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Market surveillance

Report of the Advisory Group on Market Surveillance on its activities and its meeting in Prague (25-26 September 2013)

Summary

The report of the meeting of the “MARS” Group, held in Prague on 25 and 26 September 2013, is hereby submitted for adoption by the Working Party. The main decisions taken were:

- to continue the development of the general market surveillance initiative
- to support the revision of the Recommendation D
- to enhance activities related to education on standards-related issues
- to explore the possibility for training market surveillance authorities on issues related to counterfeit goods and product marks.

I. Introduction

1. The 11th MARS-meeting was organized in cooperation with the Czech Office for Standards, Metrology and Testing and the Slovak Office of Standards, Metrology and Testing.
2. The meeting was attended by more than 30 experts from 10 UNECE member countries representing different organizations and stakeholders.
3. The full list of participants, as well as presentations made at the meeting, is available at www.unece.org/tradewelcome/areas-of-work/working-party-on-regulatory-cooperation-

and-standardization-policies-wp6/sessions/wp6-meetings/wp6-other-events/2013/mars-group-meeting/docs.html

4. The meeting was opened by Mr. Tomáš Hajdušek, Deputy Minister, Czech Ministry of Industry and Trade, Mr. Milan Holeček, President of the Czech Office for Standards, Metrology and Testing and Ms. Jana Krivosudská, Head of the Service Office of the Slovak Office of Standards, Metrology and Testing. They praised the strengthened cooperation between the Czech and Slovak standards authorities, which allowed them to host this event jointly for the first time.

5. The Chair of WP.6, Ms. Stoldt, then briefly introduced the MARS Group institutional setup and past achievements. She also outlined her vision for the future of the Group's work. In particular, she hoped to see the MARS Group working more closely with national and regional market surveillance authorities, especially in the less advanced countries of the UNECE region, and to strengthen partnerships between the MARS Group and other initiatives within the WP. 6.

II. Exchange of information on market surveillance activities in participating countries

6. The Chair of the MARS Group welcomed the proposals by Ms. Stoldt, the Chair of the WP.6, and started the first day's proceedings, which were presided by Mr. Holeček.

(a) Proposal for a Regulation on Consumer Product Safety (CPSR), which had a very broad scope, covering all non-harmonized consumer products, with the exception of food and feed, pharmaceuticals and other specific categories of products;

(b) Proposal for a Regulation on Market Surveillance which would result in the same procedure being followed for almost all products, based on the unification of market surveillance provisions from three different sources of EU legislation in one single legislative act, and thus contributing to simplifying EU legislation, while at the same time reinforcing cross-border cooperation among Member States and controls on the Union's borders.

7. A Multi-annual Action Plan for Market Surveillance, including 20 practical actions, for example, to reinforce the interaction between the ICSM and Rapid Exchange Information System (RAPEX) databases, to assess the costs and benefits of a common EU injury database, to increase support for administrative cooperation under the ADCO committees, to promote a unified risk assessment procedure for all products, among others.

8. The question and answer session clarified several points including for how long operators would have to retain the supporting documents under the new package, the specifics of the unified risk assessment procedure, the repeal of existing regulations if the new package was adopted, and the role of national standards bodies. There was also a discussion on whether one of the provisions of the CPS—namely the obligation on the indication of origin—would be compatible with EU commitments under the WTO TBT Agreement.

9. The Chair of the Board of the Czech Consumer Association explained that there was a need to reinforce the role of consumers in market surveillance, by making them better informed, and better able to defend their interest, with a special emphasis on the most vulnerable among them. He went on to introduce the organization ANEC—the European consumer voice in standardization—and referred participants to a joint ANEC/Orgalime position paper published in May 2013 (“Market Surveillance Regulation: A brave step towards an effective pan-European market surveillance system” <http://tinyurl.com/p64obce>)

and to a LinkedIn Page on “Consumer Product Safety in Europe” www.linkedin.com/groups?gid=5058737&trk. He praised various aspects of the Market Surveillance Regulation introduced previously by the representative of the EU Commission, but voiced some concerns, in particular about the origin requirements under the proposed regulation, because ANEC maintains that a product that is on the market should be safe, irrespective of its origin, price and applicable law.

10. The Chair of the MARS presented a proposed ADCO Machinery Guide. She recalled previous acts of legislation including former Council Regulation 339/93/EEC and Regulation 765/2008/EC and other tools already available to market surveillance authorities and customs authorities, such as RAPEX, the ICSMS; the Risk Information Form, the Risk Assessment Task Force and more recently the TAXUD Guidelines.

11. She said that the main purpose of the TAXUD Guidelines was to support customs and market surveillance authorities in carrying out the tasks effectively in accordance with Regulation (EC) No. 765/2008 (which introduces a clear legal framework for the controls of products entering the EU market and clear obligations on national authorities competent for that, e.g. Customs). The Guidelines consist of a generic and a specific part. The generic part is essential to understanding the overall relevant applicable EU legislation and in particular the obligations on safety and compliance controls and the cooperation between the relevant national authorities. The information related to the applicable EU legislation could also be found at the European Commission Export Helpdesk, together with the CN code and rules of origin.

