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UNECE FORUM ON MARKET SURVEILLANCE (Geneva, 29 October 2002)

Industry Views on Market Surveillance in the European Union

This background paper has been prepared by the European Industry Association on Information Systems, Communication Technologies and Consumer Electronics (EICTA), Brussels.

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EICTA'S VIEWS ON MARKET SURVEILLANCE
related to New Approach Directives

EICTA[1], having participated to the consultation process of the European Commission Review of the New Approach, would like to take the opportunity to elaborate on its earlier contribution and to add additional comments focusing, in particular, on Market Surveillance.

An effective implementation of the New Approach system, for the use of Declaration of Conformity (DoC), should be complemented by an efficient and consistent market surveillance system. EICTA wishes to express its support and satisfaction with the method of using SDoC (Supplier's Declaration of Conformity without mandatory 3rd party involvement) and market surveillance to demonstrate sustained compliance with the essential requirements. This approach drastically reduces time to market for manufacturers and suppliers, compared to third party testing and certification. At the same time, it provides benefits to the customers due to lower cost and earlier product availability.

In general market surveillance should be recognised as an essential part of any conformity assessment system, regardless of the nature of regulation in an economy. Even where products are expected to be submitted for pre-market type approval, some form of market surveillance is essential for adherence to basic regulatory objectives. As the manufacturer is always liable for his product, regardless of whether third party certification or a supplier's declaration was used, the preferred way of conformity assessment for the manufacturer is the supplier's declaration of Conformity. However, there should be a quick, effective and appropriate reaction to any misuse of SDoC. Therefore, each country should maintain a Market Surveillance system:

- Users should be protected from illegal and unsafe products being put on the market
- Products already on the market which severely infringe the objectives of the governing legislation should be removed
- Equal and fair market conditions should be set for all suppliers. Those who follow the rules and regulations should not have a disadvantage compared to those who do not comply with the rules.

[1] As of 1 October 2001, EICTA has merged its activities with EACEM, the European Association of Consumer Electronics Manufacturers. The new joint association is called EICTA - European Information, Communications and Consumer Electronics Technology Industry Association. It combines 45 major multinational companies as direct members and 28 national associations from 18 European countries. The new EICTA altogether represents more than 10,000 companies all over Europe with more than 1.5 million employees and revenues of over 190 billion Euro.

It can be expected that importers and SMEs may have little or no knowledge about the regulatory requirements applicable to them and their products. Market Surveillance authorities are well suited to inform and educate such companies, so that they do not place non-compliant products on the market due to a lack of knowledge about the legal requirements.

Market surveillance encompasses a number of activities. It includes:

- **Methods**
  - Follow-up on complaints regarding market players
  - Use of information from media benchmarking and advertisements published in media
  - Use of information on spectrum surveillance (jamming reports, harmful interference)
  - Sampling of products from retail outlets
  - "Intelligent" pre-selection, e.g. statistically "suspicious" distribution channels.

- **Actions:**
  - Inform and educate importers and other SMEs about the regulatory requirements
  - Review of supplier's compliance documents upon challenge
  - Re-testing of products for compliance against requirements valid at the time of placing the product on the market
  - Product removal process including appeals procedure.

- **Reasons to carry out market surveillance include:**
  - Dubious conformity assessment practices
  - Counterfeit goods
  - Substitution of parts/components after testing or approval.
  - Unauthorized use of radio equipment transmitting on non-harmonized frequencies, or not efficiently using the spectrum.

The responsibility for market surveillance lies with Member States' authorities. A key element of a well operating market surveillance system is consistency between Member States, be it in technical competency or in the way of operation and communication.

Sound market surveillance is based on two activities:
Firstly, the market surveillance itself. This may be based on assessment of compliance information from the supplier and of customer complaints. It may involve actual checking of products, or any other possibility.

