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Explanatory note

EMARS II project

EMARS II is a project funded by the European Commission under Action 8 of Decision N° 1926/2006/EC establishing a programme for Community action in the field of consumer policy 2007-2013 (Agreement number 17.020200/08/507572). Action 8 provides financial contributions to joint actions to improve the effective application of directive 2001/95/EC on General Product Safety (GPSD).

The project seeks to continue and further develop the activities begun under the project Enhancing Market Surveillance through Best Practice, EMARS. In particular the project seeks to further strengthen the practical cooperation and coordination that has resulted at the operational level from EMARS. The project is being coordinated by PROSAFE on behalf of the 19 EU Member States and 2 EFTA member States formally participating in the project.

Strategy Document

One of the deliverables of the core coordination tasks is a strategy for the further enhancement of market surveillance after the completion of the project. This deliverable follows on from a similar deliverable produced in 2008 at the end of the first EMARS project. The 2008 strategy provided the framework for the orientation of the EMARS II project.

Disclaimer

The views expressed in the strategy document reflect only the consensus that has emerged amongst the project participants. Although the strategy was developed as a result of a process that included an open workshop and consultation of many interested parties the document does not reflect the views of any of these other parties nor does their participation in the process imply any endorsement on their part of the contents of the document. We also have to note that there are on-going discussions on the future of market surveillance in Europe that are not yet concluded. At the time of writing no formal proposals have been published. What the future market surveillance framework in Europe will actually look like will depend on the conclusions of these discussions and the decisions taken by the responsible parties.

Strategy for the Further Enhancement of Market Surveillance in Europe 2011

Developed in the framework of the EMARS II project¹

1. Introduction - Market Surveillance in Europe Today

One of the key deliverables of the EMARS II project is a strategy for the further enhancement of market surveillance in Europe. The EMARS projects have helped bring about a step change in European level cooperation on market surveillance. The past four years have seen an exponential growth in joint market surveillance activities and all EU Member States have now participated in at least one of the activities coordinated by PROSAFE.

Moreover Market surveillance has never before enjoyed such a high profile in the political process in Europe. There is today a fundamental understanding of the vital role that market surveillance plays in ensuring the operation of the internal market. This is reflected in a number of major initiatives that have been launched at the European level. There is of course Action 8 of the Community Action Programme on Consumer Policy that has provided the funding for all the recent Joint Actions, including of course the first EMARS project and now EMARS II. The implementation of the New Legislative Framework has provided a more consistent base for market surveillance of harmonised products and completely re-visited the co-operation between customs and market surveillance authorities, taking into account the enormous expansion we have seen in imported consumer products. DG-TAXUD is now developing best practice to support the implementation of the new legal base.

The current level of activity and the consensus emerging as to the direction that market surveillance should take in the future in Europe points to us being presented with a unique opportunity to enhance market surveillance in Europe in a lasting way.

2. Principles of Market Surveillance

The EMARS Open Workshop held in October 2007 resulted in broad agreement emerging around a set of principles concerning market surveillance. The participants at the workshop were drawn from all relevant stakeholder groups. The principles agreed then are still valid today as we examine how to further enhance market surveillance in Europe.

The headline objectives of market surveillance were clearly identified as being

- To protect consumers;
- To support enterprise and fair competition;
- To base ongoing activity on effective consultation with all stakeholders.

Pursuit of these objectives should improve the free movement of goods around the EEA.

In addition the important roles of industry, the European Commission and national governments were underlined. For example in the case of Industry to produce safe products and be prepared to demonstrate their conformity with the legal requirements and the integrity of the CE mark. The Commission/Member Governments can contribute to the overall objectives by making legislation clear, understandable and simple and ensuring the availability of effective and adequate sanctions

¹ Supported by a financial contribution awarded to specific Joint Surveillance and Enforcement Actions in the area of Consumer Product Safety (Non-food) (Directive 2001/95/EEC on General Product Safety) under Article 8 of the decision 1926/2006/EEC establishing a programme for community action in the field of consumer policy.

A number of principles were identified for market surveillance authorities themselves:

- Taking a preventative approach by employing best market surveillance practice and effective communication strategies to inform and advise consumers and businesses;
- Targeting serious and deliberately unfair and unsafe products, services and practices by using a co-ordinated risk based approach;
- Dealing swiftly and proportionately with problems identified by ensuring offending products, services and practices cease to put consumers at risk;
- Being efficient and effective by working in partnerships with other enforcement agencies and co-ordinating operational programmes and practices;
- Ensuring market surveillance officials are appropriately trained by ensuring they are aware of the business context in which they operate, employ best practice and are supported by continuing professional development;
- Supporting the training of business by sharing training materials;
- Resolving problems at source and in a coordinated manner by adopting a lead authority approach as part of a coordinated approach with other enforcement agencies;
- Ensuring that all policies and strategies which affect business are relevant, appropriate and clearly understood by a process of consultation;
- Market surveillance officials to participate in standard making;
- Ensuring a common approach to resourcing to achieve competent and uniform enforcement.

