

During the debate it was stressed that market surveillance should not be considered outside the general framework for conformity assessment schemes. The importance of regional initiatives in trade facilitation was mentioned, for example, through EOTC (European Organisation for Conformity Assessment), which provides a focal point for conformity assessment activities and services ranging from the registration of mutual recognition agreements to information, advisory, educational and training services.

There was general agreement among delegates that a wider exchange of information on dangerous and non-compliant goods between public authorities in the European region through existing or new networks would be beneficial for relevant market surveillance bodies and would contribute to higher levels of consumer/user safety and protection.

A number of questions were raised on TRAPEX as the sole, institutionalized regional scheme involving countries in transition. While praising the efficiency of the RAPEX system, it was noted that it lacked clear decision-making tools to assess risks (a matter that is now being addressed by the EC).

Participants were also presented with a new Internet-based information and communication system (ICSMS) that combines public information (on faulty products and voluntary recalls) and restricted information (product information, test results, measures taken) regarding product safety. The ICSMS project is the result of cooperation between Belgium, Sweden and Germany, and was recently joined by Austria and Luxembourg. It is supported by the EC and about 70 European companies and industry associations.

The representatives of business associations stressed the importance of exercising extreme caution and confidentiality in treating any information received by inspectorates from manufacturers (in particular through regional information schemes) and expressed their interest in cooperating with public authorities on issues of establishing common data bases and networking.

The final session was devoted to the question of how to protect consumers from dangerous goods without building unnecessary obstacles to trade through market controls, on regulatory dimensions of national market surveillance systems and the constraints they might place on manufacturers. Delegates decided that further work will be required to address a number of issues of concern that were raised during the Forum (the list is reproduced in the annex to this chapter).

The results of the Forum were considered by the Working Party at its plenary session and delegations agreed that identified, unsolved issues of concern to UNECE member Governments in this area would require further attention. It was decided to establish an ad hoc group of experts to advise Governments on market surveillance matters. The first meeting of the new Group was held in Slovakia in September 2003 (see chapter 5).

## ***PARTICIPANTS IN THE FORUM***

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The following countries were represented: Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, and Yugoslavia. The Commission of the European Communities was also represented.

The following United Nations bodies and specialized agencies participated: the United Nations Conference on Trade and Development (UNCTAD), the International Trade Centre (ITC) and the United Nations Industrial Development Organization (UNIDO).

The following intergovernmental organizations also attended: the European Committee for Electrotechnical Standardization (CENELEC), the CIS Interstate Council for Standardization Certification and Metrology, the European Free Trade Association (EFTA) and the International Organization of Legal Metrology (OIML).

The following non-governmental organizations participated: the European Organization for Testing and Certification (EOTC), the International Accreditation Forum (IAF) and the International Organization for Standardization (ISO).

A significant interest in the Forum's discussions was demonstrated by private-sector companies from western and eastern Europe, and associations, such as the Association of Perfumery, Cosmetics and Household Chemistry Manufacturers (APCoHM) (Russia), the European Cosmetic Toiletry and Perfumery Association (COLIPA), the Committee on Sustainable Development and Ecology of the Russian Federation, the Consumer Foundation "Stiftung Warentest" (Germany), the Industry Contributors Forum (ICF), the Industry Cooperation on Standardization and Conformity Assessment (ICSA), the International Federation of Standards Users (IFAN), the Liaison Group of the European Mechanical, Electrical, Electronic and Metalworking

Industries (ORGALIME), the Zhytomyr Chamber of Commerce and Industry (Ukraine), the German Machinery and Plant Manufacturers' Association (VDMA) and the European Industry Association on Information Systems, Communication Technologies and Consumer Electronics (EICTA).



***ISSUES OF CONCERN BROUGHT FORWARD BY PARTICIPANTS***

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1. Market surveillance is important for the protection of human health, safety and other legitimate objectives. Since different approaches to the concept and its implementation are pursued within the UNECE region, communication is seen as indispensable between all players, including public authorities, economic operators, consumers and users;
2. To organize efficient systems of market surveillance the following “pillars” are needed on the national level: a general legal and institutional framework (including, at least, laws on safety of products and on product liability, as well as the means to demonstrate compliance and tools of enforcement) and technical regulations for products (limited to legitimate objectives) to be observed by manufacturers/suppliers;
3. Whenever feasible, public authorities should opt for the least possible restrictive forms of market surveillance on the basis of proportionality of risks, while at the same time taking into consideration the forms of compliance specified in legislation as well as economic and other conditions prevailing in a particular country;
4. Efforts should be made to ensure consumer or user confidence regarding the safety of products and other legitimate objectives specified in legislation;
5. Efforts should be made to explore ways to raise awareness and give greater visibility to market surveillance activities among all relevant players, including manufacturers (and in particular, SMEs), suppliers and consumers. Public authorities should give particular attention to communicating with the aforementioned actors to take pro-active measures, including visits, in order to prevent cases of non-compliance due to lack of awareness of applicable regulatory requirements for products to be placed on the market;
6. Efficient and transparent national market surveillance procedures should be developed and possible shortcomings should be addressed with regard to the organisation, the resource basis and staffing of

current market surveillance structures and procedures (for example, to see if they are adequate with regard to new technologies). Whenever necessary, reforms of the organisational structures including the issue of adequate staff training, should be initiated;

7. Communication and information exchange should be enhanced with regard to recalled products on the national level to avoid unsafe products circulating on the international level. This will also contribute to an efficient allocation of the resources needed for surveillance in partner countries;
8. Contact points within the UNECE region should be established with a view to facilitating the exchange of information on market surveillance measures, taking into account existing domestic laws on commercial confidentiality;
9. The issue of the competence of customs authorities in market surveillance should be addressed and cooperation on the national and the transnational level should be enhanced between customs and other public authorities to strengthen their role and capacity in detecting severely non-compliant products or services and in preventing the entry of such products at borders of partner countries;
10. The feasibility of preparing a list of competent market surveillance authorities within the UNECE region (starting, for example, with those responsible for the sectors of electrical household equipment, machinery and cosmetics) should be explored;
11. Cooperation and coordination between the different market surveillance authorities needs to be enhanced to simplify the traceability of products and improve the exchange of information both through existing channels and through the development of closer and faster informal networks (preferably linked into one global network). Possibilities should be explored for coordinating existing databases at a national level into central registries of unsafe/severely non-compliant products or services at the regional or international level;
12. The issue of products with CE marking (but non-compliant with EU legislation) placed by manufacturers from the EU on markets of third countries should be addressed;
13. Public authorities should pay attention to the need for appropriate

actions against manufacturers and suppliers deliberately placing severely non-compliant products on the market;

14. Further consideration should be given to assisting transition economies in developing their market surveillance structures and procedures.



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*Market surveillance in the UNECE region*

**MARKET SURVEILLANCE:  
OVERVIEW OF THE CONCEPT,  
PLAYERS AND OBJECTIVES**



***The Concept of Market Surveillance and its Specific Features***

*Mr. Andrea Femrell, SWEDAC, Sweden*

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Surveillance is an extensive concept but can basically be defined as the implementation of legislation, from the publication of regulations to inspection and information activities.

A narrower and perhaps more relevant description is “actions intended to investigate whether those responsible for a particular product are complying with, or have complied with, the applicable regulations and, if not, to respond in an appropriate manner”. The State has a duty to develop and implement surveillance activities to protect individual parties and the general public. If the State has chosen to regulate a particular area, it must also ensure compliance with the regulations. If a product is to be inspected at any stage, certain legal requirements must apply to it, related, for example, to its design, manufacture, use or disposal.

The extent of surveillance (goal of the inspection; identity of the inspectors; place, time and manner of the inspection) can differ from one product, sector or country to another.

Surveillance can be carried out at four stages of a product's life cycle:

- Design and manufacture;
- Sales, retail sales and import;
- Product use;
- Recycling, recovery, disposal.

The most common reasons for inspecting a product concern:

- Health and safety;
- Environmental aspects (both the external environment and the user environment);
- Openness (formalities, marking);
- Quality aspects.

## **Examples of Different Types of Inspection at the Various Stages**

### ***1.Design and Manufacture***

- National approvals, issued by national authorities or State-owned test houses. Pre-market inspection and testing are obligatory. The State has overall responsibility after the product has been released onto the market;
- State inspection of product handling during the production stage (e.g. with foodstuffs and medicines);
- Private third-party inspection of a product or its manufacturing system and handling. State-approved independent private parties perform the inspections. Responsibility for the product lies with the manufacturer, but the inspection body is responsible to the manufacturer and to the State;
- The manufacturer's own inspection. Responsibility for the condition of the product rests wholly with the manufacturer.

### ***2.Sales, Retail Sales and Import, from Market Access to the End User***

- State inspection of products, product storage facilities and sales competence;
- Private inspection on behalf of the State. The State is responsible for any actions resulting from the inspection. The manufacturer's liability and the responsibility of other parties vary depending on the type of inspection that was decided upon for the design/manufacturing stages and on where the product is in the chain.

### ***3.Product Use***

- Recurrent inspection by the State of products in use. The owner/user is responsible for the condition of the product.
- Private recurrent inspection by approved third-party inspection bodies, on behalf of the State. The State is responsible for requesting and paying for the inspection services, as well as for acting upon the inspection results.
- Full private inspection by inspection bodies operating in a competitive market, without the involvement of the State. Owners/users are required to have their equipment/product inspected without the involvement of the State. The owners/users are responsible for the condition of the equipment/product. The State verifies that the regulations are complied with by the owners/users, and that the inspection bodies possess the necessary competence.

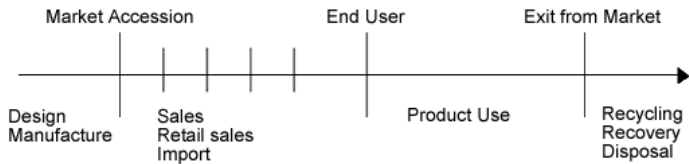


#### **4. Recycling, Recovery, Disposal**

- State or private inspection of recycling and the environmental aspects of final storage or disposal.

Surveillance and the various forms of inspection can look very different, depending on how or when different forms of inspection are used, and depending on how the requirements for a product are specified and applied.

### PRODUCT LIFE CYCLE





***Reform of the State Surveillance System in Russia***

*Mr. Valeri Usov, Chairman, State Committee on Standardization and Metrology, Russian Federation*

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**Mandatory Requirements**

Meeting mandatory requirements is the responsibility of the manufacturer. Compliance with these requirements is controlled in the marketplace through conformity assessment procedures, which lead to accreditation or product certification and are aimed at increasing safety. These control and surveillance procedures are established by the Government.

The Russian Federation Government implements several kinds of market surveillance, including:

- Surveillance over mandatory standards for the quality and safety of products and service, including foodstuffs;
- Surveillance over mandatory certification rules and over certified products;
- Metrological surveillance over measurement instrumentation and related activities;
- Metrological control of the quantity of alienated products and pre-packed products in packages of any type.

