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INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP AND SMEs DIRECTORATE-GENERAL

Single Market for goods

Internal Market for Goods and Market Surveillance

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SUMMARY OF THE MINUTES OF THE MEETING OF THE GROUP OF INTERNAL MARKET FOR PRODUCTS (IMP) MARKET SURVEILLANCE BRUSSELS, THURSDAY 29 JANUARY 2015 CCAB, ROOM AB-1D

1. Welcome and opening of the meeting

The Chairman welcomed the participants, and the draft agenda (Document: 2015_IMP_MSG_01) was adopted. An attendance list is attached (Annex 1).

2. Cross-border cooperation (Document: 2015_IMP_MSG_02)

The Commission explained that the purpose of cross-border cooperation is to make sure that EU product legislation can be effectively enforced in the single market despite the fact that the enforcement powers of individual authorities are limited by national boundaries. The Commission representative also stressed the need to ensure that once non-compliance is found, enforcement could take place across the whole EU.

Regulation (EC) No 765/2008 sets out the principle of mutual assistance, but does not provide implementation details. Against this background, document 2015_IMP_MSG_02 proposes some general principles and a procedure to follow when the manufacturer or importer of a non-compliant product found in Member State A is located in Member State B.

Many of the experts welcomed the paper as appropriate guidance for market surveillance. However, further clarifications were considered necessary. Some participants underlined the importance that the responsibility for the investigation remains with the authority of country A. The question on how to deal with language issues was raised.

As to the means of informing authorities in other Member States, all participants stressed the importance of ICSMS.

The Chairman thanked the delegates for their constructive contributions, recognised that a lot of work has to be done in this area and asked the participants to send their comments to the Commission by 15 March 2015.

3. Draft report on Member States' assessment and review of the functioning of market surveillance activities according to article 18(6) of Regulation (EC) No 765/2008 (Document: 2015_IMP_MSG_03)

The Commission thanked Member States for the transmission of their reviews and assessments of market surveillance activities in the 2010 – 2013 period pursuant to Article 18(6) of the Regulation. All Member States except one were able to deliver their report by the date of the meeting. The Commission appreciates the fact that most Member States were able to provide a significant amount of information, despite the difficulties of the exercise (first round of reviews, relatively short time available to discuss the common indicators and to collect information).

The national reviews and their English translations were uploaded in the IMP-MSG Circabc and published by the Commission on the market surveillance page of DG GROW available at the following link:

http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation/index_en.htm

Publication by the Commission complements, but is not a substitute for publication by national authorities.

The Commission presented the draft report containing a synthetic overview of Member States' own reviews and assessments. Some general considerations can be drawn at this stage. This information is very valuable as it provides deep insights into the practical enforcement of product legislation in the EU for the first time. The examination of the national reviews and assessments shows that the level of detail of information provided varies from Member State to Member State. Those which followed the approach suggested by the Commission contain in general more accurate and complete information on the activities carried out.

The Commission representative drew the attention of participants to the three main sections of the report. Section 3 gives a snapshot of the information provided by each Member State by explaining the approach taken when collecting and assessing the functioning of market surveillance and the resources available to it, the sectors covered by the national report and the conclusions drawn. This section does not yet contain the analysis of information provided by all Member States. Section 4 presents a more detailed analysis of information provided by Member States for a specific sector (toys). Section 5 presents some considerations on the implementation of the Regulation at national level in the 2010 – 2013 period. It notes that certain sectors were not included in the national reviews, that many Member States found difficulty in estimating resources for market surveillance and that national authorities frequently claim lack of resources. It also points to major challenges that could inspire further policy development. Finally it contains some conclusions on the results of this first application of Article 18(6) of the Regulation and makes suggestions for future exercises that could benefit from a common understanding on the relevant assessment criteria and the consolidation of the methodology used in this first round (i.e. fine-tuning of indicators, clarifications, address information gaps at Member State level).

The majority of the participants expressed appreciation for the Commission's work. As to the preparation of the national reviews they noted that this was at the same time a difficult (especially in terms of coordinating the different authorities) and very instructive exercise. They realise it was an opportunity to look at what had been done so far and what could be done better in the future. Against this

background they agreed to launch a discussion on the relevant assessment criteria for the functioning of market surveillance activities, possibly within the context of an ad hoc working group. It was also noted that the availability of this information can increase the visibility of market surveillance activities and help in obtaining more resources.