These principles can help guide a vision for the future and the strategy necessary to implement this vision.

3. Vision for the Future

The following vision of the future has been developed within the framework of the EMARS II project:

- A single market surveillance framework is in place for all products, harmonised and non-harmonised;
- This ensures a consistent approach to market surveillance delivering a high level of consumer protection and a level playing field for business;
- A multi-annual market surveillance programme is in place at the European level;
- Every Member State of the EEA participates in the European programme and their participation supports the implementation of their own national market surveillance programmes;
- The European-level and national market surveillance programmes are coordinated with the Customs authorities to help ensure the integrity of the European marketplace;
- The priorities for market surveillance activities are increasingly based on an analysis of relevant information such as accident data, consumer complaints, knowledge of the implementation of new and revised standards and intelligence garnered from around the globe on new and emerging hazards;
- A single body at the European level coordinates operational level collaboration between all the Member States of the EEA;
- The coordination body helps develop and implement best practice for market surveillance activities;
- Expertise with respect to specific products, services and hazards will have been identified and developed in different Member States throughout the EU;
- The transparent exchange of information promoted by the intensified cooperation and collaboration facilitated by this central resource and the activities it oversees in turn allows for better identification of priorities at the national level;
- This effort greatly improves how Member States can deploy the limited resources at their disposal;
- Market surveillance authorities will benefit from much greater operational efficiency as a result;
- Greater consistency between Member States and greater understanding of different national standpoints would be promoted by on-going European and national level training;

- The results of market surveillance are made readily available and the follow-up of market surveillance actions should be carried out not only in Europe but also in the countries where manufacturing was based;
- Increasingly more initiatives involving international collaboration and outreach to business will be undertaken in the future by the European authorities to ensure that products are safe at the point of manufacture;
- Feedback to the standards development community is also assured and the lessons learnt from the market surveillance activities can be addressed appropriately;
- Reflecting the increasing importance of services in the consumer economy the scope of initiatives will reflect the need to address the safety of products and of services;
- Industry will benefit from the provision of a level playing field and would be given practical help in respecting its legal obligations;
- The consumer will benefit from a more consistent approach to enforcement resulting in a more coherent and ultimately safer European market.

4. Challenges Confronting Market Surveillance

A number of important challenges remain for market surveillance in Europe. These include:

- Further growth in the out-sourcing of products outside the EU increasing from new and emerging markets;
- The continued expansion of e-commerce, resource allocation in a time of financial uncertainty, and
- A need for better risk-based priority-setting especially in the medium-term to ensure Member States can plan accordingly and participate in more activities at the European level.

5. Specific Objectives of the Strategy

The strategy presented below seeks to achieve the vision set out above respecting the principles identified during the EMARS II Strategy Workshop and addressing the main challenges outlined above.

The main objectives are:

- Establishing a single European framework for market surveillance through:
 - A single European legal framework for market surveillance;
 - A multi-annual European-level market Surveillance Programme;
 - A single Coordination Body at the European level.
- Developing a more rigorous and systematic approach to the identification and execution of market surveillance activities;
- Promoting a more consistent approach to market surveillance;
- Further improving systematic collaboration with Customs officials;
- Ensuring adequate liaison between market surveillance authorities and standards development;
- Improving operational level collaboration with relevant enforcement authorities outside Europe;
- Providing greater transparency about what the national market surveillance authorities are doing;
- Helping economic operators to better meet their obligations.

6. Main Pillars of the New Strategy

Three main pillars form the basis of the strategy. These are:

- I. Creation of a single European market surveillance regime
- II. Establishment of a Multi-annual European level market surveillance programme
- III. Establishment of a single coordination body at the European level

All of these enjoy broad support from legislators, regulators, authorities and stakeholders.

I. Single European Framework for Market Surveillance

The European Parliament and the result of the GPSD consultation all point towards merging the frameworks established under the GPSD and NLF Market Surveillance regulation.

II. Multi-annual European level market surveillance programme

The Commission first proposed a multi-annual European level Market Surveillance in its communication towards a Single European Act where it made 50 proposals for improving our work exchanges with one another². This commitment was reiterated in its subsequent communication on twelve levers to promote new growth³. This proposal can be seen as an organic development of what the Commission has been encouraging to take place under the GPSD in recent years. Given the widespread support and participation by the Member States for PROSAFE's activities it would be reasonable to expect that all Member States would participate at some level in this programme.

