Updates from regional grouping and advisory group on Market Surveillance

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Follow up to the 22nd session and the annual planning meeting of the UNECE WP.6 activities
ECE/TRADE/C/WP.6/2013/3

11th MARS meeting in Prague on 23-24.11.2013 organized in cooperation with the Czech Office for Standards, Metrology and Testing and Slovak Office of Standards, Metrology and Testing
ECE/TRADE/C/WP.6/2013/11
Excellent logistic in preparation – Czech Republic informed the of the annual planning meeting in Berlin of the topics proposed:

- Further development of the UNECE Generic Market Surveillance procedure
- Implementation of the UNECE Recommendation „I“ on Education in Standard´s related Issues
- Discussion on best practice guidelines in Market Surveillance
- Implementation of the EU regulation on standardization
- Implementation and enforcement of the EU regulation on construction products
- Proposed modification of the market surveillance within the framework of the EU
- New rules on Market Surveillance in the Euroasian Economic Community

Beyond that discussion on the further work related to the MARS guidelines and databases
11th MARS meeting – summary of results, future work and challenges presented by the WP.6 Chairperson

- Recommendation M on the “Use of Market Surveillance Infrastructure as a Complementary Means to Protect Consumers and Users Against Counterfeit Goods”;

- Recommendation N on “Good Market Surveillance Policies and Practices” which aims at guiding authorities in the set up and administration of a market surveillance system

- “Glossary of Market Surveillance Terms” in English, French and Russian promoting an increased mutual understanding of national practices in the field of Market Surveillance

- Creation of a database of Market surveillance authorities which shall span beyond the UNECE region to include also Brazil, and China, among others
MARS future challenges presented by the WP.6 Chairperson

to work in closer partnership:

- with national and regional market surveillance authorities in Member States

- with the other initiatives that are ongoing within the WP. 6, and in particular, the Sectoral Initiatives, and the Group of Experts on Risk Management in Regulatory Systems

- Development of common Guidelines and tools for efficient networking
Further development of the UNECE Generic Market Surveillance procedure

- Update on Market Surveillance Model initiative - Draft Guide to the use of the general Market surveillance procedure

Annex 1 List of sub-procedures and reporting templates to be developed. Most of these templates are in different stage of the development at the EU level:

- Contact information for respective government inspectorates (MSA)
- Risk assessment developed by ADCOs
- Notification form for dangerous products
- Standard list of risks related to dangerous products (see ADCOs guidelines + DG TAXUD Check lists)
- Safeguard clauses (for EHSR and/or formal non-compliance)
- MS information system
- General MS plan, including testing (share resources)
- Requirement and follow up for CABs (alignment to NLF – new obligation for CABs)
- Reporting of MSA to national/regional (existing or in preparation)
- Market Surveillance and Customs

- When transferring them into the UNECE Generic Model more inputs from UNECE countries (and beyond) is needed
How to support the enforcement of CRO (elaborated on the WP.6 sectoral initiatives)

- Exploring the feasibility of the less formal IRC mechanisms acceptance for the CRO enforcement
  - Recognition and incorporation of international standards (CB Scheme, IECEx scheme, OIML MRA etc.)
  - Soft law: principles, guidelines
  - Dialogue / Informal exchange of information

- MR Agreements and (voluntary) schemes - saving the cost of testing – Best practice of their usage by MSA

- Recognition of test results under the formal bilateral/multilateral agreements (i.e. GLP)

- Any further suggestion?
Mutual recognition in the EU Regulation 764/2008/EC

- **Scope of application:** 12.4 Commission shall draw up, publish and regularly update a non-exhaustive list of products which are not subject to Community harmonisation legislation. It shall make that list accessible through a website.

- **MSAs recognize the results of the accredited labs** – if the accreditation body fulfills the requirements of the 765/2008 Regulation.

- **Existing IT tool - Export Helpdesk for Developing Countries** - trade facilitation tool to assist developing countries’ exporters to access the EU market, accessible free of charge (EN, ES, FR and PT languages) - http://exporthelp.europa.eu/

- Harmonized as well as non harmonized products
MSA and Custom co-operation
Regulation 765/2008/EC- Control of imported products

- Obligation of border controls on an adequate scale before release for free circulation (Articles 27 to 29 of NLF Regulation)
  - customs must suspend release for free circulation
  - they must inform Market Surveillance Authorities (MSA)
- MSA can prohibit marketing if products dangerous
- Apply to all products covered by EU legislation
- Cooperation with customs is a key factor – Guidelines for the common understanding – RATF and Customs

Common understanding of the risk assessment
Cross border enforcement by MSA - General Principles

- The MSA who finds a non-conforming machine on their market (‘initiating authority’ / ‘MSA-1’) should normally handle the case and get the manufacturer to solve the problem, even if based in another country.
- Above agrees with the New Legislative Framework
- MSA-1 should try to get voluntary compliance in all EU/EEA. In many cases manufactures are cooperative and is the most efficient solution.
General Principles 2

- MSA-1 should not rely on other MSA to solve the problem
- Passing cases to other Member states is generally unacceptable
- MSA-1 should keep the MSA in the member state of the manufacturer (‘MSA-2’) informed and copies of relevant letters
- The MSA-2 can, if necessary, be requested to assist in obtaining the technical documentation. Only exceptionally should case is handed over to MSA-2.
ADCO Machinery Guide(s)

Take(s) into account:

- COM guide to the Machinery Directive 2006/42/EC.
- Court ruling from 2005, Yonemoto vs. Finnish Government. Concerning obligations of machine distributors (referred to as ‘importers’ in the ruling, as Yonemoto had ‘imported’ the machine from France)
- Best practice of the Member States:
  - Risk assessments for project Market Supervision Car Lifts
  - good practice guidance on the application of the safeguard clause
  - Good practice guide on market surveillance intervention against imported machines
Flow chart showing main steps of intervention procedure

1. MSA-1 becomes aware of a problem

2. MSA-1 makes inquiry to the manufacturer (and MF representative and NB if relevant). Dialog/visits etc.

3. MSA-1 makes conclusion on non-conformities. Manufacturer is requested to solve the problem voluntary in all EU

   *Most problems will be solved here and case can be closed*

4. MSA-1 takes enforcement action against the manufacturer (sales ban, withdrawal, recall, restrictions). Valid in MSA-1 country

5. MSA-1 makes Rapex- and Safeguard action notification if relevant

6. EU Commission gives their opinion

7. All MS to make sure that problem is solved in their country.
Inquiry to importer and MF3 about non-conformities and list of distributors

If relevant, copy to distributor (depending on the case)

Yes. Followup. Close the case.

Yes. Followup. Close the case.

Importer or MF3 solves the problem on EU level?

Copy of conclusion on inquiry to distributor. Inquiry to distributor about sales information.

Awaiting importer and MF3 reaction.

Not OK

Sales ban etc. to distributor in MS making the intervention.

Copy to MF3.

Sales ban etc. to importer. Copy to MF3. Safeguard notification if product is CE marked.

No

No

Conclusion on inquiry to importer. Request for corrective actions. Copy to MF3.
Thank you for your attention

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