

**NATIONAL MARKET SURVEILLANCE PROGRAMME
GENERAL**

**PORTUGAL
2012 to 2013**

DECEMBER 2011



1 Introduction

This document is Portugal's general market surveillance programme 2012-2013 for the sectors covered by community harmonization legislation and by other special legal rules (inorganic fertilizers and construction products) as required by Article 18(5) of Regulation (CE) No 765/2008 of the Parliament and of the Council of 9 July 2008, setting the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.

The general market surveillance programme covers both the ASAE's market surveillance and the other Portuguese market surveillance authorities' obligations within the European Union (EU) internal market.

2 General objectives of market surveillance activities

For the purposes of Regulation No 765/2008 the following definitions shall apply: «market surveillance» the activities carried out and measures taken by public authorities to ensure that products comply with the requirements set out in the relevant Community harmonization legislation and do not endanger health, safety or any other aspect of public interest protection.

Whereas the free movement of goods is a cornerstone of the single market mechanisms, in place to achieve this based on is the prevention of new barriers to trade, mutual recognition and technical harmonization are required.

In this sense, the market surveillance overall aims is to ensure that only circulate safe products circulate in communitary market.

So, the purpose of market surveillance is to ensure that the provisions of applicable directives and regulations are complied within the entire territory of the EU, as citizens are entitled to an equivalent level of protection throughout the single market, regardless of product origin. In addition, the market surveillance shall ensure the safety, health and consumer protection, as well as eliminate unfair competition between companies and traders.

3 Organisation of Portuguese market surveillance

The general programme concerns market surveillance in the sectors covered by the products and general product safety.

The Decree-Law No 23/2011 of 11 February creates the conditions to apply the Regulation No. 765/2008 in Portugal. The national legislation is intended to ensure that all products sold in within the Community market comply with European Standards and do not jeopardize the health or safety of consumers and users.

In order to achieve, this legislation sets rules for market surveillance, and border control while the national organization sets in the provisions concerning the responsibilities and obligations of market surveillance authorities

This legislation also provides that if a product presents a serious risk to consumers or users, the ASAE or the others authorities that perform market surveillance for that type of product, can prohibit its sale and also restrict the products being made available on the market, to withdraw it from the market or to recall the products held by importers, stockists and distributors.

So the responsibility of market surveillance is assigned to eight authorities, six of them in mainland Portugal and two more in the Autonomous Regions of Madeira and Azores.

The general programme of market surveillance is directly related to the obligation of economic operators in the supply chain with regard to the placing on the market and making available on the market of products, conformity assessment of products and training of inspectors.

Thus set of measures and activities of public authorities to ensure that the various classes of products comply with the requirements set out in the relevant Community harmonization legislation or do not endanger health, safety or any other aspect of public interest protection.

In mainland Portugal, market surveillance, is performed through the following authorities (see annex):

- Autoridade de Segurança Alimentar e Económica (ASAE);
- INFARMED – Autoridade Nacional do Medicamento e Produtos de Saúde;
- ICP-ANACOM – Autoridade Nacional de Comunicações;
- Instituto da Mobilidade e dos Transportes, I. P. (IMT);
- Instituto Portuário e dos Transporte Marítimos, I. P. (IPTM, I.P.);
- Polícia de Segurança Pública (PSP).

And in the Autonomous Regions the authorities are the following:

- Inspecção Regional das Actividades Económicas dos Açores (IRAE Açores);
- Inspecção Regional das Actividades Económicas da Madeira (IRAE Madeira).

The obligations under Articles 27 to 29, of the Regulation the responsibility is affected to the Customs Authority, Autoridade Tributária e Aduaneira (AT).

4 Activities of market surveillance

The strategic orientation of market surveillance is within the wider context of the Government role in economic development, particularly in a context which points to the need felt and accepted, the increase fast growth and increased competitiveness.

The principles of market surveillance are an essential tool for the implementation of Community harmonization legislation.

The market surveillance is intended to ensure that the provisions of applicable directives and regulations are fulfilled in the entire EU, because citizens have the right to a level of protection equivalent throughout the single market, regardless of product sourcing.

In addition, the market surveillance is very important for the interest of economic operators because it helps to remove unfair commercial practices.

An efficient implementation of the law normally requires that the market surveillance authorities are acting sometimes in cooperation with manufacturers, importers or distributors in order to prevent the placing on the market or making available on the market of products that do not fulfill with the legal requirements.

The activities of market surveillance involve two steps:

- (1) The national market surveillance authorities should ensure that products placed on the market or making available on the market comply with the provisions of applicable national legislation transposing Community legislation and,
- (2) Take the measures in order to establish compliance, if necessary.

