E U R O P E A N E C O N O M I C A R E A

S T A N D I N G C O M M I T T E E
O F T H E E F T A S T A T E S

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SUBCOMMITTEE I ON THE FREE MOVEMENT OF GOODS

EEA EFTA Comment

on actions in the field of market surveillance

1. The EEA EFTA States welcome the initiatives and actions which strengthen market surveillance in Europe and would also like to thank the Commission for including them in the discussions and allowing the opportunity to contribute to the development of the initiatives.

2. Reference is made to the joint IMP MSG/ GPSD meeting on 19 and 20 May 2014. In this meeting, several documents related to *"A vision for the internal market for products"* and *"20 actions for safer and compliant products for Europe: a multi-annual action plan for the surveillance of products in the EU"* were discussed. The European Commission asked for feedback by 15 July 2014. We have chosen to concentrate on five important issues. The views presented may be of a preliminary nature, and subject to be reviewed as the work progress.

3. The EEA EFTA States note that no unnecessary administrative burdens should be placed on market surveillance authorities, leaving less resources for market surveillance activities, nor on economic operators, cf. the internal market simplification agenda (e.g. REFIT).

1. INITIATIVE ON THE ENFORCEMENT OF THE UNION LEGISLATION ON INDUSTRIAL PRODUCTS (2014-IMP-MSG-02)

4. The EEA EFTA States support the European Commission's initiative to look further into the issue of non-compliance and the use of penalties in that context, as practice seems to vary between states and also between market surveillance authorities at national level. This initiative is also important in order to ensure equal treatment of all economic operators throughout the internal market. However, it should be left to national governments to decide the **level** of penalties and to decide which budget lines penalties should benefit. We see, however, a need for a better and uniform understanding of how market surveillance authorities should react when faced with a non-compliant product even if this product does not necessarily represent a serious risk. The degree of non-compliance, e.g. formal non-compliance (e.g. CE marking or EU declaration of conformity is missing) versus more essential non-compliance (e.g.

that a notified body has not been involved as required) and the different ways to react, need further clarification. Furthermore, should the **intent** behind the infringement (placing a non-compliant product on the market) have an impact on the level of the sanctions? When harmonisation is not a solution, we believe it would be a good idea to identify best practices and guidelines.

2. PRELIMINARY REFLECTIONS ON ECOMPLIANCE (2014-IMP-MSG-03)

5. We support a development towards eCompliance, if this can simplify the life of both economic operators and market surveillance authorities. If an eCompliance system is to be established, the following should be taken into account:

- Economic operators and market surveillance authorities must be involved in the planning and testing of such a system, before a final decision whether to implement it or not, is made;

- It must be coordinated with other systems used by market surveillance authorities, e.g. ICSMS;

- The information to be included, and how market surveillance authorities should react to this information, needs further discussion. Only documents in their final version and required by legislation, should be uploaded in the system.

6. Several market surveillance authorities have expressed concerns as to whether an eCompliance system will lead to increased administrative burdens with little value added. We must avoid a situation where thousands of economic operators upload documents and expect "approvals" or feedback from market surveillance authorities through the system. There is a risk that this will lead to an increased demand on resources, and may lead into pre-market surveillance, which is contrary to our system. In order to make such a system operational, we would therefore at the outset prefer it to be a system for **sharing** of information, and not a system for communication between economic operators and market surveillance authorities.

7. The need of the different sectors must be taken into consideration – will one size fit all?

8. There are different views among market surveillance authorities on whether the use of such a system should be mandatory or not. This needs further assessments.

9. If made mandatory, what should the consequences be for economic operators which do not register in the system? Furthermore, if mandatory, the issue on how to include economic operators outside the EEA has been raised, with no easy solution in view.

3. NATIONAL MARKET SURVEILLANCE PROGRAMS (NMSPS) PURSUANT TO ARTICLE 18 OF REGULATION 765/2008 (2014-IMP-MSG-04)

10. The EEA EFTA States agree that there is a need to develop a better common model for national market surveillance programs (NMSPs). However, we must be careful not

to require too detailed information in these programs, and be cautious not to demand information which may not be available. The level of information proposed in the draft seems to be too detailed, creating unnecessary administrative burdens on the market surveillance authorities. The level of detail needs further discussions with Member States with a view to simplifying the model, see comments from some EFTA market surveillance authorities **in Annex 1**.

11. We are of the opinion that 1 October 2014 as the deadline for submitting NMPS is too early, as it does not fit with national budgeting and planning timing. 1 December 2014 could be a better date.

12. Sharing information is essential for the cooperation between market surveillance authorities both nationally and cross border. Our experience is, unfortunately, that market surveillance authorities rarely consult the NMSPs of authorities in other countries. Elaborating NMSPs does not seem to be sufficient in itself. To the extent that this does not already happen, the ADCOs must play the role as facilitators.

