MINUTES OF THE MEETING OF THE GROUP “INTERNAL MARKET FOR PRODUCTS (IMP) MARKET SURVEILLANCE” (REV. 01)
BRUSSELS, MONDAY 01 FEBRUARY 2016
CCAB, ROOM AB-1A

1. Welcome and opening of the meeting

The Chairman welcomed the participants, and the draft agenda (Document: 2016_IMP_MSG_01rev03) was adopted.

2. Cross-border cooperation model (Document: 2015_IMP_MSG_02rev02)

The Commission introduced the paper laying out the basic principles and procedures for cross-border cooperation among surveillance authorities in the EU. The Commission pointed out that the document was a revision following the comments received by Member States and ADCO Chairs at the IMP_MSG meeting of January 2015 and on the version circulated in June 2015. In fact very few comments were transmitted by Member States on the current revision before the meeting.

A remaining issue concerns the language to be used for request of mutual assistance. According to delegates, ideally MSA should be able to find a common language or agree to use EN. If this is not possible the solution set out in Article 12(4) of Regulation (EC) No 2006/2004 on Consumers Protection Cooperation should be used.

Furthermore, some clarifications were requested about the meaning of step 7.2: an authority is empowered to take action against products made available by an economic operator located abroad, although enforcement may be problematic. This is precisely the reason why the follow-up by other Member States is needed (see steps 8 and 9). This also addresses the issue of a level playing field.

Another point raised during the meeting was the use of ICSMS as a communication tool between the market surveillance authorities. The delegates supported the idea of having such a communication tool and welcomed the updating of ICSMS to include this to avoid the need of “baton passing”. An ADCO representative noted that while the cooperation model stresses the importance of using ICSMS, due to the current lack of a communication module in ICSMS requests for mutual assistance should be transmitted via e-mails.
Commission answered that the use of ICSMS was strongly requested in the past by this group. However the Commission official confirmed the need to resort to practical arrangements to take into account the current stage of development of ICSMS. The Task Force on the Horizontal Good Practices will also develop a template for the relevant requests.

An expert commented that the use of ICSMS and the parallel sending of e-mails would create an additional administrative burden for market surveillance authorities. Within ICSMS one has the possibility of accepting or not a case and of making comments. Thus, all the information remains in the system and can be consulted at any time. However, other delegates welcomed the proposal to solve any matters informally before putting the information in ICSMS, thus creating a genuine collaboration. They suggested that the Commission should also play a significant role during this cooperation.

On the same point, an ADCO Chair noted that the deadline of ten days within which the authority of country B would be willing to handle the case should be optional or even deleted, since this time limit is not always feasible. Concerning the period of ten days, the Commission explained that this reflected the comment received by a Member State, and in this way Member States would avoid the opening of a parallel proceeding on the same economic operator. The authorities should try to discuss as soon as possible about who will carry out the case.

An ADCO Chair raised the issue that a market surveillance authority might deal with an economic operator located in its own country very quickly, but it might be very difficult to impose a fine on an economic operator located in a different country. The assistance of foreign MSA should also be sought to fine an economic operator that does not cooperate.

Overall, the experts welcomed the paper as appropriate guidance for market surveillance.

The Commission concluded that the document is supported by the group; however the text will be slightly adapted to address the comments received about the language of mutual assistance requests and to provide further clarifications.

3. Member States’ assessment and review of the functioning of market surveillance activities according to article 18(6) of Regulation (EC) No 765/2008

3.1 Commission Report (Document 2015-IMP-MSG-03rev01)

The Commission presented the report of Member States’ reviews and assessments of market surveillance activities during the 2010 – 2013 period. In particular, this report gives a combined overview of the contributions received, presents findings on the implementation of the Regulation (EC) No 765/2008 at national level and points to the challenges faced that could lead to further policy work and development.

The expert group welcomed the paper which will be published on the DG GROW website.
3.2 Task Force on Development of Key Indicators for Market Surveillance (Document 2016-IMP-MSG-02)

The Commission gave a progress report on the work of the Task Force which was set up as a result of the discussion held during the last IMP-MSG meeting on 29 January 2015, and the joint CSN/IMP-MSG meeting on 30 January 2015. The work is focused on facilitating the transmission of information on market surveillance activities and on ensuring the comparability of that information, while taking into account as best as possible the various ways in which market surveillance is organised across Member States and to make sure that no administrative burdens are needlessly created.