12. The specific part of the Guidelines consists of information sheets for individual product groups, as well as checklists for these individual product groups. They provide customs officers with complete and comprehensive information in order to facilitate product safety and compliance-related controls. They are important not only for individual customs officers, but also for the customs authorities’ risk management and the presentation of the risk profile before a decision is taken on control measures.

13. The risk analysis function needs information about the specific risks of the product regarding health, the environment, safety and any other aspects of public interest protection, as well as other data in order to develop risk indicators as a basis for a selection of the flow (e.g. selected companies and groups of products). Machinery ADCO Guidelines should facilitate the results, which could be integrated into the checklists. Each information sheet of the TG TAXUD Guidelines is supplemented by a checklist for the individual product group that covers the most relevant elements to determine whether the characteristics of a product give cause to believe that a product presents a serious risk to health, safety or other public interests. It includes elements relevant for the screening of the product group and indicates when the release for free circulation of goods should be suspended for reasons covered by the checklist. From the Machinery sector only the chainsaw has been covered by the TAXUD Guidelines so far, but it is expected that the results of the NOMAD group will be incorporated into these sectorial checklists for another groups of machinery. Within the ADCO Machinery Guidelines, the RAPEX risk assessment will be extended to all risks including those others than health and safety, and environmental risks as envisaged, by Regulation 765/2008. Serious risk from the injury model is transferred to “irreversible harm”. She explained that the proposed ADCO Machinery Guide was also based on the Machinery Directive 2006/42/EC, the 2005 Court ruling “Yonemoto vs. Finnish Government”, concerning obligations of machine distributors, and best practice of Member States. It included a flow chart showing the main steps of the intervention procedure, standard formal letters to be addressed to counterparts in partner countries, and examples of a gap analysis.

14. The Director of the Standards Department, Czech Office for Standards, Metrology and Testing presented the activities of his Office, particularly regarding the implementation

of Regulation 1025/2012, which had entered into force on 1 January 2013. The regulation contained 29 actions, 9 of which were applicable at the national level. It established a regulation reporting group (RRG) composed of representatives of all CEN and CENELEC members, which had already started to operate. The Regulation also included provisions relative to the transparency of the work programme, to the accessibility of standards and the standards-making process for small and medium-sized enterprises, and to education on standards and standardization. The Czech Office was operating an online access system that was very reasonably priced and was subscribed by 27,000 users. Answering one question from the audience, he explained that the sales of the standards covered about 40% of the operational budget of the Office.

15. The Head of International Cooperation Department, of the Central Inspectorate in the Czech Trade Inspection Authority (CTIA) presented the activities of her organization in market surveillance and product safety. The CTIA had a broad scope of work covering most non-food products as well as environmental protection. The bulk of the work was currently concentrating on ladders, child-care products, and products from China. She presented a recent example of the agency's work based on a report in a consumer magazine, which had required the withdrawal of the product from the market and a communication to the CTIA's counterpart in an EU partner country, because the economic operator was based there.

16. The Senior Advisor to WP. 6 explained the role of standardization in the context of foreign trade and trade policy. Regulatory authorities made use of a number of different specifications, including in particular, those developed by: treaty organizations (such as Codex, the IPCC and the OIE); by formal standards bodies (e.g. ISO, IEC, CEN/CENELEC) and by other organizations (e.g. forums and consortiums, and NGOs). There is a continuum, rather than a clear divide, of many organizations that develop specifications of different kinds which are key inputs into all economic activities and in trade. Unlike the SPS agreement, which explicitly called on national authorities to make reference only to standards developed by three international organizations, the TBT agreement allowed significantly more liberty to regulators. It is important, though, for the standards-making process to follow good international practice. To date, 162 bodies had accepted the WTO Code of Good Practice, 87 of which were central governmental standardization bodies.

17. A representative of the Czech Office for Standards, Metrology and Testing presented Regulation 305/2011 on Construction Products, which had entered into force in April 2013. The Regulation replaced a previous Directive and aimed at ensuring reliable information on construction products using a common technical language. It placed new obligations on manufacturers, on notified bodies and also on authorities and end users. One important new element was that the declaration of conformity had been replaced by a declaration of performance, a more user-friendly document that followed the product all the way through from manufacturer to end user.

18. An important tool is provided by the New Approach Notified and Designated Organisations (NANDO) Information System. Member States, EFTA countries (EEA members) and other countries with which the EC has concluded mutual recognition agreements and Protocols to the Europe Agreements on Conformity Assessment and Acceptance of Industrial Products have designated Notified Bodies, established per Directive. Lists of Notified Bodies can be searched on the NANDO website. The lists include the identification number of each notified body, as well as the tasks for which it has been notified, and are subject to regular update.