The Government is now reducing mandatory certification requirements and its surveillance of mandatory standards. Indeed, these are becoming technical barriers to trade in an increasingly global market. For this reason, the Government is changing its approach by:

- Beginning the transition to voluntary application of standards;
- Decreasing certification volumes;
- Increasing the efficiency of surveillance of mandatory requirements (technical regulations) in the market. Here, government surveillance comprises continuous supervision and controls including single inspections, tests, measurements and verifications.

Voluntary standards for industry are used as a probative base for conformity assessment.

### **Legislative Basis for Market Surveillance**

Mandatory requirements are established by laws, Governmental legislative acts and State standards (technical regulations).

The authority and competencies of the Gosstandart of Russia are set forth in Russian Federation Government Decree No. 498 “On Approval of Statute of the Russian Federation State Committee for Standardization and Metrology”.

Other relevant legislation includes:

- Standardization: decree No. 5154-1 “ On Standardization”;
- Metrology: decree No. 4871-1 “On Assurance of Measurement Uniformity”;
- Certification of products and services and registration of certification systems: decree No. 2300-1 “ On Protection of Consumer Rights, and decree No. 5151-1 “ On Certification of Products and Services” ;
- Accreditation: decree No. 514 “ On Accreditation of Organizations Involved in Conformity Assessment” ;
- State Surveillance: decree No. 5154-1 “ On Standardization” , decree No. 4871-1 “On Assurance of Measurement Uniformity”, decree No. 5151-1 “On Certification of Products and Services”; decree No. 29 On Quality and Safety of Foodstuffs”;
- Coordination of the Activity of Federal Executive Bodies Carrying out Surveillance over Products(Works, Services) Quality and Safety: decree No. 2300-1 “On Protection of Consumer Rights”.

***Market Surveillance in the United States***

*Mr. Alan H. Schoem, Director, Office of Compliance, U.S. Consumer Product Safety Commission (SPSC)*

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**Background**

The US Consumer Product Safety Commission (CPSC) is an independent federal regulatory agency responsible for:

1. Protecting the public against unreasonable risks of injury associated with consumer products;
2. Assisting consumers in evaluating the comparative safety of consumer products;
3. Developing uniform safety standards for consumer products to minimize conflicting State and local regulations;
4. Promoting research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

The Commission is responsible for regulating about 15,000 different types of consumer products, from common household products to mobile amusement rides. The Commission also regulates various product hazards including those associated with children's products, chemical hazards, the flammability of clothing and poisoning to children under 5 caused by various chemicals and drugs. The Commission is not responsible, however, for true industrial products, motor vehicles, motor vehicle equipment, foods, drugs, cosmetics, pesticides, tobacco products, airplanes, boats, firearms or fixed site amusement rides, which generally are regulated by other US agencies.

In addition to its regulatory action, the Commission works with industry to develop voluntary standards, educate industry on its rules and regulations, and educate consumers on the safe use of products. The Commission's preferred method of operating is to work cooperatively with the industries it regulates and to take enforcement action only when necessary and appropriate.

## **CPSC Enforcement Authority**

The Commission, through its Office of Compliance, has broad authority to enforce its laws, rules and regulations. The Office provides advice and guidance to industry on the requirements of regulations and on how to conduct recalls. The Office also conducts investigations of potential product defects and regulatory violations. Where a violation is found, the Office may proceed in several ways:

- It may seek voluntary remedial action commensurate with the magnitude of the product hazard or violation.
- If the Commission staff is unable to obtain voluntary remedial action, it may, with Commission authorization, seek to compel such action through an adjudicatory proceeding.
- Where appropriate and with Commission authorization, the Office may seek civil penalties against firms that violate Commission rules and regulations. If civil penalties cannot be obtained voluntarily, the Office of Compliance will recommend that the Commission seek penalties in federal court.

With the approval of the Commission, the Office also monitors compliance with selected voluntary safety standards.

## **Reporting Dangerous Products**

Manufacturers, importers, distributors and retailers are often in the best position to know if their product is dangerous. For this reason, the Consumer Product Safety Act, the statute that created the Commission, requires that if such firms obtain information that reasonably supports the conclusion that one of their products creates an unreasonable risk of serious injury or death, they must immediately report that information to the Commission, unless they have *actual* knowledge that the Commission has been adequately informed. Failure to report to the Commission subjects the firm to civil penalties of up to \$1.65 million dollars.

In addition to relying on reports from firms, the Commission also initiates its own investigations when it learns of potential product hazards.

## **Product Recalls**

When a firm reports to CPSC about a potentially hazardous product, or when CPSC learns of such a product through staff-initiated investigations, it evaluates the information reported along with any additional information it has or obtains, then conducts any necessary technical evaluation. This process can take several months or more. CPSC staff then makes a preliminary determination as to whether the product is defective and presents a substantial product hazard. If the staff makes a preliminary determination of hazard, it seeks appropriate remedial action in the form of a recall. Firms may elect to repair the defect in the product, replace the defective product with a similar product that does not have a defect, or refund the purchase price of the product.

In 1997, the Commission formally launched its Fast Track Product Recall programme. Under this programme, if a firm reports a product problem to the Commission and initiates a recall of the product within 20 working days of the report, the Commission staff does not make a preliminary determination of hazard. The programme benefits consumers because products are recalled more quickly. It benefits CPSC by saving resources and time, because CPSC staff does not have to make a preliminary defect determination, but instead assists the recalling firm with its recall programme. Today, about two thirds of CPSC's recalls are conducted under the Fast Track Product Recall programme.

## **Enforcement of Mandatory Safety Standards**

CPSC has issued a number of mandatory safety standards and banning rules, which apply to manufacturers, importers, distributors and retailers. Any firm in violation of a CPSC mandatory safety standard or banning rule is subject to civil fines of up to \$1.65 million, and criminal penalties as well.

CPSC investigators work closely with US Customs officials at ports throughout the United States to prevent products that may violate CPSC mandatory safety standards from entering the United States. The Commission also conducts surveillance of domestic manufacturers and retailers to ensure the products they make or sell comply with CPSC laws, rules and regulations.





***Market Surveillance in the European Union:  
The Experience of two Member States***

***Market Surveillance in Finland***

*Mr. Seppo Ahvenainen, Deputy Director General, Ministry of Trade and Industry*

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**Basic Characteristics and Objectives of Market Surveillance.**

The primary objective of market surveillance in Finland is to ensure that products entering the market meet relevant health, safety and environmental requirements. The Finnish market surveillance concept includes the New Approach of the European Union's (EU) regulation and the "CE" marketing regime, as well as national non-harmonized regulation. There is no pre-market State control, and manufacturers are responsible for regulatory conformity.

Under the previous conformity assessment system, all products could be controlled before entering the market. Most of these controls were mandatory and conducted by third parties, and only a small portion was voluntary.

Under the EU's New Approach, all products can be controlled, but most of these controls are voluntary. Among the mandatory controls, some are conducted by third parties but most are conducted by the supplier. These mandatory controls cover health, safety and environmental concerns. If products meet these essential requirements for entry into the market, they receive the "CE" mark.

In the EU, market surveillance is based on national surveillance systems (subsidiarity). Each country's market surveillance system is organized differently according to the:

- Legal framework;
- Administrative structure (central, regional or local);
- Geographical characteristics and properties of the products (physical, chemical..).

The roles and competencies of various parties responsible for market surveillance can vary. The parties engaged in market surveillance include legislators (Ministries), surveillance authorities, conformity assessment bodies, and businesses (including manufacturers).

The scope of market surveillance depends on the industrial structure, the structure and size of the product market and the available surveillance resources (financing, personnel, competencies).

### **Performance Aspects**

Cooperation is essential for performance at the national level (within each product sector, across the product sectors, across the administrative levels and at the focal points), and at the “Community” (supranational) level (within each product sector and across product sectors). Benchmarking and the use of best practices are important in helping achieve satisfactory results.

### **Practical Surveillance Work**

In practice, the typical operative steps in market surveillance are:

1. Sampling/buying products
2. Testing
3. Evaluating
4. Administrative hearing
5. Decision
6. Reactions (including penalties)
7. Delivery ban or sales ban or recall or remark
8. EU notification

In the sampling strategy, the selection of products is based on information from the market, from other authorities and from other countries (notifications), and on accident and incident statistics and experience from market surveillance results.

## ***Market Surveillance in Germany***

*Mr. Christoph Brandt, Chairman, Working Committee for Market Surveillance*

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### **Legal Foundations**

The legal foundations of market surveillance in Germany are:

- The Equipment Safety Act (GSG) with its related decrees (GSGV), under the competency of the Federal Ministry of Labour and Social Affairs;
- The Product Safety Act (ProdSG), under the competency of the Federal Ministry of Consumer Protection, Food and Agriculture.

### **Implementation**

Market surveillance is implemented across Germany through a network of 84 labor inspectorates. These agencies inspect approximately 40,000 devices annually in a reactive capacity. Six thousand devices are checked annually on a proactive basis. An additional 3,800 devices per year are inspected during visits to trade exhibitions.

This system presents several advantages: market surveillance is conducted throughout the country, under the authority of a single administration for several directives. The disadvantages of the system are a lack of coordination and poor exchange of information.

To address these problems, the Government created a body to coordinate market surveillance: the Working Committee for Market Surveillance. The Committee comprises representatives of:

- Authorities for the Device Safety and Product Safety Law;
- Federal representatives for the Directives, appointed by the Bundesrat;
- The Federal Ministry of Labour and Social Affairs;
- The Federal Institute for Occupational Safety and Health;
- The Central Body of the German States for Security Techniques.

The Committee is responsible for coordination, strategy development, evaluation, exchange of experience, and contacts for industry, trade and consumers, in the area of market surveillance.

***Organization and Enforcement in Turkey***

*Mr. Ozcan Pekta, General Director, Directorate for Protection of Consumers and Competition*

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**Background**

Turkey's market surveillance system is based on the Law on the Preparation and Implementation of the Technical Legislation on Products (2002), which is consistent with EU Council Directive on General Product Safety. The Ministry of Industry and Trade is in the process of preparing the rules of implementation of this new system, and is working on a draft regulation for market surveillance.

The existing system is mainly based on the enforcement of standards under the Law on Protection and Control of Export and Prevention of the Adulteration in Trade and the Regulation on the Implementation of Turkish Standards.

**Inspections under the Existing System**

Under the current system, inspections are carried out by controllers and central and provincial staff, who report to the Ministry of Industry and Trade. Inspectors verify TSE (Turkish Standards Institution) marks and conformity with product standards through weighing, measuring and, if necessary, physical and chemical testing.

Inspections are carried out at a product's place of production, storage, distribution, export or import.

In the internal market, if an inspected product is not in conformity, the matter is referred to the Attorney General.

For inspections at the export or import stages, the exporter must submit a written declaration requesting the inspection of the products. The products are then inspected at the most convenient place, in the presence of the exporter, using the same methods as for products in the internal market. Products that conform to standards are marked as such and a certificate of conformity is issued to the exporter or importer.

- If the products to be exported do not conform, they are refused. If the interested party does not raise a valid objection, the Attorney General is notified.
- If products for import are not in conformity, they are refused. This refusal is noted in the inspection request and the Customs administration is informed immediately.
- An inspection of goods to be imported is not required if the importer can provide a report stating that the product conforms to applicable standards. This report must be from an authority recognized by the Turkish Government. If such a report is provided, the importer will be given a certificate of conformity.

