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POLICY DEPARTMENT
ECONOMIC AND SCIENTIFIC POLICY **A**



EFFECTIVENESS OF THE MARKET SURVEILLANCE IN THE MEMBER STATES

- Economic and Monetary Affairs 
- Employment and Social Affairs 
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- Internal Market and Consumer Protection 

Market Surveillance in the Member States

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DIRECTORATE GENERAL FOR INTERNAL POLICIES OF THE
UNION

DIRECTORATE A: ECONOMIC AND SCIENTIFIC POLICIES

INTERNAL MARKET AND CONSUMER PROTECTION

Effectiveness of Market Surveillance in the Member States

STUDY

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POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICIES

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Abstract

The study describes measures taken by Member States for the effective functioning and strengthening of market surveillance authorities, actions to set up market surveillance programmes and stepping-up control systems. It also gives an overview of the products presenting a serious risk.

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LIST OF ABBREVIATIONS

AdCO	Administrative Cooperation Groups
ASAE	Food and Economic Safety Authority, Portugal
Cenelec	The European Committee for Electrotechnical Standardization
DG ENTR	Directorate-General for Enterprise and Industry
DG SANCO	Directorate-General for Health and Consumers
EEA	European Economic Area
EMARS	Enhancing Market Surveillance through Best Practice Programme I and II
EP	European Parliament
GPSD	General Product Safety Directive
ICSMS	The European Market Surveillance System
IMCO	European Parliament Committee on Internal Market and Consumer Protection
MS	Member States
MSA	Market Surveillance Authority
Prosafe	Product Safety Enforcement Forum of Europe
RAPEX	The Rapid Alert System for Non-Food Products
RASFF	Rapid Alert System for Food and Feed
SOGs	Senior Officials Group
SOGs MSG	Senior Officials Group for Market Surveillance
SWEDAC	The Swedish Board for Accreditation and Conformity Assessment
VWA	The Food and Consumer Product Safety Authority, the Netherlands

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EXECUTIVE SUMMARY

The objective of this study was to give an overview of the situation in the European Union concerning the steps taken in the MS to strengthen their market surveillance means and authorities in relation to the adaptation of the goods package. The main conclusions of the study can be summarised in the following bullet points:

- Overall, good practices for market surveillance seem to be (a combination of):
 - The risk assessment strategy carried out by the Netherlands, as it helps the MSA focus on the most important assignments, thereby helping the MSA to be as cost-efficient as possible. It is furthermore an advantage when handling large amounts of goods which cannot all be checked
 - The market surveillance council present in Sweden, as this helps the MSA share knowledge and coordinate their efforts, thus avoiding duplication work
 - The cooperation across borders, exemplified by the Baltic Cooperation programme, as this allows numerous MS to assist in checking large amount of goods as well as a unique opportunity of learning from each other's systems
- With the exception of a few countries, the majority of the MS have not allocated more human nor financial resources to market surveillance as a result of the goods package, nor are they planning to do so in the near future. The main reasons for not doing so include budget reductions due to the financial crisis, and a market surveillance system which in its basics already complies with the requirements laid out in regulation 765/2008.
- Some MS find the resources set aside for market surveillance adequate, mainly if they have managed to set up a system including a large amount of coordination and cooperation. The prime example, highlighted by numerous MS, is Sweden, where SWEDAC succeeds in effectively coordinating the market surveillance activities among the MSA.
- The initiative taken by Germany in creating the Baltic Cooperation for Market Surveillance is another example of successful cooperation, as this system has helped new MS such as Estonia, Latvia and Lithuania adapt to the requirements of the goods package. The ICSMS system is also a beneficial tool for cooperation and should be linked with any similar national initiatives, such as the Romanian and the Greek IT system.
- 18 of the MS have currently initiated the set-up of a market surveillance programme, usually choosing a set-up that reflects the way in which market surveillance is organised in each MS (national, regional or sectoral set-up). Some level of national coordination of the MS who have selected a regional or sectoral approach is advisable in order to ensure a common national footing on market surveillance.
- 9 of the MS have not initiated the set-up of market surveillance programmes as of yet, but are waiting for the Commission to specify further what is needed for the programmes in terms of the structure of the programme, the type of information to be included etc. Lack of experience as well as lack of resources are the main reasons for the MS to await instructions from the Commission.
- The Commission in turn had not expected to provide as much information as the MS require, but nevertheless acknowledges that a common ground for market surveillance has never been established before and that assistance may be needed.

