

Market Surveillance Plan 2016

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1 Background

As an EU Member State, Sweden is committed to pursuing market surveillance in a number of different fields. The National Board of Housing, Building and Planning is responsible for market surveillance of construction products on the Swedish market. First and foremost, this means construction products covered by a harmonised standard or a European Technical Assessment (ETA) pursuant to Regulation (EU) No 305/2011¹, (the 'CPR')².

The Board is also responsible for market surveillance of lifts and subsystems, and of safety components for cableway installations,³ and for surveillance under the *produktsäkerhetslag* (2004:451) [Product Safety Act] (PSA) of products within its remit.

1.1 What the Board's market surveillance of construction products is intended to achieve
Market surveillance is intended to help create more open and fair competition on the construction products market, which in turn helps ensure more cost-effective building and cheaper homes.

It is primarily designed to ensure that construction products covered by the CPR have the correct declaration of performance and CE marking, and that the declared performance corresponds to actual performance. To enable developers to select appropriate construction products, they must have correct information about the performance of those products' essential characteristics. The use of appropriate construction products is in turn one of the conditions, besides proper planning and implementation, which enable construction works to meet the requirements of planning and building law. In the long term, the aim is to strengthen confidence in the declaration of performance and CE marking, primarily among construction product users, and so increase demand for these assessments and markings.

To this end, the Board is involved in both proactive⁴ and reactive⁵ market surveillance. In the case of construction products covered by harmonised sectoral legislation other than the CPR, such as lifts and cableways, market surveillance is intended to ensure that products meet the relevant safety or energy-efficiency requirements laid down by law, and as such is primarily reactive. There will be no proactive market surveillance in these fields in 2016.

The Board's surveillance under the PSA concerns products not covered by harmonised standards. The aim is to ensure that construction products made available to consumers are safe. To this end, the Board mainly carries out reactive surveillance, that is to say in response to information received from the public, but proactive surveillance of certain product groups is also conducted.

2 Legal basis

Construction products are products which are intended to form part of buildings and other structures, such as roads, railway bridges and waste-water facilities.

The National Board of Housing, Building and Planning was designated as the market surveillance

¹ Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, OJ L 88, 4.4.2011, p. 5, as corrected by OJ L 103, 12.4.2013, p. 10; amended by Commission Delegated Regulation (EU) No 568/2014 of 18 February 2014, OJ L 157, 27.5.2014, p. 76; amended by Commission Delegated Regulation (EU) No 574/2014, OJ L 159, 28.5.2014, p. 41.

² Construction Products Regulation.

³ Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts, Directive 2000/9/EC of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons.

⁴ Own-initiative projects where the Board investigates a particular sector.

⁵ Market surveillance conducted in response to reports received by the Board.

authority for construction products in Chapter 8, Article 3 of the *plan- och byggförordning* (2011:338) [Planning and Building Ordinance] (PBO). Under Article 3 of the *produktsäkerhetsförordningen* (2004:469) [Product Safety Ordinance] (PSO), the Board is also responsible for surveillance of the safety of construction products pursuant to the PSA.

In addition to the above-mentioned legislation, there are a number of other acts and ordinances which apply to the Board as a market surveillance authority. The main ones are:

- *förordning (2014:1039) om marknadskontroll av varor och annan närliggande tillsyn* [Ordinance on the market surveillance of goods and other similar supervision]
- Regulation (EC) No 764/2008 on mutual recognition⁶
- Regulation (EC) No 765/2008 on accreditation and market surveillance⁷
- *plan- och bygglagen* (2010:900) [Planning and Building Act] (PBA)
- *lag (2011:791) om ackreditering och teknisk kontroll av varor* [Act on accreditation and conformity assessment of goods].

There are also binding Swedish provisions which provide safeguards, for example by limiting the release of dangerous substances from wood-based panels or the level of heavy metals from construction products in drinking water.⁸ Rules of this kind are issued by the relevant authorities in the sector on the basis of superior legislation, and they may play a role in the Board's product surveillance.