The expert group expressed the need for the close collaboration of the Task Force with the Member States in the collection of data. However, some of them doubted the efficiency of indicators such as budget and resources allocated and pointed out that data should focus on non-compliance, and in particular the number of non-compliant products found, and the number of inspections. This would lead to a certain inventory of non-compliance which could lead to a common understanding of it. Other delegates nonetheless supported the view that even if these indicators may be imperfect, they might give an idea of what is going on in the European Union and get an overview of the market quality. Much of this information may come out from the data already existing in ICSMS and thus the use of this data could be a first step to arrive at the total picture.

The Commission informed the participants that the next meeting of the Task Force is scheduled for Tuesday 16 February 2016 and that this work should be seen as the starting point of fighting against non-compliance and protecting consumers.

4. Cooperation between customs and market surveillance authorities

4.1 Risk management in the area of product safety and compliance controls on imported goods (Document 2016-IMP-MSG-03)

The Commission outlined the specific risk management approach towards product safety and compliance controls, which the Commission endeavoured to develop together with Member States, as well as the methods for information exchange between the customs and the market surveillance authorities. The Commission presented some recommendations and practical tools for customs and market surveillance authorities at national and European levels in order to help both authorities in better organizing product safety and compliance controls and carrying out their daily work.

Delegates welcomed the efforts made by the Commission on this issue. They nevertheless acknowledged a lack of some combined nomenclature codes for specific products (e.g. LED lamps).

The Commission said that they are aware of this issue and that they will be dealing with it mentioning that it is feasible to create additional codes, but since is a long process, it would be very important to identify the priority product groups.
Another point mentioned by the experts is the problem of communication between customs and market surveillance authorities due on one hand to different languages used and on the other hand different computer systems. They supported the idea of bringing some consolidation and improvement to the systems used, even those between the custom authorities of different countries, since sometimes a product which is banned in one Member State enters the Union through another one.

The Commission replied that there is already a communication system between the customs authorities, which is called CRMS and within which each authority can create risk information. The Commission acknowledged that the use of this system could be improved in the future, and its use should be promoted to share more information on risky products. The Commission concluded that this document is finalized for now, but Member States can send additional comments which could be taken into account later on.

4.2 Mapping the differences in dealing with safety and compliance controls for products entering the Union

The Commission informed the delegates of the work done by the Commission regarding Action 19 of the Multi-Annual Plan dealing with the mapping of differences in dealing with safety and compliance controls for products entering the Union. The Commission pointed out that the Commission had prepared a questionnaire for the main entry points and that the last contribution had been received the previous week. Now the Commission is analysing the replies received and will draft the report highlighting the synergies and differences in the customs controls on product safety. The Commission concluded that the results will be shared with the members of this Group.

5. Implementation of market surveillance at national level: National market surveillance programs (Document 2016-IMP-MSG-04rev01)

The Commission presented the overview of the information contained in the latest market surveillance programmes for 2015, also giving some feedback on the timing of submissions and the sectors covered by Member States in these programmes in 2015 and 2016. The Commission also presented the degree of implementation of the proposals made earlier by Member States for improving the preparation of the programmes. Remarkable progress has been made by Member States in the submission of the 2016 sectoral national programmes, as:

- the 16 Member States, Norway and Turkey having shared the programmes before 31 December 2015 have all used the new Excel template which facilitates remarkably the use of the information;

- many of them sent the programmes well ahead of the end of the year, which is in line with the objective of ensuring information is exchanged as soon as possible.

The delegates agreed that in the programmes information must be divided into general and sectoral information. The general programmes must be available to the public, while some sectoral information contains sensitive information and
cannot be published. Some of them argued, however, that the reporting as it is in its current form departs too far from the requirements laid down in the Regulation (EC) 765/2008 and that Member States should follow whichever template they want as far as the relevant information is provided. Some other experts expressed their concerns regarding the timing of the exercise due to the organisation of their authorities. The Commission noted that the new templates, following the analyses and discussions undertaken in 2013 and 2014, distinguish more clearly between information available to the public and information needed for the authorities - whose type, depth and timing are not identical. Furthermore, early information shared among authorities can be based on preliminary versions of the programmes.

The Commission concluded that the sharing of national programmes among authorities should be seen as an on-going work without formal deadlines. The Commission emphasised that this exercise should be considered as an organisational and not a legal one.