- The number of dangerous products discovered in the MS has increased in the last five years when looking at the RAPEX system, but decreased when looking at the RASFF system. Better coordination in some MS such as Germany has helped in avoiding that the same product was checked by several MSAs, thus allowing the MSAs to check for more products altogether. However, the EU is lacking a solid system to store and compare data on dangerous products. The RAPEX system lacks clear definitions of what a dangerous product is, but is still the best way of achieving comparable data on dangerous products. As an addition to the RAPEX system, however, DG SANCO's Consumer Market Scoreboard can be beneficial in order to better understand consumer's and retailer's perception on the issue of dangerous products.
- In terms of measures taken to detect dangerous products, especially Germany and the Netherlands are increasingly focusing on catching dangerous products before they appear on the market. The Dutch MSAs state that in order to thoroughly prevent the dangerous products from entering the European market in the first place, reallocation of funding to the countries which through its ports function as the gateways to Europe is necessary.
- When it comes to establishing control systems in the MS to ensure safer products, it can be seen that using systems for cooperation on a national level, such as the ICSMS system used extensively in Germany and the Swedish model of coordination and cooperation, has helped the MSAs in these MS sharing knowledge about which products are checked when and where.
- Also corporation across borders, such as the Baltic Sea Cooperation, is beneficial both in order to share knowledge on market surveillance between MS, or as a way of controlling a greater number of products.
- A risk assessment strategy can be used as a way of handling large amounts of goods coming to the market. However, a risk assessment strategy can also be beneficial in MS which deals with lesser amounts of goods, in order to focus their effort as much as possible. This is especially interesting in MS which suffer from budgetary problems.

1. INTRODUCTION

In 2008, the Parliament adopted the 'Goods Package' which included a Regulation setting out requirements for accreditation and market surveillance relating to the marketing of products ((EC) No 765/2008), a Decision on a common framework for the marketing of products (No 768/2008), and a Regulation laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State ((EC) No 765/2007). The package was finally adopted by the Council on 9 July 2008. In the deliberations, one of the key priorities for the Parliament was to strengthen market surveillance to ensure safe products on the European Market (to enter into force in January 2010), but Member States (MS) are expected already now to take steps to strengthen their Market Surveillance Authority (MSA).

1.1. Objective of this study

The objective of this study is to give an overview of the situation in the European Union concerning the steps taken in the MS to strengthen their market surveillance means and authorities in relation to the adaptation of the goods package. Accordingly, the following questions will be covered in this study:

- What measures have been taken by MS for the effective functioning and strengthening of market surveillance authorities, i.e.: what resources have been allocated (human as well as financial resources)? Have more resources been allocated to the authorities due to the adoption of the goods package?
- Have MS started to set up a market surveillance programme, cf. Article 18 paragraph 5 in the Regulation on setting out requirements for accreditation and market surveillance?
- How many products presenting a serious risk have been discovered in the MS during the last five years? Has the number changed? What measures are taken to detect such products?
- What kind of control systems have been established in MS to ensure safe products on the European market?

1.2. Structure of the report

The structure of this study is guided by the aforementioned four questions. After the introductory chapter, Chapter 2 describes the goods package and in particular Regulation 765/2008 on the provisions for accreditation and market surveillance. Chapter 3 presents the seven selected case studies, and in Chapter 4, the human and financial measures taken by the MS for the effective functioning and strengthening of market surveillance authorities are discussed. Chapter 5 concerns the MS' set-up of a market surveillance programme as foreseen in Article 18, paragraph 5 of Regulation 765/2008. Chapter 6 discusses the products discovered in the past five years presenting a serious risk, and Chapter 7 analyses the control systems being established in the MS to ensure safer products on the European market. Chapter 8 concludes.

This study is based on a number of different data sources. First of all, the market surveillance authorities in all MS were consulted. In addition to these, European organisations such as the Product Safety Enforcement Forum of Europe (Prosafe), and the European Committee for Electrotechnical Standardization (Cenelec) were consulted, along with the European Commission (DG ENTR and DG SANCO), in order to obtain a better understanding of the market surveillance systems in the MS. The RAPEX system has been consulted in order to obtain data on which MS detected the most products of serious risk, as this can be an indication of the functioning of the market surveillance system. Moreover, DG SANCO's Consumer Market Scoreboard was also consulted in order to gain an overview of the different MS' consumer market environment.