The experts agreed to fine-tune the indicators used in this exercise, but noted that they constituted a good basis and should not change too much. They also asked the Commission to combine all sets of information requested by different services in order to have a full picture of the market surveillance activities and to minimise the administrative burden. The Commission confirmed that under Action 6 of the Multi-Annual Plan it is proposed to merge the indicators used for these reviews with the 'enforcement indicators' collected by JUST (former SANCO). The use of ICSMS to collect this kind of information was widely supported.

The Chairman concluded that this is a work in progress, but the assessments and the statistical information received until now are already very revealing. Comments and/or suggestions on the draft report of the Commission should be sent to the Commission by 15 March 2015.

4. Implementation of the EU strategy and action plan for customs risk management: request for feedback on import controls and cooperation with customs (Document: 2015_IMP_MSG_04)

The Commission informed the participants of the new strategy together with a detailed action plan adopted by the Commission on 21 August 2014 (COM(2014) 527 final) to improve customs risk management. The new strategy identifies the key priorities where action is needed in order to achieve more effective and efficient EU-wide customs risk management by improving the border controls and therefore the performance of market surveillance. The strategy explicitly covers also aspects related to cooperation between customs and market surveillance. Following the conclusions of the Competitiveness Council on 4 December 2014, the Commission drafted a detailed roadmap to give a concrete form to the implementation of the objectives and actions laid down in the EU Strategy and Action Plan for customs risk management. DG TAXUD explained the structure and purpose of the road map and would like to receive feedback from the market surveillance authorities in particular on:

1. Objective 3: Implementing the concept of 'Assess in advance – control where required' to respond adequately to identified EU and national risks while maximising efficiency in the use of resources and fluidity of the supply chain.
2. Objective 4: Strengthening capacities to secure equivalence in effective implementation of the Common Risk Management Framework (CRMF) and to increase responsiveness to newly identified risks.
3. Objective 5: Promoting interagency cooperation and improve information sharing between customs and other authorities at the MS and EU level to ensure effective risk management. Relevant aspects in this regard are for instance the fact that customs need market surveillance authorities' expertise, the need to links relevant databases such as ICSMS and the possible role of Authorised Economic Operator schemes in the area of safety and compliance checks.

The participants insisted on the need for and importance of collaboration between market surveillance authorities and customs. In this context, training sessions and courses should be organised for customs inspectors in order to have a common understanding on what needs to be checked. Some representatives stressed the value of the check lists for customs inspectors developed under the Customs 2020 programme and encouraged ADCOs to ensure the drafting of additional lists for all relevant categories of products.

Furthermore, sharing of intelligence (e.g. risk profiles for economic operators and products, respectively) between market surveillance authorities and customs is essential, although it may well be that an economic operator has a low risk profile for taxation purposes and a high risk profile in the area of product safety and compliance. The involvement of ADCOs in the preparation of market surveillance authorities' risk profiles would avoid duplication of work at national level. It was also noted that the information on risk profiles should be further shared among all customs to be effective. The Commission emphasised in this respect the use of CRMS (Community Risk Management System) that enables the exchange of risk information.

A real obstacle to cooperation when proactive market surveillance is carried out is the fact that CN codes used by customs in the TARIC database do not provide for the level of detail required for certain product categories used by market surveillance authorities. If the product categories to which the CN codes refer can be refined, GROW and relevant sectors should be consulted on possible outcomes.

A further obstacle, notably for reactive market surveillance (e.g. follow up to RAPEX and ICSMS notifications, arises from the fact that customs do not have information on relevant economic operators and product type).

A delegate also reported being surprised when, having asked customs which economic operators were importing a given category of product, being told that the information was confidential. Another participant noted that customs declarations can contain false information (e.g. product description).

Some participants complained about the short time given to market surveillance authorities to react when goods are suspended for free circulation. Another Member State noted that the fact that its own customs are fully fledged market surveillance authorities reduces coordination problems and allows for more efficient controls. The adoption of a similar model could be examined by TAXUD and other Member States. One participant noted that customs would need to be equipped with some testing facilities.

The Commission representative observed that some of the issues raised relate to objective 5 (Interagency cooperation) and some to objective 3 (Select in advance), which focuses on finding the right identifiers in pre-arrival data. He noted that checklists are useful tools to check goods presented at the customs, however in regard to objective 3 it is important to identify the best moment for controls: either before arrival at the moment of unloading or at release for free circulation. The development of risk criteria allows the screening of information transmitted in advance by the shippers (i.e. before goods reach the EU borders) or data from customs declarations. The result of this screening can then be exchanged among customs in all Member States in the Common Risk Management System (CRMS) (objective 4). He also mentioned that the problem of CN codes has been submitted

to the relevant service which is looking into it. He finally thanked the participants for their reactions and contributions.