3 Principles for selection

3.1 Information gathering

The Board's proactive market surveillance, i.e. inspections organised in advance on the Board's own initiative, is planned in the light of specific, topical, societal needs and what action will have the greatest impact. The Board has decided to focus on inspections of either key product groups or product groups for which there is the greatest need for clarity and guidance. Inspections thus help to enhance compliance with relevant requirements, for example regarding declarations of performance for and the CE marking of construction products. As regards non-harmonised products, the Board's surveillance is also guided by the PSA.

The Board also receives information and reports on suspected deficiencies in construction products (these give rise to reactive surveillance). These are products which do not comply with the requirement for a declaration of performance or CE marking (see section 1.1), which cannot be regarded as safe for the purposes of the PSA, or which do not meet current requirements under certain sectoral directives.

The Board maintains contact with organisations in construction and, where possible, with customer groups, so as to obtain information on developments in the sector and how requirements are met. It intends to increase contacts with operators on the market, in order to make market surveillance

⁶ Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC.

⁷ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.

⁸ *Kemikalieinspektionens föreskrifter (KIFS 2008:2) om kemiska produkter och biotekniska organismer* [Swedish Chemicals Agency Chemical Products and Biotechnical Organisms Regulations] and *Livsmedelsverkets föreskrifter (LIVSFS 2013:4) om dricksvatten* [National Food Agency Regulations on Drinking Water]; see also *Boverkets byggregler* (BFS 2011:6) [the National Board of Housing, Building and Planning's Building Regulations].

more effective and enhance transparency.

The Board also conducts a dialogue with national authorities, and participates in European cooperation groups, so as to gather information on products on the construction market. This is done through the RAPEX and ICSMS information systems and AdCo meetings.

The information gathered is used in risk assessments carried out to help decide which product areas should be subject to surveillance.

3.2 Risk assessment and selecting products for surveillance

The Board makes use of risk assessments as an aid in selecting products for targeted, proactive market surveillance. Such assessments take into account a number of parameters which it is believed may affect the level of risk involved in a particular product field. In the case of construction products covered by the CPR, the risk is at the level of the structure, i.e. incorrect information on the performance of the product can have consequences for, among other things, the safety of the finished structure. Risk assessments are primarily used in selecting products covered by harmonised standards, that is to say products for which a declaration of performance is supposed to be drawn up and which should then bear a CE marking.

The Board also analyses which essential characteristics under a particular harmonised standard are relevant for the product group in question under Swedish building rules, and which of those characteristics should be selected for testing, if any.

Where surveillance is carried out pursuant to the PSA, the Board bases its selections on intelligence and reports received.

4 Surveillance methods

4.1 Proactive market surveillance

Market surveillance is conducted in the form of projects, often in cooperation with contracted notified bodies and accredited laboratories for the testing of product characteristics. In certain cases, the Board has products tested, where it considers this to be appropriate.

Document checks focus, firstly, on the product's declared essential characteristics and CE marking. Secondly, the underlying technical documentation is examined, as are instructions and safety information.

Before investigating a particular product area, the Board assembles the relevant information on CPR requirements for the product group in question and for the economic operators concerned. The first step in the market surveillance is then a comprehensive awareness-raising campaign. We take the opportunity to provide sector-oriented information, through information campaigns, talks, conferences and sector meetings. We also provide information on CPR requirements and on which product characteristics we believe should have a declaration of performance in Sweden for which intended uses of the type of product at issue.

The information is sent to those in the chain who are likely to benefit from it. The Board's objective is to disseminate general knowledge about the obligations which derive from the CPR, and to prepare individual undertakings for inspection. Information may be sent to the entire chain of parties involved: manufacturers, importers and distributors.

