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A COMMUNITY FRAMEWORK FOR MARKET SURVEILLANCE

The Draft Community Framework for Market Surveillance as presented by the EU Commission (Certif 2005-7) provides a good basis for discussion and for drawing up concrete measures within this area. A common single market requires a uniform sophisticated market surveillance system which will result in the best possible level of surveillance in all Member States. UNICE therefore support the establishment of a Community control mechanism to ensure that all Member States fulfil the obligation to carry out market surveillance.

MARKET SURVEILLANCE IS THE PREROGATIVE OF THE MEMBER STATES

Market surveillance is the prerogative of the Member States (in accordance with the principle of subsidiary, a fact pointed out by the European Commission). However **common, in all Member States equivalent, comprehensive provisions** are required with regard to **processes relating to control and sanctions** to ensure that the overall aim of a single market is advanced.

It is important that all Member States take responsibility for ensuring that the market surveillance is conducted in a consistent and homogenous manner. A prerequisite for achieving this is the allocation of **sufficient resources** by the national authorities to ensure implementation. Limited resources do not constitute a valid excuse for enterprises not fulfilling their obligations (i.e. for not complying with the safety requirements of the EU legislation framework). Neither should this be an argument for the authorities.

Product conformity is the number one concern of companies. In price sensitive sectors, this may tempt some manufacturers or importers to take the easy option, marketing products which do not conform with the requirements. As long as there is not an effective market surveillance system with efficient sanctions, there is little risk involved in marketing non-compliant (unsafe) products. Consequently, those manufacturers who obey the rules are placed at a competitive disadvantages to those who break the rules.

Some argue that pre-market control through the implementation of compulsory 3rd party certification might compensate for the lack of real market surveillance. Experience indicates however that this is not the case. Certificates can (and are) misused and copied. UNICE sees little reason to impose additional burdens on enterprises that are in compliance with EU law because national authorities fail to fulfil their tasks and obligations, thereby making it easy for those manufacturers who are ready to break the rules.

A SIMPLE AND EASY TO UNDERSTAND FRAMEWORK

The right approach at this time would be to join forces to achieve a better, more efficient and predictable market surveillance. In this regard, it is first and foremost important to establish a regulatory framework that is **simple** and **easy to understand**. The wrong approach in our view would be to introduce a stricter legislative framework. The 'free riders' who do not comply with the current legislation are not likely to comply with an even stricter framework – so why punish those who do comply with even tougher regulations?

The essential requirements stipulated in the directives clearly state how safe products must be designed and produced. It is the responsibility of the manufacturers to fulfil these requirements, while it is the responsibility of the authorities to ensure the implementation and the enforcement of the regulation. It must be noted that consumers also have a responsibility, i.e. to use products according to their intended use and the instructions of the manufacturer and to report unsafe products.

CORRECT AND CONSISTENT IMPLEMENTATION AND ENFORCEMENT

The next step is **correct** and **consistent implementation** and **enforcement** of the common EU framework. Achieving a high ranking on the EU's implementation scoreboards is of little importance if the legislation is not being implemented and enforced in a correct and consistent manner throughout the Internal Market.

Market surveillance needs to go further than just ensuring that the documentation is in order which in terms of safety is not the most important issue. There are many enterprises that have provided perfectly thorough and clear-cut documentation in relation to declarations of conformity whilst in reality their products have been defective. Market surveillance should therefore be concentrated on the **technical aspects** of products.

Products should be **tested** against the manufacturer's declaration of conformity which in most cases refer to harmonised **European standards**, set up to fulfil the essential requirements of the product directives. Adherence to these standards would simplify the work of the authorities. Separate individual stipulation/evaluation of essential requirements can create legal uncertainty.

Market surveillance authorities need to participate in the standardisation processes in order to bring their expertise into the development of standards and to acquire a better understanding of the results of standardisation.

Business and retail services sector along with importers must also be held accountable in relation to their responsibility to ensuring that the products that are being marketed and sold are those which fulfil the safety requirements.

CLOSE AND EFFICIENT COOPERATION

It is necessary that market surveillance authorities establish close and effective **cooperation with customs authorities**. Customs authorities must be given access to adequate resources so that they are able to check products, not only in relation to taxes and excise duties, but also with regard to compliance **with essential safety requirements**.

The establishment of an effective **system for cooperation between the market surveillance authorities throughout the EU/EEA area** is also required, both to ensure more effective use of available resources and in order to avoid doubling of work. This type of cooperation is essential in order to achieve consistent enforcement of the legal framework and in order to enhance mutual confidence.

It is possible to envision a system where the different market surveillance authorities **share the responsibility for different sectors** between themselves in a given geographic region. It follows that the next stage in this process would be to seek increased cooperation between the EU/EEA area and authorities in third countries

which could amongst other things improve opportunities with regard to tracing the origin of products.

An effective **early warning system** is also essential in avoiding the defusion of unsafe products throughout the internal market. Close administrative cooperation between the market surveillance authorities of the different Member States would make this type of surveillance system more effective and efficient .

MEMBER STATE ACTIONS

In addition to cross-border cooperation, it is equally important that the **various surveillance authorities within a Member State cooperate closely**. As things currently stand a product may fall under the scope of several different directives for which different authorities have been assigned the task of conducting controls. For both the enterprises and authorities, it is not very efficient if one authority turns up to do a safety check one day, while, the next, another authority comes to conduct a voltage control, check electromagnetic compatibility or waste management procedures. This places unnecessary additional burdens on enterprises and in some ways constitutes the misuse of available resources on the authorities' side.

A survey on market surveillance systems in the different EU/EEA Member States may reveal a variety of best practices and could be useful in moving towards an effective and consistent market surveillance system throughout the EU/EEA¹.

It is important that the market surveillance authorities be transparent and **provide information** freely about their activities. The Commission's draft for a *Community Framework on Market Surveillance* mentions information campaigns as an effective means for increased understanding among the actors involved, and explicitly to national actors and the general public. By this we assume that this is a reference to information campaigns for which the Commission itself would be responsible?

That is all well and good, but **national information campaigns** would be much more effective. We would therefore recommend that the Commission contribution should be to contribute to (and convince) Member States introducing their own information campaigns the objective of which should be to increase general knowledge about the concept of market surveillance itself (such as who is responsible for what within this area i.e. authorities, manufacturers, importers, retailers, consumes etc). Any campaign should also provide information on **contact points** which enterprise and consumers can contact, should they discover products that do not conform to the prescribed requirements. One essential element of any such information campaign would be information on CE- marking.

In closing we would like to point out that UNICE is interested in and open to a dialogue with the Commission on these issues and we would be pleased to be consulted further on this matter. It must however be made absolutely clear that market-surveillance and the controls related therein are tasks which must be handled by the authorities themselves and not be left in the hands of private actors.

¹ For concrete examples please refer to the United Nations Economic Commission for Europe's document on Market Surveillance which accompanied the invitation to the UNECE meeting in the WP6 in October 2004 in which examples of cooperation between the various national surveillance authorities within a country are described