Further comments and/or suggestions should be sent to the Commission by 15 March 2015. Follow-up will be provided at the next meeting.

5. Alignment package, pyrotechnic articles, recreational craft and radio equipment directives

5.1. *Safeguard clauses (Document: 2015_IMP_MSG_05.01)*

The Commission described the practical steps of the Union safeguard procedure included in the Decision No 768/2008/EC whereby authorities take restrictive measures on non-compliant products presenting a risk and notify these measures via ICSMS to the Commission and other Member States where the non-compliance is not restricted to their national territory. Other Member States or the Commission may raise objections against the notified measure. The outcome of the safeguard procedure has the objective of leading to the adoption of a common approach among Member States with regard to non-compliant products presenting a risk. Where there is disagreement on the national measures notified, the final step of this procedure leads to a binding Commission Decision where:

1. If the national measure is justified, all Member States must take the necessary measures to ensure that the non-compliant product is withdrawn from the market and inform the Commission accordingly; or
2. If the national measure is considered unjustified, the Member State must withdraw the measure. If there is a GRAS-RAPEX notification relating to the product, it must be withdrawn.

Delegates recognised the Commission work on the clarification of procedures and expressed their preliminary positive reaction on the paper. However, they insisted on the need for a link between RAPEX and ICSMS, and pointed out that ICSMS does not fully operate in some countries. The delegates requested additional explanations on the paper and on the measures that were covered by this procedure.

The Chairman asked the participants to send their comments / proposals by 15 March 2015.

5.2. *Transitional period for updating Declarations of Conformity as a result of the alignment package (Document: 2015_IMP_MSG_05.02)*

The Commission informed the meeting about the state of play of the Alignment Package, where most of the directives will enter into application on 20 April 2016. As of the date of application of the new Directives, Declarations of Conformity will need to include the reference to the new Directives. Industry associations have insisted that the lack of a transitional period for adapting the references will create

a significant administrative burden, in particular for those products manufactured in series and for which the exact date of placing on the market was difficult to determine. In the light of the above, the Commission outlined a possible solution affecting only the Declarations of Conformity and no other obligation, namely:

1. For products where the DoC is not a 'required' document, manufacturers could refer to the old legislation until 1 January 2017; and
2. For products where the DoC is a 'required' document, manufacturers could refer to the old legislation until 20 April 2018.

The delegates expressed significant concerns about this proposal and were hesitant towards the idea of foreseeing such transitional periods. All participants agreed that the market surveillance authorities have to find the best solution and to leave avoid for any misunderstandings. If the Declaration of Conformity is not drawn up correctly, market surveillance authorities should ask for its correction and take the appropriate measures.

The Chair concluded that there was insufficient support for the suggested approach on possible transitional arrangements for Declarations of Conformity under the NLF alignment package across Member States.

6. National market surveillance programs – feedback on the use of the new methodology (Document: 2015_IMP_MSG_06)

The Commission summarised the discussion on how to improve the use of national market surveillance programmes and in particular the specific proposal for a new methodology distinguishing between information to be shared among market surveillance authorities and information for the public. Furthermore, the Commission representative addressed certain specific implementation aspects of the new methodology, notably the question on how to ensure that effective exchange of information on sectoral activities planned takes place in ADCOs and the proposed common timetable to be agreed. She also stressed the importance of Member States using the small Excel template prepared for sharing information on planned sector activities in order to have information on all countries and all sectors in a single file and allow for the quick extraction of relevant data.

The delegates participating broadly welcomed the new methodology, the need to distinguish different programmes depending on their content and target group and the involvement of ADCOs. A delegate proposed that the Commission should chair ADCOs to improve their functioning.

Furthermore, exchange of information on preliminary plans within ADCOs could be a help for prioritisation (intelligence sharing) and a useful tool for *voluntary* collaboration among groups of Member States. Some ADCO Chairs confirmed this is indeed already the case for their sectors. On the other hand, it was noted that the discussion of preliminary plans for year n by summer of year n-1 would not be early enough to set-up formal joint actions financed by the Commission as their preparation requires more than a year. One Chair however mentioned that joint

projects are actually initially agreed in the ADCO and then reflected in the national programmes of those Member States who wish to participate.

As to the proposed timetable, some participants noted that it would be too early to transmit sectoral programmes by the end of September as budget allocation only takes place towards the end of the year. However, it was also observed that nothing prevents Member States from performing any necessary fine-tuning of programmes transmitted to the Commission and the other Member States as they should be viewed as working documents for confidential use and are not for publication.