The information reaches more undertakings than those which will be directly inspected. The Board aims to produce information which is appropriate for the sector concerned at any given time, but tries also to create opportunities for meetings. It adapts the form of meetings to suit the precise conditions of the sector in question. In some projects, the Board makes previously announced visits to individual undertakings in the field. In others, it organises bigger information meetings to bring together a greater part of the sector.

The Board considers that this information-based approach has the biggest impact in persuading more undertakings to meet their obligations under the CPR.

The results are compiled on the basis of the document checks conducted and any tests of particular product characteristics (decided in advance). If declarations of performance and CE markings are not in line with the CPR, or if the actual product characteristics do not correspond to the declared performance, measures are imposed. Even purely formal errors are thus required to be corrected.

The economic operators affected are first given the opportunity to remedy deficiencies. An administrative sanction governed by the PBA, the building penalty, may also be imposed in such cases, if the declaration of performance is missing. Measures which can be taken if deficiencies are not remedied include withdrawal from the market or recall of products and, where necessary, the imposition of fines. The Board's primary aim is to have deficiencies remedied voluntarily.

Proactive market surveillance projects conclude with a final report, in which the experience gained from the project is gathered together. We also use the ICSMS information system to disseminate information to other market surveillance authorities.

4.2 Reactive market surveillance

Reactive market surveillance involves cases initiated on the basis of reports from the public, other authorities or, for example, inspectors of lifts and other motor-powered devices, and the Board's own intelligence. The reports and information received form the basis for further analysis of the extent to which investigation and measures are required. Initially, the documentation in such cases is checked, but checks may be widened to include testing.

Both harmonised and non-harmonised products can be subject to reactive surveillance. Those products include both construction products in respect of which deficiencies in their declaration of performance and CE marking under the CPR are suspected, and products which may constitute a danger to consumers pursuant to the PSA.

If a construction product does not comply with the requirements of the CPR or other harmonised EU legislation, the manufacturer, importer, distributor or other affected party must remedy the situation.

Other measures may also be taken, see section 4.1.

If a construction product poses a danger in accordance with the definition in the PSA, the economic operator affected must take steps to prevent damage/injury.

Information and documentation from reactive projects may be used as a basis for future proactive market surveillance.

4.3 Market surveillance of lifts and cableways

Ideally, market surveillance pursuant to the relevant directives⁹ takes the form of reactive projects.

⁹ Directive 95/16/EC and Directive 2000/9/EC, see section 1.

Lifts and cableways are subject to inspection and, where necessary, the inspection bodies report any deficiencies they find to the Board. There is nonetheless some proactive surveillance.

4.4 Evaluation

The evaluation of market surveillance conducted by the National Board of Housing, Building and Planning includes examining the extent to which plans were followed, whether they were deviated from and, if so, what the reasons for the deviation were. The Board also looks at documentation on the impact of action undertaken, the number of checks and tests conducted, the conclusions that can be drawn from the project, the number of reports received and what proportion thereof gave rise to voluntary rectification/measures and what proportion required sanctions to be imposed.

5 Cooperation

The Board cooperates and exchanges information/experience with a number of other authorities. These include primarily *Trafikverket* [the Swedish Transport Administration], *Konsumentverket* [the Swedish Consumer Agency], *Energimyndigheten* [the Swedish Energy Agency], the Swedish Chemicals Agency, and Customs. The Board endeavours always to provide effective surveillance and where appropriate cooperates on proactive projects with other authorities. The degree of cooperation depends on the project in question.

We would point out that the Board is also the market surveillance authority for construction products which do not fall within the authority's remit. These include products which form parts of roads, road bridges and railways, for which the regulatory authority, under the Planning and Building Ordinance, is the *Transportstyrelse* [Swedish Transport Agency].