### **New System**

The system currently being developed establishes the principles and the procedures for allowing products to enter the market. These procedures include conformity assessment, market surveillance, inspection and related notifications.

Specifically, the Law relating to the Preparation and Implementation of Technical Legislation on Products covers:

- Conditions of product entry into the market;
- Obligations of manufacturers and distributors;
- Conformity assessment bodies;
- Notification bodies;
- Market surveillance and inspection;
- Banned products;
- Withdrawal and destruction of products;
- Notifications related to these arrangements.

Under the law, a “safe product” is any product that, under normal conditions of use, does not present any risk or presents only acceptable risks. Public authorities have a general market surveillance obligation to ensure that products placed on the market are safe. The law also requires compliance by manufacturers and distributors.

Market surveillance is the action carried out by public authorities to verify that a product is in conformity with the relevant technical regulations and safety requirements before the product enters the market

or after it has entered the market. The authorities responsible for market surveillance include any public body legally authorized to prepare and implement the provisions of the law for the products under its responsibility.

The Ministry of Industry and Trade plays an important role in market surveillance. It is responsible for almost 80% of technical legislation and its implementation, in a wide range of areas.

The Ministry of Industry and Trade carries out market surveillance at two levels:

### **Before Market Entry**

At this level, the Ministry examines the product's compliance with relevant standards and requests the appropriate public or private conformity assessment body to carry out the conformity assessment procedures for the product.

The Ministry is still developing legislation in this area, and will specify as soon as possible the notification criteria and the notification bodies.

### **After Market Entry (Consumer Level)**

After a product has entered the market, controls take the form of:

- Checking the marking and/or certificate relating to technical regulations;
- Sensorial examination (weighing and measuring);
- Physical and chemical testing by laboratories or certification bodies.

Controllers perform regular controls at places of production (if necessary), storage areas and distribution points. The controllers also carry out random and surprise inspections.

If there are definite indications that a product is unsafe, even if its conformity with the relevant technical regulation has been certified, the product shall temporarily be prohibited from entering the market during the period required for necessary testing.

Results of physical and chemical tests are sent to the General Directorate or a provincial office. If the product is in conformity with the relevant technical regulation or is assessed as safe, the manufacturer is notified.

If the product is found to be unsafe after its inspection, the public authority shall take the measures below at the manufacturer's expense:

- Prohibition of the product's entry into the market;
- Withdrawal of the product from the market;
- Whole or partial disposal of the products if it is impossible to render them safe;
- Announcement of the information from the above paragraphs to the persons at risk using two daily newspapers and two television channels with nationwide reach. If the persons at risk can be informed by local television and newspaper, these shall be used to make the announcement. If the persons at risk can be identified individually, they shall be informed directly.

Commercial secrets are not disclosed during market surveillance and inspection activities, except when disclosure is necessary to avoid a serious and urgent threat to the health of persons, animals, plants, or the environment, or where there is a serious and urgent threat to the safety of persons and their property.

Law 4703 imposes fines on parties who fail to comply with its provisions by, for example:

- Manufacturing non-conforming products;
- Placing unsafe products on the market;
- Failing to provide consumers with the necessary information regarding a product's risks (applies to manufacturers and distributors);
- Failing to keep all the documents required for the necessary time period or failing to submit documents to the public authorities upon request (applies to manufacturers, conformity assessment bodies and notification bodies);
- Distorting, imitating or misusing the certificate of conformity and/or conformity mark;
- For conformity assessment bodies and notification bodies, not carrying out their services in an independent and impartial manner.



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If there is more than one infringement per year, the penalty is doubled for each infringement.

In developing Turkey's new system of market surveillance, the Ministry of Industry and Trade must still resolve several issues:

- Determining the selection criteria for notification bodies, conformity assessment bodies and technical services;
- Establishing the necessary technical, administrative and legal requirements;
- Increasing human resources;
- Training the staff of the provincial offices;
- Ensuring the effective coordination of market surveillance authorities.



*Market Surveillance in Croatia*

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**Introduction**

The State Inspectorate was established by the Law on the Organization of Ministries and State Administrative Organizations (1997) and the Law on the State Inspectorate (1999), which governs the work, organization and methods of work of the State Inspectorate. Prior to 1999, inspection work was carried out by 12 bodies under 4 Ministries. The establishment of a separate body directly responsible to the national Government helped focus inspection activities, improve working conditions, increase the quality of inspections, improve cooperation and coordination, and reduce costs where a product is submitted to multiple inspections.

The Inspectorate's inter-institutional cooperation (in particular with the Ministry of Defense, Ministry of Internal Affairs, Ministry of Labor and Social Welfare, Ministry of Tourism) has improved considerably and includes well-planned and coordinated joint control actions in areas such as the fight against business crime. The Inspectorate also makes proposals to the Government for amending legal acts or improving regulations to increase the effectiveness of inspections.

The scope of the State Inspectorate's tasks include inspection of trade and crafts, work and occupational safety, mining, pressurized containers, cattle breeding, fishing industry, wine business, forestry, hunting, catering and tourism. Inspectors carry out their work independently within the framework of Croatia's relevant laws and regulations.

**Management**

The State Inspectorate is managed by the Chief Inspector, who is appointed by the Government upon the Prime Minister's proposal. The Government also appoints the Deputy Chief Inspector, upon the Chief Inspector's proposal.

## **Territorial Organization**

The State Inspectorate's Headquarters are located in Zagreb. The State Inspectorate is organized into five Regional Units, each of which has several Branch Offices (44 in total).

## **Internal Organization**

The State Inspectorate's inspection work, organization and methods of work are governed by national legislation. The State Inspectorate comprises seven divisions, each containing several departments:

- Legal Affairs Division;
- General Affairs Division;
- Commerce, Catering and Crafts Supervision Division;
- Product Quality Control Division;
- Division of Supervision in Agriculture and Forestry;
- Labor Relations and Occupational Safety Division;
- Electric Power Supply, Mining and Pressure Vessels Supervision Division.

### *The Industry Perspective*

#### ***ORGALIME speaking for European Engineering***

*Mr. Philippe Portalier, Liaison Group of the European Mechanical, Electrical, Electronic and Metalworking Industries (ORGALIME)*

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#### **Background**

ORGALIME is a confederation of federations, with 32 members from 21 European countries. ORGALIME represents over 100,000 European firms that specialize in mechanical, electrical, electronic and metalworking engineering and that generate a total of 1.04 billion Euros per year.

European Union (EU) institutions are responsible for regulatory activities, while EU member States are the market surveillance authorities. ORGALIME serves as the link between its members from the European engineering industry and EU regulatory institutions.

#### **The “New Approach” to Standardization**

For ORGALIME, the New Approach developed by the three European standards organizations (CEN, CENELEC and ETSI) in conjunction with the European Commission and EFTA is the most cost-effective solution. Manufacturers who produce dangerous or counterfeit products create concern among users and consumers, who expect safe products. European regulatory authorities are attempting to solve these problems by setting acceptable thresholds and establishing appropriate policies under the New Approach. This approach consists of self-declarations of conformity, the use of EN (European) Standards and effective and harmonized market surveillance. It allows all relevant participants to share responsibilities more equitably and balances all parties' interests. The detailed “old approach” legislation with mandatory third party certification for all products is no longer appropriate.

Effective market surveillance is always necessary for industry, and is a prerequisite for fair competition throughout the European market. For effective market surveillance, efficient and effective coordination is

essential among market surveillance authorities, and between market surveillance authorities, Customs and other market players. In addition, efficient and effective communication is needed between market surveillance authorities and manufacturers (before action), standardization organizations and “end users” (after action). Necessary elements to achieve these goals include a rapid exchange of test results, cross-border cooperation (ICSMS, training), the simplification of procedures and improved communication.

*European Industry Association on Information Systems, Communication Technologies and Consumer Electronics (EICTA) view on Market Surveillance as related to the New Approach Directives*

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EICTA is the European Industry Association on Information Systems, Communication Technologies and Consumer Electronics. Forty-five major multinational companies and 28 national associations from 18 European countries belong to EICTA. Altogether, EICTA represents over 10,000 companies throughout Europe, with more than 1.5 million employees and revenues of over 190 billion Euros.

An efficient and consistent market surveillance system is necessary for the New Approach system and the Declaration of Conformity (DoC) to be effectively implemented. EICTA supports the combined use of the Supplier's Declaration of Conformity (SDoC), which does not require third party involvement, and market surveillance to verify continued compliance with essential requirements. This approach drastically reduces time to market for manufacturers and suppliers, compared to third party testing and certification. At the same time, it benefits consumers by lowering costs and allowing products to be available more quickly.

Because manufacturers are always liable for their products, regardless of the method used for assessing conformity, they generally prefer conformity assessment using the SDoC. To ensure that there is a quick, effective and appropriate reaction to any abuse of the SDoC, each country should maintain a market surveillance system to protect users from illegal and unsafe products; remove products from the market if they violate existing regulations; and set equal and fair market conditions for all suppliers.

Market surveillance is an essential part of any conformity assessment system, regardless of the nature of regulation in an economy. Even where products must be approved before entering the market, some form of market surveillance is necessary to ensure compliance with basic regulatory objectives. Market surveillance authorities also have a duty to inform and educate importers and small and medium-sized enterprises about the regulatory requirements that apply to them

and their products. The responsibility for market surveillance lies with Member States' authorities. A key element of a well-functioning market surveillance system is consistency between Member States.

Sound market surveillance is based on two activities. Firstly, authorities must carry out surveillance of the market itself, by assessing compliance information provided by suppliers, investigating customer complaints and inspecting the products themselves. Secondly, an important element of effective market surveillance is communication. Rapid availability of surveillance results allows for efficient market surveillance action. Electronic communication technologies are the preferred means to provide instant access and dissemination of information on the local, regional and global levels. For suppliers with a stake in the market, knowing that their failure to comply with basic obligations will be publicized is a powerful incentive to conform to applicable regulations.

Market surveillance measures should be proportional to the objectives they seek to achieve. Products that severely infringe the objectives of the governing legislation should be quickly identified and taken off the market, whereas incorrect labelling and incomplete declarations should be handled differently. In terms of the documentation requested, when there are founded concerns that the level of protection a product offers is much lower than that required, the technical documentation requested should be proportionate to the severity of the anticipated problem. However, when non-compliant documents are the only problem, market surveillance authorities should first request the SDoC and user documentation. Whatever the situation, it is important that the manufacturer have the opportunity to review the results of market surveillance before they are acted upon.

In summary, EICTA believes that new legislative provisions should not be added to the existing New Approach system in an attempt to improve the market surveillance system. Rather, consistent and improved implementation of existing legislation will create a harmonized environment for market surveillance, benefiting consumers, industry and the internal market.