III. European-level Coordination Body

The PROSAFE experience has shown that a single coordination body at the European level assisting the Member States with market surveillance cooperation is an essential element in the success of such cooperation

The tasks of such a body could include but may not be limited to the following:

- Provision of a knowledge centre;
- Coordination of surveillance activities;
- Management of systems, such as RAPEX and ICSMS, insofar as this would be compatible with the legal obligations of the Member States and the Commission;
- Driving quality improvements through the exchange of information on national practices and through the promotion of best practice at the European level;
- Support for related activities, for example, for the organisation of product safety weeks, outreach activities, promoting adequate liaison with the customs authorities and the standards development community, international cooperation (e.g. ICPSC, OECD), the handling of consumer complaints, training etc.

We can highlight the following points about the organisational characteristics:

- All Member States should be involved in the organisation but that it should not be its role to 'force' Member States to cooperate. Member States should also have some form of oversight over the organisation and the activities it undertakes;
- The organisation should be formally linked to the European Commission but not be a part of it. The Commission could help guide the body and discuss the (multi) annual plans, which could be drawn up by the organisation together with the Member States;
- The organisation should be obliged to consult stakeholders, although care would have to be taken to ensure the independence of the market surveillance authorities;
- Finally, as regards resources the most important issue would be to ensure the permanence of the organisation. It was felt that the qualifications of staff depended on the tasks to be undertaken by the body. Brussels was generally considered to be the best location for such an organisation. One suggestion made was to have a dual funding model: one for funding the operation and one for funding activities.

A key point for the formal set-up of the organisation is to make a clear distinction between the role and legal obligations of the Commission, the Member States and this organisation, which should ideally focus on 'practical' activities to support the operational effectiveness and efficiency of market surveillance in Europe.

² Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee Of The Regions, Towards a Single Market Act "For a highly competitive social market economy" 50 proposals for improving our work, business and exchanges with one another, Brussels, 11.11.2010 COM(2010) 608 final/2

³ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee Of The Regions, Single Market Act "Twelve levers to boost growth and strengthen confidence "Working together to create new growth" {SEC(2011) 467 final}, Brussels, 13.4.2011 COM(2011) 206 final

Other issues to be addressed

Other issues that need to be addressed relate to the continuation and further development of activities carried out under the EMARS and EMARS II projects whose value has already been demonstrated. This list includes but is not limited to

- Coordination of all Joint Actions currently being managed by PROSAFE;
- Maintenance, implementation and further development of the existing best practice;
- Operation of existing systems such as the Rapid Advice Forum, the Knowledge Base and other initiatives promoting the continuous improvement of national systems such as CIMS;
- Further development and roll out of the existing e-learning initiative focused on the GPSD. For example, through the development of further e-learning packages focused on risk assessment and key principles of market surveillance modelled on the GPSD package and similarly delivered;
- The development of an operational protocol to deliver a 'Home Authority' solution for Europe as envisaged by our Key Principles together with the identification of other operational protocols, which may improve the efficiency and effectiveness market surveillance;
- Identification of priorities for future activities and development of proposals for future Joint Actions.

Coordination of Joint Actions and the maintenance and further development of the existing best practice

Best practice has been developed within EMARS II and this needs to be applied practically in future market surveillance activities at the European and national level. In particular attention has to be given to horizontal issues that impact on all market surveillance activities. These include communications activities, cooperation with customs, liaison with standards developers, international cooperation. All of these issues need to be addressed appropriately to ensure the success of a multi-annual European level Market Surveillance Programme.

Operation of existing systems such as the Rapid Advice Forum, the Knowledge Base, risk assessment group and other initiatives promoting the continuous improvement of national systems (CIMS)

A number of systems have been developed under the framework of the EMARS projects that have contributed enormously to an improved climate in cooperation between the Member States. These include the Rapid Advice Forum, the Knowledge Base, the risk assessment group, the overview of market surveillance guidelines, and work on risk assessment, training and initiatives aimed at assisting continuous improvement of national systems (CIMS). These systems have helped promote closer cooperation on day-to-day operational issues and bolstered the necessary confidence building that it is a pre-requisite for successful collaboration on joint activities.

The systems have also greatly contributed to the efficiency of market surveillance authorities' activities and leveraged the knowledge of other Member States. It is considered vital for the future enhancement and development of market surveillance in Europe and that these systems are maintained and further developed.

The development of a further e-learning module focused on risk assessment and modelled on the GPSD module and similarly delivered

One of the notable deliverables from the EMARS II project was an e-learning tool with a module that provides training on GPSD. This tool has proven successful insofar that some 100 market surveillance officials from all over Europe have visited the website and gone through all or parts of the GPSD module.

This tool could be further enhanced through the development of additional modules. One example in the short term could be a module on risk assessment.