The Board also cooperates and exchanges experience/information with other market surveillance authorities. For example, at national level, the Board is represented on the *Marknadskontrollråd* [Market Surveillance Council], while at EU level it attends meetings of the cooperation groups for construction products: AdCo-CPR, AdCo-LD (Lifts Directive) and AdCo-CWD (Cableways Directive). It also works closely with counterpart market surveillance authorities in other countries, above all Denmark and Norway.

The Board has ongoing contacts with various sector representatives and with the Swedish reflection group for notified bodies.

6 Costs

The Board's budget for market surveillance is approximately SEK 7 million per year; the work involved corresponds to five annual work units. This includes both proactive and reactive surveillance, but also the paperwork for information campaigns and the testing of products.

In allocating resources for market surveillance of construction products, the Board places the emphasis on planned and proactive projects. However, it also ensures that it has the leeway to carry out reactive surveillance (which cannot be planned), including surveillance under the PSA. The latter includes the main surveillance activity in respect of lifts and safety components for lifts.

7. Time-frame

7.1 Brief description of activities in 2015

In 2015, the National Board of Housing, Building and Planning worked on the following targeted projects:

- Asphalt, document checks and tests,
- Smoke detectors (AdCo-CPR joint project), document checks and tests,

- Infrastructure ballast, document checks and tests,
- Cement, document checks,
- Flexible roofing products of paperboard and fabric, document checks and tests,
- Windows, in part an AdCo-CPR joint project, document checks and tests,
- Stoves, document checks and tests,
- Load-bearing structural steel components covered by EN 1090-1, information campaign and document checks,
- Small, individual waste-water outlets covered by EN 12566-3 2005 + A2:2013 (mini waste-water treatment units), document checks,
- Concrete roof tiles, document checks and tests,
- Emergency and panic exit devices, document checks and tests.

These included new proactive projects but also continuing work on projects started in previous years. In the same way, in 2016 the Board will continue with projects started prior to 2016.

Reactive surveillance was conducted on an ongoing basis, as reports were received and depending on the resources available. The products involved came under a variety of mandates under the CPR and other harmonised legislation and included some from outside the harmonised sphere.

7.2 Market surveillance planned for 2016

In 2016, the National Board of Housing, Building and Planning intends to carry out surveillance primarily of the following CPR product groups:

- Structural bearings under bridges (EN 1337-3), document checks and tests where appropriate,
- Shower enclosures (EN 14428:2004 + A1:2008), document checks; to be carried out in conjunction with some surveillance of shower cabinets (not governed by the CPR),
- Plasterboard (EN 520), document checks and tests where appropriate,
- Fixed road signs (EN 12899-1), document checks,
- Crash barriers (EN 1317-5), document checks.

Depending on resources, the Board is also considering the possibility of carrying out market surveillance of timber structures (EN 14081-1:2005 + A1:2011) or of products for the protection of concrete (EN 1504-2:2004).

Within the field not governed by the CPR, the Board is planning to conduct surveillance of magnesium oxide board.

The Board will conduct information campaigns as part of all proactive surveillance projects. The selection of product groups from those referred to above will be made on the basis of information gathered, analysis and the budget set for 2016. The number of product groups that can be looked at in 2016 also depends on the case-work generated by surveillance of the priority product groups, and other resource distribution.

The Board will continue to deal on a reactive basis with any incoming reports.

7.3 Activities planned for the next three years

It is difficult to provide detailed plans of activities over a three-year period. With the aid of well-established work procedures, we will continue to work on the market surveillance of construction products, particularly harmonised products governed by the CPR, with a view to increasing confidence in construction products with a declaration of performance and CE marking. Our work will also focus on joint initiatives with other States in the internal market, so as to exchange information, skills and methods regarding market surveillance of construction products.

In the future, the Board considers that it will be appropriate to carry out market surveillance of floors, boilers and construction products which are either chemical preparations or have the potential to release chemicals into indoor air, so as thereby to have the opportunity to step up cooperation with the Chemicals Agency. Surveillance of wood-burning boilers (not covered by the CPR) will also be an appropriate field for the future.