Secondly, effective market surveillance, including radio spectrum surveillance, also has a strong element of communication. Fast availability of the results of surveillance provides an important basis for action. Preferably electronic communication technologies should be used providing instant access and dissemination capabilities on the local and regional levels and on the global level for cross-border prosecution. For suppliers with a stake in the market, where surveillance is active, the prospect of publication of failure to comply with basic obligations is a powerful incentive to maintain care.

Reports indicate that relatively few of the non-compliant products detected are really dangerous. Therefore, the guiding principle of market surveillance shall be proportionality to ensure that measures are appropriate and do not go beyond what is necessary to achieve the objectives. Products which severely infringe the objectives of the governing legislation shall be quickly identified and removed from the market, whereas incorrect labelling and incomplete declarations need to be handled differently. Regarding documentation, market surveillance authorities should first request the SDoC and user documentation. Only when there are grounds for a concern that a product does not offer the level of protection required to a serious extent, technical documentation should be requested that is proportionate to the severity of the anticipated problem. It is important that there is an opportunity for the manufacturer to review the results of market surveillance, before they are acted on.

In summary, EICTA believes that new legislative provisions should not be added to the existing New Approach system in order to improve the Market Surveillance system. A consistent and improved implementation of the existing legislation will create a harmonized environment for market surveillance that will benefit consumers, industry and the internal market.

In addition EICTA likes to refer to its Position on Traceability, dated 4 April 2001, which addresses this specific aspect of Market Surveillance in detail (see annex to this paper).

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Annex

EICTA POSITION ON TRACEABILITY

**information provided by manufacturers on products
for market surveillance in
the European communities internal market.**

Introduction

During the recent discussions on the review of new approach directives (e.g. LVD, EMC, and potential RTTED) the issue of traceability of electrical equipment by market surveillance authorities has been raised. There seem to be concerns that equipment found to be non-compliant cannot be traced to the manufacturer in order to ensure corrective actions, including, ultimately, the removal from the European market place. Proposals were made that equipment should be provided with some of; the name and address of the manufacturer, the authorised representative in the Community, the importer.

As a principle any legal measure should not go beyond what is necessary to achieve the objective. This also applied for traceability requirements, which should be proportionate. (i.e. the minimum needed to ensure that those responsible for products, which have actually created problems, can be traced.) It should be commonly acknowledged that purposefully illegal acts cannot be countered by traceability information. Criminal cases like falsifying documents or counterfeiting documents are subject to criminal law.

Problem Definition

Market Surveillance Authorities would like to have a way of identifying the original manufacturer of products for traceability. In the new industry structures, development, production and market introduction can be the responsibility of many different companies. Legislation should be flexible enough to allow a particular company to assume responsibility for the product. Products are not necessarily manufactured at a single production facility and may incorporate sub-assemblies supplied and manufactured by others. This problem is made even more complicated by product re-branding. Because of competition and commercial issues in the OEM business e.g. for re-branded products, the non-disclosure of the original manufacturer's name to the public may be essential.

Manufacturers and suppliers placing products on the European market must find a way of providing the necessary information to the market surveillance authorities so that they can identify and take action against those placing non-conforming products on the market.

Position

The New Approach Directives should be consistent in respect of traceability for market surveillance. The definition of whom has the responsibility for non-conforming products should be that used in the New Approach guide. This states that where a manufacturer is not established in the Community and has no authorised representative in the Community the responsibility is placed on the importer, the person responsible for placing the equipment on the market.

In order to trace the original manufacturer the person who places the product on the European market must identify to the Surveillance Authority, on request, the organisation that they obtained the product from if they are not the original manufacturers.

With these provisions the traceability of products should be ensured by the authorities and take account of evolving market needs.

EICTA is the European Information and Communications Technology Industry Association – bringing together 22 national ICT associations from 16 European countries and 31 large ICT corporations with major operations in Europe. EICTA has been operational since 1 January 2000, combining those activities that were previously vested in ECTEL and EUROBIT. It currently represents more than 10.000 European ICT companies. More about EICTA can be found at: www.eicta.org.

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