The activity of market surveillance is based in two most important strands:

- **Proactive** based on central planning properly articulated at the regional level, which selects and prepares enforcement actions according to previously determined criteria, the specific regional characteristics of structural situations and circumstantial, and also of the imperatives of inter-institutional cooperation;
- **Reactive**, based on complaints, denunciations and in specific situations identified by the inspectors, and also based on a request for cooperation from other authorities.

5 Priorities

In Portugal, the national laws that ensure the implementation of directives and regulations also ensure the obligations concerning the harmonization of legislation, the form and methods of execution entrusted to the public authorities, and their competencies.

Sometimes, to check compliance with legal requirements, it is necessary to develop strategies for action, setting up for cooperation and protocols between the market surveillance authorities

All market surveillance authorities have strategic plans of action, which include regional and/or national priorities.

The safety of the consumer or user, activity and priorities of ASAE are complemented with the participation in meetings and the work undertaken by ADCO's groups, and participation in joint actions of PROSAFE.

To ensure a high level of health protection and safety of consumers and users, the legislation establishes a set of essential safety requirements corresponding to the requirements laid down in directives or regulations adopted by the EU.

Before the festive seasons, such as Christmas, Carnival, Easter, etc., times for generalized exchange of gifts, the market surveillance authorities may take samples from the market of some products to submit them to laboratory tests in order to proceed to determine their compliance with legal requirements; the results being released later, if necessary.

Over the general programme, in respect with the requirements under Article 19(1) the market surveillance authorities should perform appropriate checks on the characteristics of products. When doing so, they shall take in consideration the established principles of risk assessment, complaints and any other information deemed as relevant

One of the priorities for proactive market surveillance from 2012 to 2013 is to implement the Article 23 of the regulation because it facilitates the EU best-practices of the market surveillance authorities, for example, in relation to risk assessment, CE marking or recall and injury statistics.

The subscription to the Information and Communication System for Market Surveillance (ICSMS) could be very important to use because it is a tool to help cooperation, communication and information-sharing with other Member States and their authorities.

6 Cooperation and coordination

The implementation of the National Market Surveillance General Programme of Portugal goes through cooperation between all national market surveillance, thereby setting priorities in terms of activities related to market surveillance.

The coordination of inspection activities will be established in accordance with the competences conferred by law to each of the market surveillance authorities.

The Portuguese customs authority has no responsibilities regarding market surveillance as it has no powers in this area, but only in the control of entrance of goods across borders. However, it has exclusive access to all documentation relating to the importation of products from third countries entering the national territory.

Where the customs declarations and documents containing information about the products, that might be suspicious about the safety of products, the customs authority suspends the free circulation of those products.

For the purposes under Articles 27 to 29 of the Regulation the obligations for market surveillance imply involvement of Custom authority in the market surveillance activities for all products.



According to article 27(2) shall be established mutual cooperation between the Customs authority and all the market surveillance authorities. This requires taking in to account the guidelines on cooperation with the involvement of Customs authorities in market surveillance produced by TAXUD with the collaboration of market surveillance authorities.

The coordination and cooperation in the EU is a precondition for a more effective and efficient market surveillance.

Portugal support a the development of common training programmes as well as the exchange of the national experts and officials between market surveillance authorities and a strengthening of the sectoral ADCO groups.

In respect with the requirements under Articles 24(1 and 2) and 18(1) of the Regulation, it is clear about the Principles of cooperation between Member States and the Commission so that the Portuguese market surveillance must participate in the ADCO groups meetings and in joint actions of PROSAFE for a more effective and efficient market surveillance in the EU.

Portugal would like a policy of attending all ADCO groups meetings but for this we need the Community financing which is provided as one of the activities connection with the application of the Regulation under Article 32(1).

7 Duration of the Programme

The program will begin in 1st of January 2012 and will end in 31st of December 2013, but some changes may be introduced, if deemed necessary.



ANNEX



List of Portuguese authorities with responsibility for market surveillance under Article 17 of the Regulation 765/2008