19. The Head of International Relations Department of a Technical Testing Institute presented the Noise Machinery Directive project (NOMAD), which aimed at checking noise emission data in the instructions for using machinery. NOMAD is a survey

established by 14 Member States over a span of four years and has collected and analysed 1,500 manuals covering 40 families of machines from 800 manufacturers. The survey showed that the general state of compliance of machinery instructions with the noise-related requirements of the Machinery Directive was very poor. In fact, 80% of the instructions observed did not comply, and 35% were completely unusable. It can be inferred that employers cannot take decisions on procurement based on this deficient documentation. The NOMAD project had therefore recommended to ADCO that it start a wide information promotion and enforcement campaign aimed at machine manufacturers. Other recommended action included drafting guidance documents, each being specific to a machinery family; setting up a database for published harmonized noise test codes; and training activities directed at national market surveillance bodies.

20. The Head of the Department of State Supervision and Control of Belarus presented the developments in market surveillance activities in his country, in the context of the creation of the Eurasian Economic Commission (EEC), the Customs Union of Belarus, Kazakhstan and the Russian Federation.

21. The Customs Union had established a system of common technical regulations, with the goal of eliminating technical barriers to trade among members. Belarus, like the other two members, has to implement and comply with the common technical regulations, and therefore needs to accredit bodies to carry out the required conformity assessment activities. Twenty-six certification bodies and laboratories had already been accredited in Belarus, with more expected to be accredited in the near future.

22. Market surveillance itself is still at an early stage of development within the Customs Union. It will be established after some preconditions have been set, including in particular: an agreement among the three members on unified market surveillance activities, harmonization of risk assessment procedures, and agreement on penalties for non-compliance.

23. The coordinator of the UNECE General Market Surveillance Procedure (GMSP) initiative explained that an essential requirement of a performing market surveillance system was that it should protect the legislative system applicable to products on the market. This means the legislative system should provide sustainability and confidence in the system for authorities, economic operators and stakeholders. For this to be credible, the rate of non-conforming products on the market had to be limited. As part of the GMSP, published earlier by the UNECE MARS group, a software tool to analyse and optimize the cost of sampling had been developed. Some results of this tool using real data of market surveillance authorities had been provided. The software takes into consideration the number of equipment types per economic operator, the equipment risk, the estimated average cost of conformity assessment, the measurement of uncertainty of the conformity assessment and the total budget available for the market surveillance action.

24. The software provides basically two approaches for sampling:

- The standard deviation (precision of the inspection) is fixed and then a sampling plan is provided which minimizes cost.
- The cost of the sampling is fixed and then a sampling plan is provided which minimizes standard deviation (maximizes the precision of the inspection).

25. The tool may be used by market surveillance authorities to prepare their annual or multi-annual plans. Another application is for the individual market surveillance authorities to set tangible targets for their non-conformity rates.

26. The Chair of the MARS Group invited the coordinator to make available some additional explanatory material on the slides.

27. The WP. 6 secretariat made a presentation on recent activities undertaken by the Working Party and relating to education on standards-related issues.

28. This was complemented by a presentation by a professor from a Slovak university. She briefly presented examples of existing university programmes on standardization but reaffirmed that standardization was a much neglected topic in educational curricula. However, the relationship between standardization and academia is quite rich, because although there are limited numbers of academics engaged in teaching standards, there are several professors engaged in standards development. These are considered a precious resource because they are independent and provide an unbiased point of view. Also, there is much research being done in matters closely related to standards, such as food safety. One interesting example of recent research is to consider standards as one way to resolve the asymmetry of information between buyers and sellers on markets for which there is insufficient information. In particular, compliance with process standards such as ISO 14000 or ISO 9000 provides an important signal to the final user.

29. In the discussion that followed, participants shared examples of actual use of standards in educational systems. In the Czech Republic, videos that show the importance of standards for consumers had been produced for high-school students.

III. Revision of Recommendation D

30. The UNECE secretariat introduced the proposed revision of Recommendation D on “Reference to Standards” and briefly presented the forthcoming Conference on “Standards and Regulations”. The MARS Group expressed support for the revision of the Recommendation.

IV. Database on market surveillance authorities

31. The Chair of the MARS Group encouraged delegations to continue the discussion on the global database of UNECE authorities and how to further expand and use it.

V. Any other business

32. The UNECE secretariat updated delegations on a preliminary idea for further cooperation between conformity assessment bodies and market surveillance bodies in the field of counterfeit goods. This cooperation could be mutually beneficial, in that conformity assessment bodies were concerned about the falsification of their marks, and could benefit from the cooperation of enforcement agencies. At the same time, these organizations had information on the non-conformities most prevalent on the market, and could usefully share it with the authorities.

33. The hosts of the 12th MARS meeting, scheduled to be held in in Belgrade in June 2014, welcomed the idea, saying that they would potentially be interested, resources permitting, in organizing a training course for market surveillance authorities in conjunction with the next MARS meeting, and for the product safety council of Serbia.

34. The Chair of the MARS Group and the President of the Czech Office for Standards, Metrology and Testing thanked all participants and officially closed the meeting.