The experiences so far from the Commission's training on risk assessment and EMARS's Task C on risk assessment is that there is a huge demand for training on risk assessment in Europe. In the medium term modules could be developed for new product sectors to reflect the establishment of a single European legal framework for all products. These modules would build on the training material and the knowledge that has been developed in EMARS II.

The development of a protocol for the "Home authority" principle

The strategy should help initiate the implementation of the key principles of market surveillance as identified in this document. One of the key principles is related to the "Home Authority" or (lead-authority) principle. Under such a principle authorities take responsibility for locally-based companies such as manufacturers, importers and service based businesses. The authorities act as a first point of contact for these companies and will liaise with other authorities that need to contact businesses based in their jurisdiction⁴.

This is an important principle that would greatly improve collaboration between authorities and promote much greater operational efficiency. This is a long-term activity that will most likely take several years to implement fully so the focus in the short term will be on developing a protocol in order to spread these proposed basic principles in market surveillance in order to demonstrate their value to national authorities. The aim is to achieve commitment to ensure that all authorities endorse the principles so that a strategy can be developed for their implementation in the medium-term.

Identification of priorities for future activities and development of proposals for future Joint Actions

Closer ties have been developed between the national authorities through the EMARS projects and also through the time that has been spent on identifying future priorities and developing proposals for Joint Actions. Further developing cooperation on the identification of priorities for future market surveillance activities will be a key component for the success of a European level programme. This needs to be based on reliable information and consideration has to be given to both short and medium term priorities.

Many Member States will find it difficult to adjust their market surveillance programmes in the short term but will be more flexible when discussing medium term priorities thereby allowing for greater convergence of market surveillance programmes in the medium to longer term. This will help to strengthen the European level programme and improve operational efficiency through a more coordinated use of resources at both the European and national levels in the future.

7. Implementation of the New Strategy

A number of initiatives are already planned that could go a long way to implementing some of the major components of this strategy.

Multi-annual European level market surveillance programme

The implementation of a multi-annual European level programme for market surveillance is identified by the European Commission itself as one of the 50 actions listed in the recent "Single Market Act"⁵. The Commission have re-iterated their commitment in the recent communication on 12 levers to boost growth and strengthen confidence⁶. The European Parliament also supports this initiative. PROSAFE is also seeking to implement the programme concept through the JA2010 and the proposal for JA2011, bringing together a number of different product activities and related horizontal and coordination activities in single Joint Actions.

European-level coordination body and a single framework for market surveillance

The revision of the GPSD and the forthcoming review of the NLF provide an opportunity to address these issues. The consultation process for the revision of the GPSD has already demonstrated widespread stakeholder support⁷. The European Parliament has lent its support to the establishment of a single coordination body. In a recent report the European Parliament recognized the important contribution made today by PROSAFE as regards the coordination of joint market surveillance actions and the exchange of tried and tested practices in the framework of the GPSD⁸. The Parliament went on to call on the

⁴ For implementation of this type of principle in another consumer protection field see Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) OJ L 364 , 09/12/2004 P. 0001 - 0011

⁵ Idem.

⁶ Idem.

⁷ Results of the public consultation on the revision of the General Product Safety Directive, Commission Working Document, 17 November 2010

⁸ Report on the revision of the General Product Safety Directive and market surveillance, PE 452.795 v03-00, A7-0033/2011, Brussels, 24 February 2011

Commission to consider under what conditions PROSAFE could serve as platform for an extended coordination between Member States for harmonised and non-harmonised products.

Need for sustainable funding

Funding is of course crucial to the future sustainability of any new framework that is established. For example, in discussing the development of a central coordination body based on PROSAFE the Parliament has expressed its belief that it is necessary to establish a legal basis and to allocate sufficient resources to PROSAFE to carry out this task. The European Parliament has pointed out that limited resources and its informal structure restrict coordination through PROSAFE today⁹. The existing Action based funding model does not provide a secure basis for the planning of initiatives in the medium to long term and presents a number of practical obstacles to participation by Member States authorities. The new financial framework to be agreed for the consumer policy programme from 2014-2020 may be one vehicle to provide adequate funding for the new coordination body and for the European level programme.

Annual market surveillance workshop

An annual market surveillance workshop is a specific initiative that would help promote the implementation of the Strategy. The workshop would provide a forum for market surveillance and a focus for the coordination and horizontal activities of the on-going joint activities. This would provide an opportunity to review progress and showcase specific aspects of PROSAFE's work within the framework of the joint actions e.g. risk assessment, application of best practice, identification of priorities etc. This initiative would also build on the proven success of the many EMARS Workshops including the Risk Assessment Seminars held within the framework of the EMARS II project. The workshop would provide a platform for further development and discussion of best practice with relation to risk assessment in market surveillance.

⁹ Idem