MARKET SURVEILLANCE AUTHORITY	AREAS OF COMPETENCE
<p>ASAE — Autoridade de Segurança Alimentar e Económica</p> <p>Address: Avenida Conde de Valbom, n.º 98 1050 – 070 Lisboa</p> <p>Tel: + 351 21 798 36 00 Fax: + 351 21 798 36 54</p> <p>Website: www.asae.pt</p>	<ul style="list-style-type: none"> ▪ Low voltage ▪ Simple pressure vessels ▪ Safety toys ▪ Construction products ▪ Electromagnetic compatibility ▪ Machinery ▪ Personal protective equipment ▪ Non-automatic weighing instruments ▪ Appliances burning gaseous fuels ▪ Efficiency requirements hot-water boilers fired with liquid or gaseous fuels ▪ Equipment and protective systems intended for use in potentially explosive atmospheres (ATEX) ▪ Recreational craft¹ ▪ Lifts ▪ Pressure equipment ▪ Measuring instruments ▪ Pyrotechnic articles ▪ Marine equipment² ▪ Energy efficiency requirements for household electric refrigerators, freezers and combinations thereof ▪ Transportable pressure equipment ▪ Noise emission in the environment by equipment for use outdoors ▪ Energy efficiency requirements for ballasts for fluorescent lighting ▪ General product safety ▪ Restrictions on the marketing and use of certain dangerous substances and preparations ▪ REACH ▪ Aerosol dispensers ▪ Fertilisers ▪ Pre-packaging ▪ Biocidal products ▪ Electro-medical equipment used in veterinary medicine ▪ Detergents ▪ Energy labeling ▪ Ecodesign requirements for energy-related products ▪ Textiles ▪ CLP/GHS ▪ Non-road mobile machinery ▪ Radio and telecommunications terminal equipment (R&TTE)³ ▪ Units of measurement ▪ Substances that deplete the ozone layer ▪ Fuels ▪ Bio fuels ▪ Sulphur content of marine fuels ▪ Drug precursors (categories 1, 2 and 3)⁴ ▪ Labelling of footwear ▪ Volatile organic compounds ▪ Packaging and packaging waste ▪ Batteries ▪ Waste, electrical and electronic equipment ▪ RoHs <p style="text-align: right;">(...)</p>

¹ Shared responsibility with IPTM

² Shared responsibility with IPTM

³ Shared responsibility with ICP — ANACOM

⁴ Shared responsibility with INFARMED



MARKET SURVEILLANCE AUTHORITY	AREAS OF COMPETENCE
<p>INFARMED — Autoridade Nacional do Medicamento e Produtos de Saúde</p> <p>Address: Parque de Saúde de Lisboa Avenida do Brasil, 53 1749-004 Lisboa</p> <p>Tel: +351 21 798 71 00 Fax: +351 21 798 7316</p> <p>Website: www.infarmed.pt</p>	<ul style="list-style-type: none"> ▪ Cosmetics products ▪ Medical devices ▪ Drug precursors (category 1)⁵
<p>ICP — Autoridade Nacional de Comunicações</p> <p>Address: Avenida José Malhoa, n.º 12 1099-017 Lisboa</p> <p>Tel: +351 21 721 26 11 (05/07/09) Fax: +351 21 721 20 89</p> <p>Website: www.anacom.pt</p>	<ul style="list-style-type: none"> ▪ Radio and telecommunications terminal equipment (R&TTE) ▪ Electromagnetic compatibility⁶
<p>IMT — Instituto da Mobilidade e dos Transportes</p> <p>Address: Av. das Forças Armadas, 40 1649-022 LISBOA</p> <p>Tel: +351 21 794 90 00 Fax: +351 21 797 37 77</p> <p>Website: www.imtt.pt</p>	<ul style="list-style-type: none"> ▪ Transportable pressure equipment⁷ ▪ Interoperability of the rail system within the Community ▪ Cableway installations designed to carry persons ▪ Vehicles ▪ Helmets
<p>IPTM — Instituto Portuário dos Transportes Marítimos</p> <p>Address: Edifício Vasco da Gama Rua General Gomes Araújo 1399-005 LISBOA</p> <p>Tel: +351 21 391 45 00 Fax: +351 21 391 46 00</p> <p>Website: www.iptm.pt</p>	<ul style="list-style-type: none"> ▪ Marine equipment ▪ Recreational craft⁸ ▪ Sulphur content of marine fuels⁹

⁵ Shared responsibility with ASAE

⁶ Shared responsibility with ASAE

⁷ Shared responsibility with ASAE

⁸ Shared responsibility with ASAE

⁹ Shared responsibility with ASAE



MARKET SURVEILLANCE AUTHORITY	AREAS OF COMPETENCE
<p>PSP — Polícia de Segurança Pública (Departamento de Armas e Explosivos da PSP)</p> <p>Address: Rua de Artilharia 1, n.º 21 1269-003 Lisboa</p> <p>Tel: +351 21 811 10 00 Fax: +351 21 387 4772</p> <p>Website: www.psp.pt</p>	<ul style="list-style-type: none">Explosives for civil usesPyrotechnic articles¹⁰System for the identification and traceability of explosives for civil uses
<p>AT — Autoridade Tributária e Aduaneira (Customs Authority)</p> <p>Address: Rua da Alfândega, n.º 5, r/c 1149-006 Lisboa</p> <p>Tel: +351 21 811 10 00</p> <p>Website: www.e-financas.gov.pt</p>	<ul style="list-style-type: none">All products

¹⁰ Shared responsibility with ASAE