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Item 10 (a) of the provisional agenda

Market Surveillance

Draft recommendation on “Enhanced effectiveness of Market Surveillance Policies”

Draft recommendation submitted by the Advisory Group on Market Surveillance¹

Summary

The Advisory Group on Market Surveillance has prepared a draft recommendation for consideration by the Working Party.

The Recommendation aims at increasing the effectiveness of market surveillance by encouraging authorities to prioritize this policy area in the allocation of resources both domestically and internationally, and by giving broad guidelines for the organization of administrative structure and activities.

¹ At its twentieth session, the Working Party recommended the further development of a guidance document for market surveillance authorities.

Enhanced effectiveness of Market Surveillance Policies

The Working Party on Regulatory Co-operation and Standardization Policies

1. *Recognizing* the need to ensure that products placed on the market meet legal requirements on safety, health, environment, fair competition between economic operators, and any other aspects of public interest (hereinafter, legal requirements).
2. *Noting* that market surveillance is an essential public response to addressing that need.
3. *Noting* the existing differences in both legal, administrative and operative means for carrying out market surveillance policies among United Nations Member States.
4. *Noting* the lack of systematic guidance for setting up structures that meet basic and essential criteria for the enforcement of legal requirements on products made available on the market.
5. *Considering* the best practice developed internationally, including by the Advisory Group on Market Surveillance (MARS Group) and the Working Party on Regulatory Cooperation and Standardization Policies.
6. *In the light of* the General Assembly decision 54/449 of 22 December 1999 (United Nations Guidelines for Consumer Protection).

Recommends that:

- N1. Governments should organize and carry out market surveillance activities and devote sufficient resources to ensuring that products meet the legal requirements as defined above.
- N2. Governments should give priority to providing for a legal basis for market surveillance.
- N3. Governments should establish an adequate number of competent authorities as well as promote national coordination mechanisms among competent authorities.
- N4. Regulators should establish adequate legal requirements for economic operators in relation to the marketing of products and ensuring traceability.
- N5. Governments should establish effective mechanisms for horizontal and sectoral cooperation among the stakeholders concerned at the national and international level, including mechanisms for cooperation among customs authorities in this area, and for cooperation regarding penalties proportionate to the risks.
- N6. Governments, considering risks identified and political priorities, should provide for adequate and sufficient administrative capacities, resources and powers for market surveillance authorities to ensure implementation of the requirements set for products.
- N7. Governments should set national priorities for market surveillance according to the market conditions in the country, taking into account available information from regional and international information sources on products risks, and on product related non-compliances.

N8. Governments should set annual and/or multi-annual national priorities at general and sectoral level for market surveillance.

N9. Governments should refer to best practices for market surveillance available internationally in order to plan market surveillance actions, to monitor the market, to react upon finding non-compliances on the market and to ensure the conformity of products to regulatory requirements on the market.

N10. Governments should take advantage of and contribute to existing channels for co-operation and information exchange internationally.

N11. Governments should participate in regional and international cooperation efforts such as joint market surveillance actions.

N12. Donors should recognize market surveillance as a priority in devising bilateral and multilateral technical cooperation projects.

Informative Annex

Checklist for the implementation of the Recommendation

A. Legal basis

1. Available legislation on consumer and user protection, including methods for collecting and informing of dangerous and non-compliant products (nationally/internationally).
2. Available horizontal legislation on enforcement of products defining:
 - product sector(s)
 - responsible authority /authorities
 - powers of authorities
 - cooperation (a) between enforcement authorities and (b) between enforcement authorities and other national stakeholders, including in methods for collecting and informing of dangerous and non-compliant products (nationally/internationally).
3. Sector-specific legislation defining:
 - essential product requirements
 - responsible authority/authorities
 - powers of authorities.
4. Legislation covering cross-border measures and the cooperation mechanisms between enforcement authorities and Customs authorities.
5. Explicitly address possible interactions between product legislations at national and or regional level and other national laws (i.e. criminal law).

B. Political priorities

6. Available national statement priority of product safety, health, environment and any other aspect of public concern including fair competition among economic operators.
7. Established national quality infrastructure, including a functioning system for accreditation and conformity assessment (inspection, certification, testing) and market surveillance.
8. Annual and/or multi-annual (e.g. 3-year) national market surveillance plans reflecting national priorities.
9. Participation in technical assistance in the field of enforcement.
10. Participation in standardization work at the national, regional and international level.

C. Best practices

11. National enforcement plans reflecting surveillance priorities, for instance according to the UNECE “MS Model”.

12. National legislation and other documents related to market surveillance use the terminology listed in the UNECE *A glossary of Market Surveillance Terms*.
 13. Availability of sector-specific surveillance plans and priorities.
 14. Enforcement methods comprising reactive and active surveillance techniques, as well as continuous follow-up routines.
 15. Methods for enforcement prioritization and surveillance prioritization including risk assessment).
 16. Available information-technology tools for documentation, reporting, follow-up and statistical analysis of market surveillance activities.
 17. Penalties for economic operators are proportionate to the risks and dissuasive.
 18. Cooperation with other stakeholders nationally (e.g. consumer and business organizations, industry, customs).
 19. Cooperation with other stakeholders internationally.
 20. Training of market surveillance officers and inspectors.
 21. Joint actions to assess risks of products as a basis for planning proactive market surveillance activities. The participation of non-EU countries should be supported.
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