***The Consumer Perspective***

*Mr. Heinz Willnat, Head, international Affairs, Consumer Foundation “Stiftung Warentest”*

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I have been asked to present the consumer’s perspective at this Forum and, more precisely, to describe the role that consumer organizations, particularly those which deal with consumer information, are able to play in market surveillance on a national level. I come from Stiftung Warentest, a consumer protection organization in Germany. A rather general translation of the name would be “Consumer Foundation for Product Testing”, whereby, however, the term “product” includes both goods and services. Regarding its legal status, Stiftung Warentest is a foundation under civil law, and accordingly corresponds to what is commonly referred to as a non-governmental organization.

The objectives, and in turn the fields of work of consumer organisations like this one, directly relate to the objectives of market surveillance, as they have been described earlier today, although our work takes place from a particular aspect: our task is to provide consumers with quality information on goods and services in order to ensure a high level of market transparency. The tool for achieving this is comparative product testing.

By now, there is hardly anyone who requires an explanation of just what this kind of testing is. As long as 10 or 12 years ago, however, this was not the case everywhere. In the countries of Central and Eastern Europe, for example, which in the early 1990s made their way to becoming market economy systems, the term “testing” was until that time associated primarily – if not exclusively – *with* product certification. But the development of consumer organisations in several of these countries and, particularly the development of consumer magazines, which immediately started publishing the results of comparative product tests, have acquainted the public in these countries with the nature and the significance of comparative quality investigations. To name but a few examples, a consumer magazine was already established in Slovenia in 1991, in Russia in 1992, in Hungary in 1993, and in the Czech Republic in 1994.

The respective organizations have accordingly joined the ranks of traditional Western European consumer organizations, such as Union Fédérale des Consommateurs of France with its *Que choisir?*, Consumentenbond of the Netherlands with its *Consumentengids*, Consumers' Association of the United Kingdom with *Which?*, ABC Test Achats of Belgium with *Test Achats*, or in the Switzerland, the Fédération romande des consommateurs with *J'achète mieux*, and last but not least, Stiftung Warentest with *Test*, to mention a few.

Principally, the concept of providing information for consumers is the same for all of these organizations: namely, to conduct comparative product tests for obtaining insights into quality differences among goods and services, and to inform the consumer of these differences. The resulting market transparency enables consumers to make purchase decisions based on knowledge and insights, and not (only) on such evidence as the advertising claims of the providers of the goods and services.

Thus, the test organizations make a significant contribution to the protection of the *economic* interests of consumers. Since comparative investigations naturally include product safety as well, the organizations act at the same time to protect the health and safety of consumers. The insights disclosed by such investigations into the dangers of certain goods and services are of course of great relevance for the purposes of market surveillance, too. In order to illustrate how this functions, and to what quantitative degree, I would now like to provide brief examples from the work of Stiftung Warentest (SW).

As I earlier stated, the mission of the Foundation is to provide consumers with information on the quality of goods and services. And it was for this purpose that the German Government founded it almost 40 years ago. In the early years we published all the results of our tests of goods and services in our one consumer report: the magazine *Test*. By 1991 it became clear that the financial-services sector was becoming increasingly important – and so we established *FINANZtest* - a separate magazine for finance test reports.

The source of information that we offer German consumers comes from approximately one hundred comparative tests of goods every year. On average, each of these tests includes about 20 comparable products. (Per month this means a "monitoring" of an average of 8 large market segments of goods, comprising altogether no less than 160 products.) We also perform around 80 comparative surveys of services per year,

with each one covering about 25 services products. As a result of these tests, Stiftung Warentest awards approximately 4,000 quality evaluations per year – they are in the form of verbal statements based on a scale of five ratings: ranging from “very good” to “satisfactory”.

Our total budget for the year 2001 was approximately 99 million Deutsche marks. Where does this money come from? It primarily comes from the sales of our publications, mainly, our magazines *test* and *FINANZtest*, of which we sell at least one million copies every month. These circulation figures are clear evidence of consumer interest in systematically prepared information on the goods and services market, and of the high degree of confidence that consumers have gained in consumer organizations.

So, financially the Foundation largely stands on its own feet. However, an important share of our budget – around 11 per cent – comes from the Government. This contribution is considered as compensation for the loss of revenue from advertising. This is because from the very beginning, the Statutes of the Foundation have forbidden us from publishing advertising of commercial offerings in our publications. Such a regulation is of course logical. Otherwise, whether we were actually compromised through advertising or not, we could hardly convince the consumer that we were in fact independent of commercial interests.

Now, in order to examine more closely the significance of comparative testing as a tool for the surveillance and monitoring of product safety, let us have a look at the test criteria. It is obvious that test criteria have to be selected in such a way as to sufficiently consider all aspects that determine the quality of a product. Thus, they naturally cover the technical and functional quality characteristics of a product, the handling (or ease-of-use), the environmental relevance (impact), and of course they also place emphasis on product safety.

As for the safety tests in our investigations, I would like to stress that – obviously, also due to the long-standing systematic testing work – nowadays most products fortunately come up to our expectations regarding safety. This is generally the case for product groups that are technologically mature, and that come from well-known manufacturers. On the other hand, when we test counterfeits of such products, which are often of Far East production and have a strong attraction for the consumer because of their low prices, we regularly find astonishing safety shortcomings in these products – or other critical points. So, last

year in a test of cheap (so called no-name) do-it-yourself appliances – all kinds of drilling machines, sanders and pad saws – 18 out of the 23 tested products had to be given the quality verdict "Unsatisfactory" due to the results of the endurance test.

But, apart from these particularly critical cases, we direct special attention to product groups where safety is and will continue to be the basic and intrinsic aspect of good quality. So, the European test organizations periodically carry out tests of child restraint systems in passenger vehicles, protective helmets for cyclists (both for adults and children), furniture for children, such as high chairs and cribs and beds, to give just a few examples. In the November 2002 issue of our test magazine we published the results of no less than 12 comparative tests covering 220 products, among them 49 toys for babies and children and 18 home smoke-alarm appliances – partly with "alarming" results.

Subjects for comparative investigations in the area of services are for example, airport safety (in the last survey 34 airports in 17 European countries were included), ferry boat safety (e.g. Mediterranean and North sea ferries), safety in football stadiums and so on.

There is certainly no need for me to stress that if during tests in laboratories we discover safety problems for a product that could represent acute danger for the health or safety of consumers, we immediately inform the responsible State surveillance bodies. These authorities then go into action without delay. Naturally, we also inform consumers by publishing our disclosure of such dangers along with publication of the test results in our magazine. Since consumer organizations are able to widely publicise the results of their investigations – not only by means of their magazines, but also through all other media – this is an excellent additional way to heighten the public's awareness in the field of product safety.

From all this one may conclude that consumer organizations have considerable advantages when playing a role as partners in market surveillance, particularly in the following ways:

1. They are able both to identify and to inform the public about consumer products and services that are unsafe or of unacceptably poor quality.

2. As a result, they exert influence on the players on the market, bringing about corresponding market reactions:

- a. Among consumers with regard to their buying, or more generally speaking, their consumption behaviour;
  - b. Among manufacturers and suppliers, with regard to their quality behaviour.
3. They can call the attention of public authorities to acute safety problems and problems in the enforcement of the corresponding legislation, as well.

With a view particularly to the Central and Eastern European countries, I would like to again emphasise the following factor: with its subsidies granted from the public budget, the German Government supports work in the field of consumer protection. The Government provides this support because it is aware that an effectively functioning system of consumer protection is an essential and integral part of the market economy, and that effective consumer protection is not feasible without strong and independent consumer NGOs. The same or similar situations fortunately prevail throughout all the Member States of the European Union.

Such a consumer policy is in accord with the requirements of the Treaty Establishing the European Community, which in Article 153 defines the significance of consumer protection (Amsterdam consolidated version). Moreover, the European Commission's paper for Consumer Policy Strategy 2002-2006 states: "The benefits of a common level of protection cannot be reaped fully if consumer organisations are not strong enough to play their role *by providing policy makers with policy input, evidence of problems* and by helping to enforce rules through market surveillance." The European Consumers' Organization, BEUC, the umbrella organization of the consumer organizations in the EU Member States and candidate countries, shares this standpoint. In connection with the enforcement of the amended General Product Safety Directive, the members of BEUC have taken a clear position in favour of the active participation of consumer and test organizations in market surveillance – and in favour of the required support of their efforts by national Governments.

Consumer organizations are the main channel through which collective consumer interests are represented. They have a key role to play in the development and implementation of consumer policy. Thus, it is evidence of considerable wisdom wherever Governments realize that market surveillance is a matter which State authority structures

alone cannot sufficiently handle. To ensure a high level of safety on the market, the State requires close cooperation with appropriate partners, the other players on the market. This means industry and consumer organizations.

In a number of the countries of Central and Eastern Europe, including candidate countries, consumer organizations play their role in the national market surveillance networks complementing the enforcement and market surveillance function of the public authorities. In some of these countries their potential for actively contributing to market surveillance is particularly well developed, above all – I will be referring here only to the candidate countries – in Slovenia and the Czech Republic. What is this fact based on?

In Slovenia and in the Czech Republic, the respective Governments began very early to support the development of consumer organisations and the establishment of independent consumer magazines: already in 1991, *Zveza Potrošnikov Slovenije* brought out the magazine *VIP* in Slovenia, and in 1994 *Občanské sdružení spotřebitelu* launched *dTest* in the Czech Republic. Carrying out comparative tests and informing consumers of the results of the tests, they work just as effectively as their older West-European sister magazines. In Slovenia, the achieved level of competency in comparative testing and consumer information has led to the good practice of close collaboration in market surveillance between *Zveza Potrošnikov* on the one hand, and the Slovene Institute for Quality and Metrology and the Trade Inspectorate on the other. A similar good practice has developed in the Czech Republic, where the Czech Trade Inspection fruitfully cooperates with *Občanské sdružení spotřebitelu*.

A further example of good practice in market surveillance will no doubt develop in Poland. At present the Government is about to implement its project “Competition Policy and Consumer Protection.” The goal of this project will be to ensure the compliance of Polish competition and consumer protection legislation with the *EU Acquis*. One of the most essential components integrated into this project includes measures under the title “Market Surveillance and Independent Testing”.

Such an approach signifies recognition – on a high level – of the relationship between market surveillance and consumer information for purposes of market transparency: in order to summarize this connection

I would say: by virtue of their fundamental nature, comparative product tests conducted for market transparency purposes reveal insights into goods and services that are highly relevant for market surveillance.





UNECE

PART

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*Market surveillance in the UNECE region*

**IMPLEMENTING MARKET  
SURVEILLANCE AT THE  
SECTORAL LEVEL**



## ***Household Electrical Goods: Case studies***

### ***Market Surveillance of Electrical Equipment in Denmark***

*Mr. Jan Roed, Head of Market Surveillance and Standardization, Electricity Council, Denmark*

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The Danish Electricity Council is responsible for all electrical matters. Eight inspectors handle the practical market surveillance activities directly related to electrical appliances. Market surveillance in other sectors is the responsibility of the Ministry of the Economy and Enterprises.

Market surveillance is required by the Low Voltage Directive (LVD). It can be triggered by a special project; an accident (fire or electrical shock) involving electrical apparatuses; a complaint from a consumer, retailer, importer or manufacturer; a random inspection; or a notification under LVD Article 9 or from another European Union (EU) Member State via the RAPEX system.