6. Multi-annual programme

6.1 Implementation of the programme between 2013 and 2015 (Document 2016-IMP-MSG-05rev01)

The Commission briefly presented the paper laying down the implementation and the state of play of each action of the multi-annual action plan between 2013 and 2015.

6.2 Call for Proposals and Joint Actions 2015 (Document 2016-IMP-MSG-06)

The Commission outlined the willingness of the Commission to finance joint market surveillance actions and other projects that contribute to more efficient and effective market surveillance for products within the internal market. The first call for proposals was launched in 2013 leading to an award for joint action in the field of metrology. In 2014, two proposals in the field of machinery safety and EMC-LVD were awarded funding. The 2015 launch saw no proposals granted funding, while the 2016 call for proposals on joint actions is currently being prepared and is intended to be launched as soon as possible this year.

The delegates welcomed the joint actions, but the majority of them expressed their serious concerns about the administrative burden for the preparation of the proposals. The involvement of the Commission through the financing of private laboratories was proposed, which would serve to limit the burden on the market surveillance authorities. Some of the participants proposed to also involve in the preparation of the proposals some specialized actors like PROSAFE for administrative support.

The Commission concluded that any financial contribution from the EU needs to comply with the principles and procedures laid down in the Financial Regulation adopted by the Council and the European Parliament.

The Commission gave an overview of this paper that was already presented on different occasions to this group as well as to the Administrative Cooperation Groups (AdCos). This methodology builds on the RAPEX Guidelines, developed within the framework of the Directive on General Product Safety (GPSD), and extends them to make sure that the broader categories of public risk protected under EU harmonisation legislation can be taken into account, and furthermore to reflect the specific legal requirements of product harmonisation.

A delegate mentioned that WELMEC has already developed a sort of risk methodology, and that the existence of two methodologies in this field could create some confusion. The Co-Chair of the AdCo group of measuring instruments confirmed that WELMEC deals with a different approach of risk assessment and that the two methodologies can be seen as complementary.

The Chairs of EMC, ATEX, RTTE and CP AdCo groups expressed their willingness to update the table of hazards with specific examples. A delegate questioned the table of probabilities contained in this methodology as being too detailed, and he asked for its simplification in order that market surveillance authorities would be able to define the level of probabilities.

The Commission replied that the starting points of this methodology are the RAPEX Guidelines. The Commission recognised the fact that the authorities meet a level of uncertainty in their assessments. The Commission therefore explained that the revised methodology takes uncertainty expressly into account. The Commission then announced that this paper will be published on DG GROW’s website and can be updated as new examples are sent to the Commission.

7. **Implementation of safeguard clause procedure (incorporated in all Union harmonisation legislation aligned with Decision 768/2008) into ICSMS (Document 2015-IMP-MSG-05.01rev02)**

The Commission informed the participants about the implementation of the new procedure for products presenting a risk, and the new safeguard procedure whose objective is to lead to the adoption of a common approach among Member States across the EU with regard to non-compliant products presenting a risk where there is a disagreement on the national measures notified. Since the procedure has been incorporated into all Union harmonization legislation aligned with Decision No 768/2008/EC, they explicitly presented the practical steps for its application through ICSMS.

Many delegates welcomed this approach, which will improve communication between Member States and will improve the database of product information. However, some participants voiced their concerns regarding the limit of one functional mailbox per authority and they welcomed the idea of at least one functional mailbox per directive for each authority. Some experts asked for the documents that should be provided in the procedure and if documents existing already in ICSMS should be re-uploaded. Some delegates asked the number of
automatic e-mail generated by the procedure to be as low as possible in order to
avoid overloading the users’ mailboxes.

The Commission noted that this restriction derives from the security environment
of ICSMS and that despite the fact it cannot be changed now, the Commission
will assess the need for modifying this during a next update. The Commission
pointed out nonetheless that there is the possibility of different users having
access to the system and creating reactions, objections etc. Concerning the
documentation, the Commission confirmed that if documents exist already in
ICSMS, they can be recovered by the system.

One expert questioned the notion of delay concerning the initiation of the
safeguard clause, and the notification of the measures taken to the Commission
and the other Member States. He pointed out that some measures could be subject
to appeals and thus someone has to wait for the results and then notify. Some
experts questioned the Commission about the link between RAPEX notification
and the safeguard clause procedure and asked for a clarification. They underlined
in particular that it could be useful to consider, in all sectors, that if a RAPEX
notification is required, it shall not be necessary to make a separate notification
for safeguard procedure.

