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Effective market surveillance for Europe

International trade continues growing and value creation chain networks extend all over the globe. European consumers benefit from an increasing wide selection of products, but at the same time they have to be able to trust that the products are safe. This is why, more than ever, the EU needs well-organised, coordinated and suitably effective market surveillance in order to identify nonconforming and unsafe products as early as possible. Market surveillance must ensure a consistent EU-wide application of the EU harmonisation legislation in order to create conditions for fair competition between the different market players. The aim of market surveillance is therefore to achieve smooth functioning and competitiveness within the internal market whilst at the same time protecting the health and safety of European citizens.

Market surveillance is the responsibility of the state

Within the European legislative framework, identification of nonconforming products is the responsibility of the national market surveillance authorities of the individual EU member state. Thereby, they fulfil their obligation to protect EU citizens.

The national authorities responsible for market surveillance make sure that circulating products are regularly subject to control by taking samples of the product from the market. This approach includes following the applicable principles of risk assessment, evaluating complaints and other available information. By reviewing the product documentation and, where appropriate, by physical checks and laboratory testing, the national authorities must carefully establish whether a product meets the applicable provisions and requirements at the time of market entry and, where appropriate, at the time when being put into operation. Products associated with serious risk must be recalled or withdrawn from the market immediately.

Market surveillance in Europe demonstrates weaknesses

However, in practice, market surveillance in Europe continues to show considerable weaknesses, especially when being implemented by the national authorities of the individual member states who evidence different levels of resources and intensity. Market surveillance must therefore be urgently improved and brought up to a consistently high level in Europe, as it is impressively evidenced by the current Rapex Report of 2015 (RAPEX - Rapid Exchange of Information System – rapid warning system for dangerous consumer products).

For example, France, with a population of 64 million, has about the same number of reports of dangerous products (163) as Cyprus (151), a country with 880,000 inhabitants. The situation is similar with regard to Italy, which with a population of 61 million only has 1/8 of the reports of Hungary, with 9 million inhabitants. The considerable systemic differences between the member states regarding the implementation of market surveillance endangers its ability to function correctly. These differences should therefore be eliminated as a matter of urgency.

Market surveillance needs tougher rules from the legislators

The Regulation on Market Surveillance proposed by the European Commission at the beginning of 2013 is a step in the right direction and should be passed. It aims to create a modern and unified legal framework for market surveillance by consolidating and modernising existing parallel arrangements

of member states. In addition, national authorities require sufficient funding in order to provide harmonised market surveillance to the required extent and at the required level of efficiency.

However, in the future, the extent of the market surveillance activities and frequency of controls should no longer be subject to the judgement of individual EU member states. The concept of "appropriateness" of sampling, stated for example in Regulation 765/2008 for Accreditation and Market Surveillance (compare Article 19(1)), and in the current Draft Regulation within the framework of the 'Product Safety and Market Surveillance Package', is vague and imprecise. The wide scope of interpretation and implementation it offers leads to unacceptable discrepancies in market surveillance practice within the EU. The VdTÜV argues that the implementation of the current regulations as embodied in the German Equipment and Product Safety Act (ProdSG), which describes market surveillance in concrete terms, provides the correct approach. Article 26 ProdSG provides for a "guide value of 0.5 samples per 1,000 inhabitants and year".[1] A concrete guideline as to the number of samples that are required should therefore be included into the new European legislation.

Independent testing is efficient and discharges the public sector

In view of the very limited budgetary resources of the member states, expansion of market surveillance will only be possible to a very limited extent in future. In the meantime, however, the necessary field of action continues to expand. Since the Product Safety Directive was ratified in 1995, global trade has noticeably exploded. Whilst worldwide exports were still at the level of 5,171 billion US Dollars in 1995, they already amounted to 15,229 billion US Dollars in 2010.[2] In principle, official intervention after products have entered the market is useful and necessary, but in future will by no means be sufficient in order to ensure that only conforming and therefore safe products reach consumers in all areas. In this context, independent testing of products being at the beginning of the value creation process or, in other words, before products enter the market, represents a useful and necessary complement to market surveillance activities by national authorities. With independent testing by third parties, unsafe products are identified early and therefore do not enter the market. In view of the limited resources of the market surveillance authorities, this preventive approach is efficient, economic and sustainable.

Conformity of products through independent testing

In the USA, consumer products are generally subject to mandatory independent testing and are therefore commonly conformant. Current studies[3] by IFIA (The International Federation of Inspection Agencies) and CEOC (Confederation of Inspection and Certification Organisations International) on electrical consumer goods show that products that are put into circulation on the basis of a manufacturer's Self-Declaration of Conformity often do not meet the specified requirements. Of 247 assessed European products, 78% did not comply with EU regulations, and 38 of these products (about 15%) even featured safety-relevant deficiencies.

This result contrasts with a high level of conformity amongst products which are put into circulation in the USA based on independent third-party testing. Of the 119 assessed products, 75 % conformed to the requirements and not one single product exhibited a safety-relevant defect.

1 ProdSG http://www.gesetze-im-internet.de/bundesrecht/prodsg_2011/gesamt.pdf
2 Source: UNCTAD Statistics - Values and shares of merchandise exports and imports, annual, 1948-2010 / www.statista.de
3 Consumer Product Safety in Europe: market studies 2012, 2013, 2014 conducted by IFIA (http://www.ifia-federation.org/content/wp-content/uploads/Consumer_Product_Safety_Study_2014.pdf)

Independent testing offers protection of a preventive nature and is financed based on the originator principle

As a complement to market surveillance by the member states, testing and certification of products by independent third parties in Europe, which is generally voluntary, is a very effective instrument of prevention in order to maintain necessary protection levels.

By testing products before they enter the market, the independent bodies implement the precautionary principle intended by the legislator. Thus, the state and the tax payer are discharged from the financial burden especially since the public market surveillance only allows for removal of non-conforming products from the market when damage or harm has already occurred.

This preventive approach is financed by the product manufacturer, importer or trader. The necessity for subsequent state intervention, for which the public authorities have to maintain appropriate resources, is then considerably reduced.

Above all, and for the further discharge of the public sector, the legislator can resort to the system of independent conformity assessment by recognised testing organisations. Moreover, conformity assessment bodies can be commissioned to perform technical tasks, such as tests or inspections. This approach can only succeed if the responsibility for protection of citizens and corresponding surveillance measures remains with the public authority and if no conflicts of interest arise or exist between the regular testing activities of the conformity assessment body and the commissioned tasks.[4]

Conformity assessment by independent private organisations therefore provides an efficient deregulation instrument[5] for the legislator.

Conclusion

Overall, preventive testing of products by independent third parties (on a mandatory or on a voluntary basis) and market surveillance by public authorities can be considered complementary instruments to ensure that products in the EU internal market are safe and conforming. Therefore, these instruments should both be strengthened by the European legislator for the protection of citizens.

4 Blue Guide, Version 1.1. – 15/07/2015, page 94,
http://ec.europa.eu/DocsRoom/documents/12661/attachments/1/translations/en/renditions/native
5 VdTÜV Position Paper, "Benefits for the state, Economic Operators and Consumers",
http://www.vdtuev.de/en/dok_view?oid=502427