The Electricity Council relies on various sources of statistical data:

- Fire and electrical shock, related to the use of electrical apparatus and installations and reported directly to the Electricity Council;
- Data from emergency rooms in Danish hospitals;
- Reports from the police (fire and accidents);
- Reports from the workers' safety agency;
- Information from the press.

The basic stages of market surveillance are as follows:

1. A *product* is selected and obtained through a retail purchase, a request for samples from the manufacturer or importer, or through border controls and Customs cooperation.
2. A technical *investigation* is conducted. This may include a visual inspection, a request by the Electricity Council for a declaration of conformity, or testing by a Notified Bo

3. The *results are evaluated* in relation to the requirements of LVD Article 2, which states that electrical equipment may be placed on the market only if it is constructed in accordance with good engineering practice in safety matters and if it does not endanger the safety of persons, domestic animals or property. To prohibit a product from entering the market, it must be proven not only that the product does not comply with standards but also that it is dangerous.

**a) *Appropriate measures are decided.***

- If the product presents an immediate danger, risk of fire or shock or mechanical risk, it is banned and consumers are notified through advertising in all major newspapers or television announcements.
- If the product is dangerous, then it is banned and retailers must stop selling it.

**b) *Other EU and EEA Member States are formally notified.***

Denmark continuously tries to improve its market surveillance practices through more targeted market surveillance activities, common projects with other countries, cooperation with Customs authorities, and use of notifications received from other countries. However, enforcement is only one aspect of market surveillance, and the Danish Government is multiplying its information activities. It is launching more information campaigns on “what to do”; developing its cooperation with industry, importers, retailers and others stakeholders through informational meetings; and increasing its use of standardization.

The exchange of information between EU Member States is very important for an efficient market surveillance system. Under LVD, Member States meet twice a year to discuss measures taken, alignment of decisions, coordination with the European Commission, and networking.

***State Surveillance in the Area of Electrical Goods in Russia***

*Mr. Staslav Losev, Head, Department of State Control and Supervision, State Committee for Standardization and Metrology, Russian Federation.*

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State control on the market in Russia is based on the Laws and Governmental legislative acts, State standards (technical regulations) which establish the mandatory requirements .for goods.

These requirements should be controlled at the following stages:

- **Manufacturing:** These requirements shall be fulfilled by the manufacturer.
- **Accreditation:** The procedures of conformity assessment as certification of products were introduced for increased safety.
- **Market:** These requirements shall also be controlled in the market.

The format, scope of control and surveillance procedures and the list of bodies responsible for their practical implementation are established by the State. The central body for State surveillance of the market is the State Committee for Standardization and Metrology.

At present the system of controlling the use of mandatory requirements (including certification and market surveillance) is undergoing a major reform.

The role and importance of mandatory certification and surveillance are being reduced to avoid them becoming a technical barrier. The switch is from mandatory procedures to a transition to voluntary application of standards and thus to increase the efficiency of State surveillance over observance of mandatory requirements (technical regulations) in the market: The principles of such reform, which are based on the Federal Law, are as follows:

- **Manufacture:** Voluntary standards are used as a probative base for conformity assessment.
- **Accreditation:** Mandatory certification volumes are being reduced, and there's currently a transition to voluntary declaration of conformity.

- **Market:** State surveillance is continuous supervision of product compliance with mandatory requirements. It is carried out only in the market.

- Why is State surveillance still important? Unfortunately, a significant number of electrical goods sold on the Russian market still fail to meet the necessary safety and other requirements. Thus, during the market surveillance checks/expertise conducted during the first nine months of 2002, only half of the goods checked met all mandatory requirements.

Such requirements for electrical goods are established in more than 500 State standards, 25% of which are harmonized with relevant ISO and IEC standards. It is planned to increase this level of harmonization up to 45% by the beginning of 2003.

The new changes in Russia will allow the emphasis to be changed from pre-market inspection to controls on the stage when goods are placed on the market, by easing a mandatory certification burden for manufacturers but at the same time increasing their responsibility for meeting mandatory requirements set by the State.

***Machinery Sector: Case Studies***

***Use of Harmonized Standards in the Machinery Sector - Experience of Germany***

*Mr. Harald Riekeles, Rapporteur of CEN on Machinery Safety*

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Harmonized standards according to the European Technical Directives are voluntarily applicable standards, which specify the mainly general wording of essential requirements in EU directives. Their application allows the manufacturer to assume the conformity of his product with the requirements dealt with; makes it easier to place the product on the market, may relieve the product from third party certification and supports market surveillance as criterion for the assessment of a product.

In 1985 the New Approach of the European Community gave the basis of European Standardization on Machinery. Technical rules are defined in:

- Compulsory EU Directives with general Essential (safety) Requirements which are to be transposed into national law by the Member States;
- Voluntary Harmonized European Standards (EN) specifying the Essential Requirements.

**Importance of Harmonized Standards**

Harmonized standards are technical specifications that were elaborated by a European standards organization under a mandate given by the EU Commission and are listed by the Commission under reference to the corresponding directive(s) in the Official Journal of the European Communities (OJEC). These mandated Harmonized Standards grant presumption of conformity, defined in article 5 (2) of the Machinery Directive: “Where a national standard transposing a harmonized standard, the reference for which has been published in the Official Journal of the European Communities, covers one or more of the essential safety requirements, machinery constructed in accordance with this standard shall be presumed to comply with the relevant essential requirements”.

Structure and presumption of conformity of standards for machinery safety

The standards system is divided into three types of standards: the systematic structure distinguishes three types:

- Type A standards (basic safety standards) giving basic concepts, principles for design and general aspects, that can be applied to machinery;
- Type B standards (group safety standards) on particular aspects (e.g. safety distances, surface temperature, noise) or a kind of safeguard that can be used across a wide range of machinery (e.g. two-hand controls, interlocking devices, pressure sensitive devices, guards);
- Type C standards (machine safety standards) with detailed safety requirements for a particular machine or group of machines that can provide requirements different from the type A or B standards.

Although according to the Machinery Directive all harmonized standards have a presumption of conformity, it has been seen to be different in practice: the presumption of conformity regarding a product is only given by a type C standard, and only for the scope defined.

Manufacturers can choose whether or not to refer to harmonized standards. If they choose not to follow a harmonized standard, they have the obligation to prove in their Technical File that the product is in conformity with the essential requirements of the relevant directive(s) by the use of other means of their own choice (e.g. by means of other technical specifications such as purely national standards).



***Market Surveillance of Machinery in Slovakia***

*Mrs. Nadezda Machutova, General Director, Slovak Trade Inspectorate*

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**Recent Transformation of the System**

Slovakia's market surveillance system was transformed in 1999 when the European Conformity Assessment model replaced mandatory pre-market certification. Previous technical regulations for a product's entry into the market were based on pre-market control with additional surveillance after entry into the market. A single body was responsible for approving products before their use and for conducting surveillance of their use as a part of labour inspections.

The Act on Technical Requirements on Products and Conformity Assessment Procedures incorporated the main elements of the European Union's (EU) New and Global Approach into the Slovak legal system as Governmental Ordinances to the Act. Today, almost all directives based on the New Approach have been integrated into Slovak law. Two other important Acts were adopted with the Act on Technical Requirements: the Product Liability Act, based on the 85/374/EEC directive, and the Amendment to the Act on Consumer Protection, which incorporates the core of the general product safety directive into the Slovak legal system. This created an elaborate legal framework that facilitated the transition from pre-market control to market control while maintaining the same level of protection.

**The Slovak Trade Inspection**

The Slovak Trade Inspection is responsible for market surveillance under the Act on Technical Requirements on Products and Conformity Assessment Procedures. The Slovak Trade Inspection already had broad competency in the field of surveillance of the internal Slovak market. It comprises the Central Inspectorate and eight regional inspectorates.

When the Slovak Trade Inspection began implementing the Act, its training of Slovak trade inspectors emphasized the new elements and methods, including:

- Presumption of conformity;
- Manufacturers' declarations of conformity;
- Development of a protective rather than a reactive approach;
- Shift from a repressive role to an advisory role for market players;
- Enforcement of the level of protection granted by law through efficient cooperation with Customs and labour inspection authorities.

In the past, pre-market control bodies collected information about products on the market and their risks. As a transitional measure, a joint surveillance team with private conformity assessment bodies was created. This team operated for about 6 to 12 months after the incorporation of the New Approach directives into the Slovak legal system. During this period, the private conformity assessment bodies provided the Slovak Trade Inspection with the necessary assistance in risk analysis. These private bodies have now replaced most of the pre-market control bodies.

Today, market surveillance activities cover:

- Notifications of Customs authorities (these usually indicate missing declarations of conformity and/or marking on the products)
- Complaints raised by other market players, including consumers
- Random checks.

The most frequently applied protective measure is temporarily barring a product from entering the market until a problem is resolved, e.g., a missing declaration of conformity is delivered.

### **Market Surveillance in the Fields of Machinery and Electrical Equipment**

Market surveillance in the fields of machinery and electrical equipment is covered by Governmental Ordinances that incorporate New Approach directives 98/37/EC and 73/23/EC. For machinery, compliance with legal requirements is satisfactory. However, there is a high level of non-compliance in the field of electrical equipment, which is covered by the Governmental Ordinance integrating directive 73/23/EC as amended. This finding was confirmed by statistics of

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products notified under TRAPEX (Rapid Alert System on Dangerous Products for the countries acceding to the EU), where electrical goods have represented 80% of notified dangerous products since the beginning of TRAPEX's implementation in 1999.

Among the priorities of market surveillance authorities is the search for notified products on internal market using TRAPEX. Some dangerous products are repeatedly found on the market with identical design and type, but with very different names and labeling. These findings and experiences are reflected in risk analysis and are taken into account when planning future control actions. The most common shortcoming found by the Slovak Trade Inspection regarding electrical equipment is missing declarations or missing conformity assessments.

Safety labeling and instructions for use in foreign languages have been a big problem in the past, but this problem has been partially solved.

Slovakia's future geographical position at the border of the enlarged EU will place even higher demands on the country's market surveillance authorities.



***Market Surveillance in the Machinery Sector in France***

*Mr. Ian Fraser, Expert, Ministry of Labour and Solidarity, France*

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The faith of the founders of the “common market” in free exchange as a lever for social progress has shown itself to be unfounded. As the European Community sought to improve health and safety in the workplace, protect consumers or preserve the environment, measures had to be taken to counterbalance the effects of the single market.

First, national regulations required the inclusion of protective measures from the design of equipment by creating obligations for manufacturers and national procedures for certification. These rules and procedures were then harmonized at the community level. The promotion of social objectives in the sector of machinery and personal protection equipment therefore depends directly on measures to harmonize the safety regulations for work equipment and to achieve the free circulation of merchandise. The relevant directives are directive 98/37/CE on the safety of machines and the modified version of directive 89/686/CEE on the design of personal protection equipment.

**The Stakes of Market Surveillance**

***Monitoring Equipment Conformity***

“Market surveillance” is the monitoring of the application of community legislation. Market surveillance is linked to directives on product safety and consists of verifying that the appropriate conformity evaluation procedures were followed; that products carry the “CE” mark and include the necessary documents; and that the products placed on the market actually meet the essential safety and health requirements set forth in the directives. Market surveillance thus seeks (a) to verify that the manufacturers and importers of products have met their obligations, (b) to remove from the market or bring into conformity non-conforming products and (c) to punish offences.