13. We propose that ICSMS should be tool for sharing NMSPs.

4. COMPLIANCE SCHEMES OPERATED BY MARKET SURVEILLANCE AUTHORITIES (2014-IMP-MSG-11 – ACTION 15)

14. Our approach to market surveillance is that targeting the right products and economic operators is based on risk assessment. We are not aware of any relevant compliance schemes at national level in the EEA EFTA States.

15. The national market surveillance authorities of the EEA EFTA States do not, for the time being, see a value added by introducing such schemes, mainly due to the administrative burdens demanded by operating them.

16. If compliance schemes are to be introduced at a national level in several countries, the development of a voluntary European model scheme is essential to ensure a level playing field throughout the internal market. What is the view of economic operators on the introduction of compliance schemes? In any case, it should be avoided that the introduction of a compliance scheme would call into question the value of the CE mark.

5. DEVELOPING KEY PERFORMANCE BENCHMARKS FOR MARKET SURVEILLANCE (ACTION 6)

17. This action entails a reporting obligation on market surveillance authorities in line with the obligations which will follow Article 4(3) in the proposed Market Surveillance Regulation. The proposal seems to be based on a system established in 2008 for consumer products, which has not delivered as expected.

18. Such a reporting obligation must be seen in the context of any other reporting obligations introduced by the proposed Market Surveillance Regulation and the Regulation on Consumer Product Safety. In addition, reporting obligations are found

or are being introduced in individual sector legislation, e.g. REACH, CLP, GPSD, the Biocides Directive and Timber Regulation. In addition, market surveillance authorities report through RAPEX and ICSMS. Coordination is strongly needed to avoid several layers of overlapping reporting. Both RAPEX and ICSMS would be better used to extract the information needed. The risk entailed by the proposed reporting is that a new administrative burden is created without knowing what value added the information will give or what purpose it will serve.

19. The exact level and details of reporting on activities to the European Commission (for the EFTA EEA States to the EFTA Surveillance Authority) should be clarified through discussions with member states in the EMSF, which need to be established. To this end, a Commission paper is required summing up the different existing and planned reporting obligations laid down by EEA legislation applicable to products. If this paper could include proposals for coordination and simplification of reporting obligations, this would be very welcomed.

Annex 1

Detailed comments to model NMSP, from several market surveillance authorities.

We agree in principle that future preparation and use of NMSPs should be improved.

As regards **1.1** - "Identification and competences of national market surveillance authorities":

We feel that the bullet point on "Resources at the disposal of (...)" is too detailed and not feasible in practical terms.

As regards **1.2** – "Coordination and cooperation mechanisms between national Market surveillance authorities":

We feel that such information is useful, but the number of bullet points are far too many and too detailed and should be reduced to a few main points about coordination and cooperation mechanisms between national market surveillance authorities, cf. the bullet points under point 1.3.

As regards **1.3** – "Cooperation between national market surveillance authorities and customs":

We feel that the information covered by the two suggested bullet points is sufficient, cf. our comments under point 1.2.

As regards **1.4** – "RAPEX and ICSMS information systems":

We think that the systems should be separated into two different parts as ICSMS is regarded as the EU working platform for market surveillance and RAPEX is used to inform about products presenting a serious risk.

As regards **1.5 – "**General description of market surveillance activities and relevant procedures":

We also feel that this point contains too many and too detailed bullet points and should be reconsidered in order to reduce the number of bullet points to what is actually needed and useful.

As regards **1.6 – "**Cooperation with other Member States and third countries":

We think that such information is useful and appropriate and at the right level of detailing, cf. our comments above.

As regards **1.8** – "Horizontal activities planned for the relevant period":

We regard the bullet points as examples of what could be reported and, as such, the level of reporting is acceptable and can concentrate on what is considered important and useful information, cf. our comments above.

Annex 2

As to the detailed table presented by the EC on sector-specific activities planned by Member States, we think it would be more useful if the table in Annex 2 were reorganised and filtered by sector/directive in order to clarify what is considered to be a sector with regard to market surveillance programmes – such as medical devices, product safety, chemicals, environment, calibration, explosives**,** energy consumption, other[1] and so forth. The grouping of the relevant legislation could accordingly be improved and better structured.

Market surveillance in specific sectors

Section 2.1.2 of the template recommends including an explanation on the specific strategy for market surveillance and relevant procedures in the sector. We find these requirements to report to the Commission to be unnecessaryily detailed and cannot see how this information will be particularly useful to other member states.

Section 2.1.3

We have noted that this section covers information already in use, which we find appropriate and satisfactory.

[1] e.g. construction products, cosmetics, cableways, marine equipment, radio and telecommunications terminal equipment (RTTE), type-approval of two or three-wheel motor vehicles, electromagnetic compatibility (EMC), fertilisers.