The Commission explained that the deadlines are set in the directives and that an
appeal can have a suspending effect depending on the national law. If an appeal
does not have a suspending effect, this should not delay the authority's
notification. Some other experts reported that decisions can be taken with or
without direct effects even if they are appealed. If there is a dangerous product,
the idea of the safeguard procedure is to have a quick reaction to address the risk
of the product. Therefore according to them the notification should take place also
in cases of appeal. Many delegates welcomed this approach to the procedure.

The Chairman thanked all participants for the fruitful comments and suggestions
and informed them that the Commission will need to have at least six volunteers
to test the system and give feedback.

8. Single Market Strategy and possible new actions (Document 2016-IMP-
MSG-07rev01)

The Commission presented the challenges reported by market surveillance
authorities in the national reviews and assessment of activities carried out in the
2010-2013 period, providing an overview of the suggestions put forward by
national experts on action needed through the Single Market Strategy. In
particular, the Commission focused on the following nine topics:

1. Information to economic operators
2. Simplification of product legislation; alignment between legal requirements
   and verification procedures by market surveillance authorities
3. Coordination of market surveillance at EU level
4. Harmonisation of market surveillance practice across Member States
5. Better control of products imported from third countries
6. Better control of internet commerce
7. More and/or better use of resources; tools to support market surveillance authorities
8. Stronger measures against economic operators; Penalties; and
9. Digital compliance

Delegates noted the importance of educating and training business more. However, one should check at first the specific requirements and the costs to find out what is best suited to the needs of businesses. They also mentioned the need for prevention by helping economic operators to comply with and understand the rules. The need for a rapid exchange forum to seek information on different issues was voiced by certain delegates. This would lead to better coordination between Member States, quick decisions, alignment of views and responsible decision-making.

AdCo Chairs stressed the importance of making better use of the groups. Unfortunately the involvement of Member states in some AdCo groups is still limited. An expert asked their representatives to ensure participation.

Member States welcomed the idea of digital compliance and the use of a database in a reasonable way. This could help market surveillance authorities, but also businesses, to reduce their costs. Market surveillance authorities should find the most effective ways to work, and this idea constitutes an opportunity rather than a threat. One Member State disagreed with the idea of making the database mandatory. Another participant supported the idea of having some eLearning courses for business in order to overcome all the problems on the lack of resources and knowledge presented by market surveillance authorities.

The Commission concluded that all ideas will be assessed and most of them will be reflected in the Inception Impact Assessment which will be soon published. The Chairman then referred to the whole planning procedure which will include a public consultation that will run for at least for twelve weeks in all European languages, an evaluation of Regulation (EC) No 765/2008 which will be performed by an external consultant, and a stakeholder event probably in mid-June. He concluded that this Group will be consulted again probably in October 2016.

9. AOB

9.1 State of play of the work of the Task Force for Horizontal Good Practices on market surveillance: upcoming consultation on draft guidelines

The Chair of ADCO RTTE and member of the Task Force informed the participants of the state of play of the Task Force. He mentioned that the aim is to create a guide dealing with market surveillance, and reported that representatives of different sectors are trying to find a common approach on how to carry out market surveillance. The guide will include all stages from planning/targeting up to the final decision by market surveillance authorities. The guide will also include a practical toolbox, such as samples of letters to economic operators, best practices found in the group etc. He concluded that the document is now under finalisation and ADCO Chairs will be informed of this during the next meeting on 14th April 2016.
9.2 **Update of information on national market surveillance authorities**

The Commission recounted the work done on the collection of data on market surveillance authorities and responsibilities on a sector-by-sector basis by thanking all the contributors for their efforts and informed them that this is a living document which is updated each time the Commission receives information. The Commission asked the delegates to continue to send any remarks, additions, updates, etc. without including personal data.

9.3 **Mutual recognition**

The Commission informed the participants of the other big action of the Single Market Strategy, Mutual Recognition. The Chairman said that the Commission will adopt an action plan in 2016 and will revise the Mutual Recognition Regulation in 2017. The process will be similar to the one on non-compliance. Finally, he asked if the experts considered it useful to also discuss mutual recognition in this group.

The expert group agreed that the principle of mutual recognition is very relevant to this group, since in many Member States the same authorities deal with harmonised and non-harmonised products. They welcomed the idea of discussing mutual recognition issues in this group and in general to keep all groups informed of what is happening elsewhere.