“New Approach” directives rely on delegation to private bodies for their application. Technical standardizing authorities draw up technical references that meet the essential regulatory requirements. In addition, other bodies (usually private) assess the procedures for evaluating the conformity of equipment.

### ***Monitoring the Quality of Standards***

The “New Approach” method replaces discussions between public authorities by negotiations between private interests. This method seeks to elaborate standards by consensus between the interested parties. In practice, however, manufacturers dominate. They can agree to adopt lenient standards that do not necessarily guarantee a satisfactory level of consumer protection. There is therefore a provision safeguarding and monitoring the quality of harmonized standards that provides the possibility for the European Commission or States to question the norm if they believe that it does not fully satisfy the directive’s core health and safety requirements. This power implies, for Member States, an obligation to monitor the quality of harmonized standards, and this surveillance consists, for the most part, in verifying that the equipment manufactured using these standards actually provides the “*high level of protection*” required.

### ***Surveillance of the Reliability of Notified Bodies***

The proper application of the directive’s requirements depends on the competence, independence and rigour of the notified bodies responsible for the third party conformity evaluation procedures. The designation of these bodies is the sole jurisdiction of each Member State. There is a European market of notified bodies that compete for the market for this type of CE examination. Manufacturers are understandably tempted to contact the least expensive or even the least demanding ones. This is why, in France, the bodies that perform this type of CE examination are governed by a convention that imposes requirements regarding the reliability of their work. Member States have the duty to periodically verify the competence and independence of these bodies. Nevertheless, the quality of notified bodies is unequal.

## **The State of Market Surveillance**

### ***The Market Surveillance System in France***

The French work inspection service (“Inspection du travail”) is responsible for monitoring the application of the directives on machinery and personal protection equipment. The consumer protection service is also competent in the matter of market surveillance related consumer equipment. Finally, the customs services are responsible for market surveillance because it is more efficient to verify the conformity of products when they go through customs, before they are dispersed in the various distribution circuits.

### ***Unequal Monitoring***

In 1999, the Commission organized a series of visits on market surveillance related to the five directives of the “New Approach”. The Commission noted inequalities in the quality of market surveillance. Only a minority of “New Approach” States performs systematic controls that cover all of the equipment encompassed by the directives.

## **Perspectives for the Development of Market Surveillance**

The fact that the surveillance system is still purely national while the market to monitor is already a single market favors abuses. While it is not currently possible to set up community monitoring systems, the situation could be improved by a better definition, at the community level, of the responsibilities of each State and by the development of cooperation between the authorities responsible for monitoring the market in each State and the European Commission.

### ***Sharing Information***

When a product is prohibited under the safeguard procedure, the Commission is notified and so are the Member States. In practice, however, the use of the safeguard procedure is rare. Manufacturers prefer to voluntarily remove non-conforming products or take the necessary corrective measures. These voluntary arrangements have a disadvantage, as there is then no duty to inform the Commission or the Member States under directive. If these authorities are not informed, equipment that has not been brought into conformity or non-conforming products can still be sold in other EU countries. It would therefore be useful if the results of the monitoring operations carried out by each Member State were communicated to the other States, even when they do not result in formal administrative measures.

### ***Common Surveillance***

Cooperation can extend to the coordination of monitoring operations themselves. The European Commission has pledged to financially support cross-border market surveillance projects. In the future, a growing proportion of surveillance activity will be carried out jointly either by two Member States, or, if necessary, by all the authorities of the European Union, under the initiative of the Commission.

### ***The Paths to Progress***

Administrative cooperation between the authorities responsible for monitoring in Member States is essential to ensure the effectiveness of market surveillance at the community level. Cooperation based on States' voluntary participation is limited in practice to the most active Member States and increases existing inequalities. Restrictive measures, such as the adoption of community legislative measures, are therefore necessary to overcome the weight of national traditions and the obstacles linked to the interference of legal systems.



***Market Surveillance of Cosmetics Sector: Case studies***

***Market Surveillance of Cosmetics in France***

*Mrs. Arila Pochet, Head, Cosmetic Products Department, French Agency of Sanitary Security for Health Products (AFSSaPS)*

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**Regulatory framework**

The European market for cosmetic and related products was estimated at 54 billion euros in 2001 (according to data from COLIPA) and the French market was 9.5 billion euros. Some other features of the market: about 34 billion product items sold; 600 major trade markets/brands and 250-600 thousand formulas on which products are based.

The share of different products on the market is approximately (in %): skin care-27; hair products-23; perfume, eau de toilette-20; toiletries-19; make-up-11.

The "AFSSaPS" is a public agency under the Ministry of Health with 900 employees, and is responsible for assessment, monitoring and surveillance of 15 product groups including medication, medical devices, transplants and cosmetics.

Supervised professionals are responsible for the safety and conformity of cosmetics on the European Union market. No authorization is required for products to enter the market, but before a product enters the market, it must be evaluated by a qualified professional to ensure that it complies with the relevant safety regulations. All data on the product must be kept available for the competent authorities to review at any time.

A product's formula must be deposited in intoxication treatment centres, where it is kept under seal and can only be opened if the product might be linked to an accident.

The product's labeling must include the mandatory general and specific notices.

Future revision of the regulatory framework for cosmetics products in the EU should include the requirement for the access of authorities to formulas of products and mandatory declaration by manufacturers of the known undesirable effects. Reference guidelines for manufacturers should be drawn up. The long-term objective is that the quality of cosmetic products should achieve the same level as medication.

### **The “ Technical Dossier”**

The “dossier” is a set of documents that shows the product complies with the regulatory framework. It contains all the documents related to the product’s harmlessness, safety, conformity, effectiveness and side effects. This technical dossier must be available to inspection authorities.

There are several obligations related to the composition of cosmetics: some substances are prohibited in cosmetics and personal hygiene products because of the danger they pose to the consumer, while others are authorized in certain proportions, in certain types of products, or with certain warning labels. Some effects can be obtained in cosmetics only by using certain authorized substances.

Good Manufacturing Practices must be followed, in addition to the requirement for minimum qualifications of the manufacturing personnel.

A product’s labeling must be in French and cosmetics must meet packaging requirements. All products are subject to the regulations against fraud and false advertising.

### **Inspection**

Cosmetics inspection includes two main types of action: the *inspection of the file* to ensure that the product as it has been defined meets all the safety requirements, and the *inspection of the product* to ensure that the manufacturing operations, the product’s packaging, warehousing and distribution take place in the conditions defined in the “dossier”.

Inspections take place on a routine basis, periodically (for thematic investigations) or in response to a particular event (case-by-case inspections based on consumer complaints related to undesirable side effects linked to the use of the product or based on a request from another country’s authorities).

## **Penalties**

According to their gravity, offenses are classified as crimes or contraventions. Punishment can include imprisonment, fines and/or additional penalties such as the publication of the penalty, public notification, confiscation of the product or of the benefits of the sale of the product, closure of the establishments of the incriminated company, or prohibiting the manufacturing, import or entrance of the product on the market.

## **Administrative Cooperation in the European Community**

Administrative cooperation allows the authorities of Member States to gather information on the safety and conformity of the products that are manufactured in or imported into another Member State. This administrative cooperation should be reinforced.



***Market Surveillance of Cosmetics in the Czech Republic***

*Mrs. Dagmar Jirova, Head, National Reference Center for Cosmetics*

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**Cosmetic Products**

The Czech Republic has harmonized its legislation on cosmetics with the European Commission's (EC) Cosmetics Directive 76/768/EEC, in its Act 258/2000 Coll. on public health protection and Decree of the Ministry of Health No. 26/2001 Coll. on hygiene requirements for cosmetics. The EC directives relating to methods of analysis of the cosmetic products' composition (Directive 80/1335/EEC and following) were harmonized and published in the Official Journal of the Ministry of Health (number 7/July 2001).

In the Czech Republic, cosmetics may be freely marketed without previous authorization from the Chief Public Health Officer, and without a homologation certificate. Pre-market governmental controls are no longer performed as of 1 January 2001. Products have free access to the market providing they comply with requirements for:

- Chemical composition;
- Mandatory product labelling;
- Mandatory product documentation;
- Production according to the manufacturing practice (GMP principles);
- Notification.

The prerequisite for marketing a cosmetic product is *notification*. The party responsible for the product must be a permanent resident of the Czech Republic and must submit a notification form for the product before its marketing. The party's residence address, the address in the Czech Republic where the mandatory documentation on the product is kept available, a list of products and the manufacturer's address must all be included on the notification form. This form is available at the Registry of Chemicals at the Ministry of Health.

The *Public Health Service* is the central governmental surveillance authority in the Czech Republic. It performs routine or goal-directed post-market State health supervision. Product control is focused primarily on product safety, but also regularly comprises controls of product quality, mandatory product labelling, production practices including GMP principles, labour safety and product documentation. Inspectors may perform controls of the Czech manufacturer/importer at his/her registered office or at the site of production, and/or inspect the product itself on the market. Controls of the manufacturer/importer focus on notification, product documentation, product quality and qualification of personnel.

Mandatory product *documentation* must be available to the supervising authority in the language and by the date requested. The documentation does not have to be stored in the Czech Republic but it must be submitted within three days of a request from a public health authority. The following information is required in the mandatory documentation:

- Qualitative and quantitative composition of the product; the name, composition code number and identity of the supplier for perfume formulations and perfumes;
- Physical, chemical and microbiological specification of raw materials and of the final product, quality control and microbiological safety criteria. Raw material names must comply with international terminology rules and the International Nomenclature for Cosmetic Ingredients;
- Specification of the manufacturing procedure and its compliance with GMP principles;
- Assessment of final product safety including general toxicological profile and chemical structure of ingredients and possible exposure;
- First name, surname, address and qualification of the person responsible for the product safety assessment;
- Data on adverse effects possibly resulting from the use of the given cosmetic product;

- Proof of the effect claimed for the product, where justified by the nature of the effect or product.

### **Packaging of cosmetic products**

Act No 477/2001 Coll. regulates the packaging of cosmetic products, packaging quality and waste management under the authority of the Ministry of Environment. The Ministry of Health and the Czech Environmental Inspection are responsible for the surveillance of packaging. The Ministry of Health controls compliance with size and toxicological requirements on packaging material and labelling requirements, and declarations of conformity. The Czech Environmental Inspection controls packaging waste management. Every packaging waste producer has to register and to establish a system for treating used packaging.

### ***Organization of Market Surveillance on a Country Level***

The Ministry of Health organizes market surveillance on cosmetics. The Public Health Service is responsible for controls, specifically through its Regional Public Health Centres and Territorial Units located in the administrative districts of the Czech Republic. The Ministry of Health carries out market surveillance in collaboration with several governmental bodies, including the Ministries of Environment, the Interior, Finance, Industry and Trade, as well as health institutes, the National Institute of Public Health and various associations of manufacturers, importers, distributors and consumers.