Some participants expressed appreciation for the new templates prepared by the Commission. As to the one for general programmes, a delegate noted that its second part should be aligned to the template for the national reviews pursuant to Article 18(6) of Regulation (EC) No 765/2008 so that appropriate reporting could take place on a yearly basis. Another participant felt that the template intended for the public provides for too many details. The Commission accepted this, but noted on the other hand that the information to be included is not confidential; furthermore, the majority of the details provided are not expected to change from one year to another and therefore after the first year of use, the administrative burden will be lower since only relevant subsections of the programmes will need to be modified by Member States and translated by the Commission.

7. Enforcement of IPR and potential synergies with market surveillance for products (Document: 2015_IMP_MSG_11)

The Commission presented the main differences between (private) enforcement of IPR and market surveillance. The Commission representative first introduced the two approaches in IPR enforcement in the EU, namely the regulatory framework on reactive measures and the 2014 Action Plan focusing on preventive measures, with particular emphasis on integrity of supply chains. Customs authorities are already involved in this enforcement when controlling goods at the EU borders and this could lead to possible controls within the internal market. He finally recalled the different available tools that could help authorities in fulfilling that role.

Some delegates said that it was a good idea to discuss the possibility to exploit potential synergies, since the main role of market surveillance authorities is to monitor behaviour of economic operators. In this context, they recalled the 2007 Recommendation from the UN Economic Commission for Europe which suggested that market surveillance authorities should look at counterfeit goods as well. Furthermore, finding IPR-infringing products could be a good indicator with a view to controlling compliance with product safety standards, in particular from a prioritisation perspective. The Commission suggested that more dialogue on those issues between customs and market surveillance authorities should take place.

However, several experts were hesitant on the suggestion that markets surveillance authorities could be asked to enforce IPR in particular because of the lack of resources to deal with this issue, the lack of expertise to cope with such an area of law in an appropriate matter and the lack of interest of the rights holders to complain, especially where the product quantities were negligible.

8. Fulfilment Centres (Document: 2015_IMP_MSG_08)

The Commission presented the challenges faced by market surveillance authorities concerning all the actors involved in e-commerce and in particular fulfilment centres. These could be described as companies who store goods, receive orders, package goods and ship them to customers quickly. This business model creates challenges for market surveillance authorities as regards the role and responsibilities of fulfilment services providers. The Commission suggested that in the absence of any other relevant economic operator present on the Union territory, market surveillance authorities should consider that fulfilment services providers are making available products on the Union market.

The Chair of EMC ADCO Group welcomed the paper presented by the Commission. However he expressed different views on their responsibilities. He noted that in Germany there are ad hoc provisions applicable to fulfilment houses.

He furthermore presented his experience with fulfilment houses in Germany pointing out the legal background, presenting a recent case and illustrating the general experiences with this sort of service provider. He also believed that the guidelines on online surveillance under preparation should cover fulfilment houses as a specific item. Furthermore, he stressed in the case of fulfilment houses, products are being shipped very quickly and therefore there is no time for the voluntary phase whereby authorities in the case of formal non-compliance ask the economic operator to correct the no-compliance before any mandatory action. It would be more efficient if authorities could skip the voluntary phase and impose sales bans immediately.

The majority of the delegates agreed on the challenge faced by the market surveillance authorities towards the fulfilment centres. UK welcomed any guidance from the Commission on this topic and suggested the creation of a working group to further clarify these issues. However, there was a disagreement on their exact role. Some felt that they were distributors, others considered them to be postal services and some argued that they provide logistics coordination. Participants supported the need for further analysis of all the options available to find a practical solution for dealing with the situation where no responsible economic operator can be found in the EU. Light is also needed on who precisely is doing the customs clearances and what are the powers of customs authorities. NL asked the Commission to confirm the definition of placing on the market as regards web shops located outside the EU.

The Chairman concluded that a deeper legal analysis should be performed and asked the participants to send their contributions by 15 March 2015.

9. Internal market and its international dimension

9.1. *Turkey – EU Customs Union and the Free Movement of Goods (Document: 2015_IMP_MSG_13.03)*

The Head of Section of the DG Product Safety and Inspection of the Turkish Ministry of Economy presented the framework of the Turkey–EU Customs Union, the national technical legislation, the quality infrastructure, the activities of the

notified bodies and in general the organisation of market surveillance, standardisation and accreditation in Turkey. She concluded that in the sectors for which Turkey has aligned its legislation with that of the EU, a product lawfully manufactured and/or marketed in Turkey should be treated in the same way as EU originating products. Furthermore, she insisted on the need of more information exchange, cooperation and direct communication between the Turkish and Member States' authorities.