### **Institutional Level**

The market surveillance body in the Czech Republic is State-owned and State-controlled. Market surveillance is performed on all items of common use (toys, materials intended for contact with food, products intended for children under three years of age, and cosmetics) and dietary hygiene. The most common cases of non-compliance relate to incorrect product labelling, incomplete product documentation and packaging waste management.

Customs authorities work in close cooperation with local Public Health Centres and may prevent the import of a product. Their action is based on recommendations and decisions of the local Public Health Inspector. Czech market surveillance authorities may apply fines, order corrective actions, ban the sale of products or order their withdrawal from the market and the closing of the manufacturer.

### **Problems Faced by the Authorities**

Generally, no major problems are encountered during the inspections. Czech manufacturers, importers and distributors were exposed to systematic pre-market controls for several decades (1966 to 2001), and are accustomed to following rules for cosmetics laid down by authorities and to taking full responsibility for their products.

### **Consumers' Level**

An individual may register his complaints at any level of the Public Health Service or through the Czech Trade Inspection. Complaints are accepted in any form: written, oral or anonymous. Complaints are registered and investigated with inquiries or in-depth inspections including sampling or analyses of products. The consumer who registered the complaint then receives a written answer and a report on the results of the surveillance action.

### **Financial Aspects of Market Surveillance Activities**

Market surveillance bodies are funded exclusively from the government budget. Applicable fines may reach 2 million CZK (approx. 67,000 Euros), and, in some cases, up to 3 million CZK (approx. 100,000 Euros). These fines are collected by Public Health Officers and then incorporated into the State budget.

Market surveillance bodies do not provide any paid services. They may provide non-paid recommendations or give advice. The establishment of the Information Network System of the Public Health Service is funded by the PHARE project.



***Certain Problems Regarding the Cosmetic Products Marketed in the Republic of Moldova***

*Mrs. Maria Bizgu, Head, Main Department of State Control and on Consumer Protection*

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Every country carries out market supervision and surveillance according to the State policy in this field, taking into account a number of particularities (geographic location, level of economic development, import-export ratio). Meantime, there are many common aspects of market supervision practices, which aim at the elimination of products that could pose hazard to the life and health of people.

We consider that in the process of controlling products, emphasis should be placed on marking, thus ensuring full and true information for the consumers with regard to a product's characteristics. An improperly marked product may pose a hazard to people's health and life.

The use of coded marking containing the date of manufacturing represented through letters and numbers does not help to determine the dates of manufacturing and expiration when the consumer will evaluate and select the respective product.

Encoding can be carried out only by the manufacturer, the link with whom is usually lost due to the complex chain of trade, when the product reaches the customer after two to three stages of this chain.

We consider worthwhile introducing unified requirements for the assurance of the necessary information regarding the product, i.e. the information represented as a code has to be accompanied by text, similarly to EAN bar coding.

The consumers also find important the information regarding the percentage/shares of specific ingredients (vitamins, useful additives) in the product compound. It is well known that a considerable amount of cosmetic products marketed are counterfeit. In our opinion, the first ones to deal with this problem are the manufacturers. Comparison of the products to a control sample (provided by the manufacturer) might be a useful tool, along with other means of detecting counterfeit products.

When evaluating the conformity of the products, the use of a control sample showing its identifying features would eventually help to control and trace multiple lots entering the market (type comparison and design of the package, printings, smells, general appearance, etc.).

Special attention needs to be given to cosmetic products with curative properties. Consumers should be provided with additional information, such as curative properties, instructions for use and using period, regarding this category of products.

It is especially alarming that “first-need” products (food, cosmetics, pharmaceuticals) periodically appearing on the world market are “contaminated” with chemical mutagenous substances. The National Institute of Standardization and Metrology of the Department of Standardization and Metrology of the Republic of Moldova developed a method of evaluating genetic safety of cosmetic products. It was done on the basis of the World Health Organization principle regarding risk evaluation of genetic toxicity in substances. According to this principle, the content of mutagenous substances in products to be consumed is not permitted in any concentrations, meaning that there are no limited admissible concentrations for mutagenous substances allowed. The core of the above method constitutes the biological test on the somatic mutations and genes recombination in an in-vivo test system *Drosophila Melanogaster*, as recommended by the Technical Committee of the Organisation for Economic Co-operation and Development (OECD).

Testing of the cosmetic products for determining the level of mutagenous components in them is being done in the national certification system of the Republic of Moldova since 1 October 2001. This activity is registered in the WTO secretariat as stated in the corresponding G/TBT/NOTIFICATION dated 20 December 2001.

In our opinion, the introduction of this measure in the national certification system for the testing of certain daily products, as well as testing of food and cosmetic products for determining the level of mutagenous substances, will provide a more effective protection of people’s health and heredity. It will also act on the prevention of many somatic diseases, which appear as a result of mutagenesis in the genome of the people, including the prevention of certain lung diseases.

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*Market surveillance in the UNECE region*

**EXCHANGE OF INFORMATION  
AND COOPERATION**



***Market Surveillance in the Netherlands and RAPEX***

*Mr. Dirk Meijer, Chairman, PROSAFE network (Inspectorate for Health Protection, Netherlands)*

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The Inspectorate for Health Protection and Veterinary Public Health is the enforcement body in the Netherlands for Food, Non-Food and Veterinary Affairs. Its two main tasks are enforcement and research/reporting.

Because consumer (non-food) products are now being traded globally, product safety requires global market surveillance or global coordination of market surveillance, at the very least. Existing international networks on product safety are:

- PROSAFE (Product Safety Forum Europe);
- ICPHSO (International Consumer Product Health and Safety Organization);
- The European Union's Rapid Alert Information System on Dangerous Products (RAPEX). The RAPEX system is based on the General Product Safety Directive (GPSD) 2001/95/EC, and specifically on Articles 7 (notification without urgent measures) and 8 (notification with urgent measures). In addition to the RAPEX system, there are notification systems related to the directives on the New and Global Approaches (LVD, Machinery, etc.).

The number of notifications varies greatly from country to country, from 0 to 22 per year. Many of these notifications concern products from the Far East or of unknown origin.

The RAPEX system is not yet used as effectively as could be, as it currently lacks clear decision-making tools to help assess risks. The European Commission (EC) is in the process of setting up a risk assessment system. RAPEX also needs a well-defined information network, because global coordinated market surveillance can only be successful if information is shared between enforcement authorities. This requires an efficient information exchange system and an informal network (such as ICPHSO and PROSAFE) that allows experts to meet

and discuss the issues. For this reason, the EC is supporting the elaboration of the ICSMS system (Information and Communication System for Market Surveillance), which will seek to improve the exchange of information between European market surveillance authorities.

***Experience with the TRAPEX System (Rapid Alert Information System on Dangerous Products) for Countries Acceding to the European Union***

*Mr. István Geri, Deputy Director, General Inspectorate for Consumer Protection, Hungary*

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**RAPEX**

Once goods cross the European Union's (EU) external borders, they can move freely within the internal market. This also applies to products that present a safety hazard to consumers' lives and health. This is one of the reasons why the rapid flow of information, coordination and cooperation among the market surveillance authorities of Member States is so important.

For product safety, the EU's official notification system on hazardous products is the Rapid Alert Information System on Dangerous Products (RAPEX). Participation in RAPEX is mandatory for all member states. Once the Brussels Commission becomes aware that a product presents a risk, it bans the product from the internal market and relays the details to all member states using the RAPEX system.

**TRAPEX**

In countries expecting to join the European Union, products appearing in one country's market often reach the markets of other countries. This also applies to products that endanger consumers' lives and health. Market surveillance authorities in Central and Eastern Europe recognized the need for international cooperation. For this reason, the central market surveillance agencies of Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia created a rapid information system for the region. The system follows the structure of the EU's RAPEX system and is called the Transitional Rapid Exchange of Information on Dangerous Products (TRAPEX). Unlike RAPEX, it is a transitional system and is based upon voluntary membership. The Secretariat for Coordination of TRAPEX is operated by the central market surveillance agency of Hungary (the General Inspectorate for Consumer Protection (GICP)).

TRAPEX continues to grow and improve in the following ways:

- Initial transfer of data by fax has been replaced by electronic mail, and a web site was created to allow online communication, including discussion forums. In addition, TRAPEX has launched a new system in which data transfer via e-mail is replaced by a shared international database that allows the Secretariat to perform data queries and prepare statistics.
- Membership has expanded to include the Czech Republic, Cyprus, Malta and Slovenia. The notification system now protects 104 million consumers in an area of 1.1 million square kilometres.
- The system was initially limited to non-food products, but now also includes food products and the national market surveillance authorities in this domain.

In 2001, participating authorities were alerted to 152 instances of hazardous products. For 25 of these, the products were also found in the markets of other countries. This positive experience led to three instances of cooperation with the EU's RAPEX system in 2001. TRAPEX will continue to develop its working relations with the RAPEX system.

TRAPEX members are working to expand the system to be able to inform other member states of dangerous products, as well as their own consumers, in their national language. In this perspective, the Hungarian Government launched the Hungarian Central Market Surveillance Information System, which integrates the TRAPEX system.



***Information and Cooperation:***  
***COOPERATION BETWEEN GOVERNMENT AND INDUSTRY***  
***PRESENTATION ON ICSMS ("INTERNET BASED COMMUNICATION***  
***AND INFORMATION PLATFORM")***

*Mr. Peter Rost, Coordinator, Industry's Contributors Forum (ICF)*  
*Mr. Dirk von Locquenghien, International Project Manager for ICSMS*

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Market surveillance aims to:

- Ensure consumer and labour protection by identifying and excluding unsafe products from the market;
- Avoid any unfair competitive advantage created through unlawful practices;
- Meet the requirements of the European Union's New Approach Directives.

Currently, market surveillance bodies lack the means to interact and exchange vital information in a rapid and timely manner. Current market surveillance practices and notification procedures (e.g. RAPEX and Safeguard) are not efficient enough and work only on a regional level. In addition, consumers do not have access to the results of market surveillance activities.

Effective market surveillance requires:

- Ensuring fast, reasonable cross-border action against unsafe products and their distributors;
- The provision of quick and timely information on market surveillance measures conducted by other market surveillance bodies;
- The creation of a pan-European information and communication network between market surveillance inspectorates, with limited access for consumers and companies;
- The development of a database covering all unsafe products distributed throughout Europe, including up-to-date information on product testing;
- Improving efficiency in cooperation with Customs authorities;
- Informing the public about unsafe products.

## **The Information Communication System for Market Surveillance (ICSMS) Project**

The ICSMS project was initiated through close cooperation between Belgium, Sweden and Germany, who were recently joined by Austria and Luxembourg. The project is supported by the EU Commission and about 70 European companies and industry associations.

ICSMS is an Internet-based information and communication system that combines public information (e.g. on faulty products and voluntary recalls) and restricted information (e.g. product information, test results, measures taken) regarding product safety. ICSMS supports cooperation between authorities, suppliers and consumers. It provides information on the legal, organizational and technical aspects of product safety in Europe and warnings about unsafe products.

Confidentiality plays a key role in ICSMS. This is why the system is split into a main restricted section accessible only to market inspection bodies, and a smaller public section where market inspection bodies can publish non-confidential product information.

ICSMS has many advantages:

- Unsafe products are more quickly identified and excluded from the market place regardless of their location;
- Information on unsafe products is announced immediately and appropriate measures can then be taken;
- Consumer protection is improved by providing comprehensible and reliable information;
- A platform for complaints now exists in accordance with the newly revised General Product Safety Directive;
- Work is not duplicated: test results by one surveillance authority are immediately made available to all other Member States;
- “Bad” manufacturers are deterred: ICSMS’s effectiveness will discourage them from committing offences.

Effective market surveillance is essential, and benefits everyone. Information must be easily available and usable at local, regional and global levels. Both industry and authorities have the same basic interest: safe products.

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*Market surveillance in the UNECE region*

***MARKET SURVEILLANCE IN THE  
CONTEXT OF A “WIDER EUROPE”:  
CURRENT APPROACHES AND  
FUTURE DIRECTIONS***



**MARKET SURVEILLANCE IN THE CONTEXT OF A “WIDER EUROPE”:  
CURRENT APPROACHES AND FUTURE DIRECTIONS**

*Mr. D. Podhorsky, Chairman, UNECE Advisory Group on Market Surveillance (“MARS” Group)*

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A Workshop on, “Market Surveillance in the Context of a “Wider Europe”: Current Approaches and Future Directions”, was held in Piestany, Slovakia, on 8 September 2003. The Workshop was organized by the United Nations Economic Commission for Europe (UNECE) Working Party on Regulatory Cooperation and Standardization Policies (Working Party 6) at the invitation of the Government of Slovakia and the Slovak Office of Standards, Metrology and Testing.

About 40 delegates from the following countries took part in the workshop: Austria, Belarus, Czech Republic, Iceland, Republic of Moldova, Slovakia, Sweden and Ukraine. Representatives of the European Commission and the UNECE secretariat took part in the meeting. Representatives of private-sector companies and of consumer organizations also participated.

The Workshop had a dual purpose: to pursue further the discussions initiated at the UNECE International Forum on Market Surveillance (29 October 2002, Geneva) and to discuss areas of work for the new Advisory Group on Market Surveillance, which held its first meeting in conjunction with the Workshop.

At the Workshop delegates spoke about the expansion of trade in the European region, particularly in the expanding regional grouping of the EU, called for greater emphasis on market surveillance activities and their efficiency in protecting consumers/users. In the context of a “wider Europe” it means that public authorities must have confidence in their counterparts. This should be based on an understanding of how market surveillance is organized and run in different countries.

A wide variety of regulatory approaches and different activities were presented by the Slovak public authorities responsible for safety and market controls (occupational safety, controls of industrial machines and equipment, products for general consumers, etc.).

Representatives of the Czech Republic and Slovakia spoke on the activities of their market surveillance bodies and recent legal and organizational changes as well as measures undertaken by the Government with a view to accelerating the process of approximating national legislation and institutional frameworks to the requirements of the EU.

Representatives of the CIS region (Belarus, Republic of Moldova, Ukraine) provided information on: the serious difficulties faced by their market surveillance bodies in protecting consumers against dangerous, sub-standard and counterfeit goods on their markets; about manufacturers' liability problems due to "disappeared" manufacturers or vendors who were not (or not properly) registered companies. It was noted that, for example, in Russia out of 3.5 million registered legal entities 46% are "dormant" or "dead" companies.

A representative of the Slovak Office of Standards, Metrology and Testing reported on the results of a questionnaire on market surveillance activities (replies had been received from the Czech Republic, Kazakhstan, Republic of Moldova, Russian Federation, Slovakia, Ukraine, Uzbekistan).

The speaker from the European Commission highlighted the European Union's (EU) policy with regard to administrative and technical cooperation among its member States in the area of market surveillance. He described and analyzed the objectives in the area of market surveillance, the role of national authorities and the methods to be used, within the framework of the EU regulatory system and its single market requirements. It was also mentioned that market surveillance activities should be defined taking into account the categories of products concerned.

Representatives of Austria and Sweden spoke on their national approaches to meeting the requirements set out in the respective EU directives, as well as coordination activities and principles to take into consideration when creating a system of market surveillance cooperation.

Information was also provided on the results of EC missions to candidate countries to assess implementation of the EU General Product Safety Directive. An analysis of the following countries (Bulgaria, Cyprus, Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia) was presented. On the basis of these

peer reviews the following general observations on product safety were made: there were significant differences in the way the directive had been applied; few pro-active market surveillance campaigns, few products under market surveillance (mainly - toys, electrical appliances); more developed market surveillance in the food sector; little involvement of customs; generally low testing capacities; few supportive injury statistics. In the area of consumer policy, the following observations had been made: generally insufficient financial support; need for training of personnel; need to raise the interest of consumers and to strengthen consumer organizations; and the need to improve information procedures and the cooperation between different stakeholders. Based on these comments, EU candidate countries had undertaken necessary corrective actions to improve the legal and especially administrative framework and supportive environment for market surveillance.

A representative of the private sector said that conformity requirements set by Governments should be well considered and justified so that they do not become a barrier to trade and an additional cost, which is eventually paid by the consumer. Any measures aimed at unifying and harmonizing conformity assessment requirements and market surveillance procedures are therefore welcomed by the private sector.

Representatives of a consumer organization and a public authority for consumer protection (Ukraine) referred to typical problems faced by consumers and of different ways of informing and educating the consumer.

A special presentation was devoted to cooperation between customs and market surveillance agencies, based on the example of Slovakia. A question was raised as to how to organize an adequate framework for permanent cooperation and coordination between the relevant public bodies on a national and regional level.

The issue of cross-border cooperation covered in a presentation on the Transitional System for Rapid Exchange of Information on Dangerous Products (TRAPEX) system by a Hungarian expert. There was general agreement on the necessity to continue such information exchange. One possibility would be to consider expanding and opening the TRAPEX system to other interested countries in the UNECE region.

The main debate was on two issues: what is the scope for market surveillance and what efficient and good practices and procedures could be identified and recommended to public authorities.

There were discussions on whether market surveillance should deal with such non- traditional (in western Europe) aspects as control of quality of goods, fraud and counterfeiting. Representatives of the CIS region were of the opinion that consumers could not objectively assess the safety and quality of goods on the market, which required the intervention of public authorities (information on numerous problems of this kind was provided). They also said that in some countries the consumer organizations are not mature enough to ensure effective protection of consumers.

Representatives of private companies and consumer associations spoke in favour of joint activities of public authorities, consumers and manufactures which could favour setting up a safety net against dangerous products, unfair completion, counterfeits, various deceptive practices.

During the debate it was suggested that in order to protect manufacturers from unfair competition and consumers from fraudulent claims, inspectors could verify the conformity of a product in areas beyond those related to safety. Thus, during routine market surveillance, experts could verify not only the fulfilment of legal requirements of a product (safety, labelling requirements, etc.) but also whether actual parameters of a product correspond to those declared/claimed by a manufacturer/trader (e.g. product's performance, its technical or quality characteristics). Such verification could also concern trademark/logo issues to check if an inspected product is a genuine product (i.e. whether the use of a trademark/logo has been properly authorized by its legal owner).

Such procedures, in the opinion of some participants - including those from the private sector - should not result in additional costs for inspectors but would create an additional "safety net" against counterfeit goods, which are usually of bad quality and, in many cases, also dangerous for consumers.

At the same time, the point was made that even the most sophisticated market surveillance bodies are not in a position to control and test every product on the market. Hence, Governments aiming at establishing an efficient market surveillance system should be aware of



the importance of transparency, the ethical and moral aspects, and the need to win the confidence of all clients, all of which will require a dialogue with manufacturers and consumers (However, as discussions showed, in some countries their level of understanding and willingness to get involved are not yet mature enough to obtain "ideal" results ).

A significant part of the debate was devoted to examining how to provide information and other types of assistance to consumers to help to raise their awareness of dangerous or low quality goods. One approach includes demands from authorities for additional labelling and/or product specific requirements (which was called upon by some participants), however, in some cases this could, de facto, decrease the liability of manufacturers and contribute to confusion and misunderstanding on the part of consumers.

It was generally agreed that an efficient market surveillance system should be based on: a legal framework (including product liability and consumer protection laws and instruments for enforcement for public authorities); a supportive environment (an effective court system, consumer organizations, etc.); the administrative capacity for market surveillance (testing laboratories, qualified personnel, etc.). In this respect, the question of how to finance such activities was raised.

As a follow-up to this meeting, it was suggested that UNECE should continue the practice of holding regular meetings with all major stakeholders in market surveillance activities. Participants welcomed the establishment of the new UNECE Advisory Group on Market Surveillance as a forum for a dialogue to identify solutions and good practices. This should considerably increase the protection of consumers.

At the end of the Workshop, the participants expressed their gratitude to the Government of Slovakia and the Slovak Office of Standards, Metrology and Testing for their hospitality and for the excellent organization of the meeting.

The inaugural meeting of the Advisory Group on Market Surveillance was held in Piestany, Slovakia, on 9 September 2003 in conjunction with the Workshop.

After discussions on the scope of its activities, the Group agreed that it would concentrate on matters identified both at the October 2002 Forum and at the Workshop on Market Surveillance.

The newly formed Advisory Group decided on its name, “Advisory Group on Market Surveillance” (acronym: “MARS” Group) and appointed its chairman, Mr. D. Podhorsky

The Group discussed and agreed on its terms of reference, on its future areas of activity and modalities of work. It also decided to organize a number of informal open-ended sub-groups (headed by facilitators) for interested experts to discuss concrete issues. Proposals from facilitators will be forwarded to the “MARS” Group with a view to deciding which practices/approaches would be the most efficient. The Group will then submit the final proposals to the Working Party for approval as recommendations for member States in the UNECE region.

As a result of the debate the Group agreed:

1. To invite UNECE member Governments to join the “MARS” Group and to contribute to its activities;
2. To remind Governments of the importance of strong support for market surveillance network in order to protect consumers and workers and protect the market from unfair competition;
3. To establish under the “MARS” Group an “institute of facilitators” to permit experts to contribute to analyzing and identifying good practices in relation to particular problems identified at the Forum and Workshop, and to invite UNECE member Governments to contribute to the work of nominated “facilitators” (sub-groups which are open to all interested Governments/experts) in the areas listed below with a view to developing proposals or recommendations concerning:
  - a. Terminology in the field of market surveillance
  - b. Information exchange/Networking/Database system
  - c. Reference/check list (self-assessment) to be used by market surveillance practitioners
  - d. Possibility of adapting ISO 9000 or other quality management systems (CAF, etc.) to the work of market surveillance bodies/agencies
  - e. Product liability and legal framework (e.g. how to handle problems with regard to non-registered or “disappearing” companies)
  - f. Protection of consumers against fraud and counterfeited goods
  - g. Generic guidelines for good practice in market surveillance
  - h. Coordination of the work of facilitators, reporting to WP.6 and its bureau

The results of the Workshop and of the inaugural meeting of the MARS Group were reported to the Working Party at its session on 10-12 November 2003. The Working Party invited interested UNECE member States to join the Group and to contribute to its activities.

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