In addition, some MS (France, Lithuania, Latvia, Czech Republic and Portugal) provided their national reports on market surveillance, which included a multi-annual overview of budgets and the number of inspectors involved in market surveillance activities. This helps to better understand the status of market surveillance as well as the issues the MS in question face with respect to market surveillance. Lastly, Prosafe's Handbook on market surveillance was consulted for the study in order to compare the practices described by the MSA and those recommended by a wide panel of specialists.

1.3. Selection of Member States for in-depth study

Seven MS were selected for in-depth studies, covering small and large MS as well as old and new MS. In addition, during the study a number of other typologies emerged, which were also taken into consideration when choosing the MS. These were as follows:

1. A centralised versus a decentralised approach to market surveillance. From the interviews with the MS, it was clear that while some had chosen a decentralised set-up of the organisational market surveillance infrastructure, meaning that the specific national sector authorities conduct market surveillance in a number of different ways, others have opted to coordinate the market surveillance activities centrally. The chosen set-up normally reflects the MS' current legal set-up and their current concentration of technical competences. In order to reflect the differences in the MS as well as possible, we have chosen to include MS with both a centralised and a decentralised system when selecting MS for the study.
2. Cooperation between MS. In order to better perform market surveillance, some MS have chosen to cooperate through formal networks. Examples of this are the Baltic Countries Forum for Market Surveillance, which is a cooperation on market surveillance between the countries bordering the Baltic Sea, and the European Market Surveillance System (ICSMS), which is an Internet-supported information and communication system for the pan-European market surveillance of technical products. Thus, both MS involved in formal cooperation as well as MS that are not have been included in the in-depth study.
3. Special need for market surveillance. The MS which are home to large ports get, as a consequence, more goods into their countries. The need for market surveillance is thus great here. We have therefore included both MS with large ports and MS without.
4. Budgetary and administrative issues. In some MS, the proper execution of market surveillance has been hindered by a lack of funding or by administrative difficulties. MS with these issues have been included in the study, as well as MS without budgetary and administrative issues, in order to reflect the situation in the MS properly.

Taking the above into consideration, the following MS were selected for in-depth studies:

- Germany
- Sweden
- The Netherlands
- Italy
- Portugal
- Bulgaria
- Latvia

Table 1: Overview of the MS selected for case studies

Member State	Characteristics – reason for choosing the MS					
	Large/ Small	Old/ New	Centralised/ Decentralised	Cooperation among MS	Special need for market surveillance	Budgetary/ Administrative issues
Germany	Large	Old	Decentralised, but with increased focus on coordination	Yes, Baltic Cooperation and ICSMS. Discussions with other MS on good market surveillance practices	Yes, home to second-largest port in EU (Hamburg)	No, additional resources are expected
Sweden	Large	Old	Decentralised, but with high level of coordination	Yes, discussions with other MS on good market surveillance practices	No	No, resources are sufficient
The Netherlands	Small	Old	Decentralised, but formalised with a risk assessment strategy	None to be highlighted	Yes, home to largest port in EU (Rotterdam)	No
Italy	Large	Old	Decentralised, with an attempt to coordinate	None to be highlighted	No	No
Portugal	Small	Old	Centralised	None to be highlighted	No	No
Bulgaria	Large	New	Semi-centralised	Budgetary problems prevent this	No	Yes
Latvia	Small	New	Decentralised, with an attempt to coordinate	Yes, Baltic Cooperation. However, budgetary problems prevent further cooperation	No	Yes, problems with executing market surveillance

2. THE GOODS PACKAGE AND REGULATION EC 765/2008

2.1. The Goods Package

The free movement of goods within the Single Market has been a major driver for competitiveness and economic growth in the EU. The legislative measures included in the Internal Market package for Goods (the "Goods Package") therefore have the objective of providing a common framework for improving the existing surveillance infrastructures. Moreover, the "Goods Package" sets out harmonised references for the development of future product related legislation¹.

The "Goods Package", adopted by the Council on 9 July 2008, offers a new legislative framework for the marketing of products with respect to accreditation and market surveillance. It consists of three legal instruments: Regulation EC 765/2008, which introduces the provisions for accreditation and market surveillance; Decision 768/2008, which serves as a framework and reference point for future European legislation concerning the marketing of products; and Regulation EC 765/2007, which decrees the procedures for the application of certain national technical rules for products lawfully marketed in the MS.

According to the adopted legal text in the "Goods Package", every MS shall have a well functioning MSA, to which sufficient human and financial resources should be allocated. While the Regulation on setting out requirements for accreditation and market surveillance will only enter in to force in January 2010, MS are expected already now to take steps to strengthen their MSA.

2.2. Regulation EC 765/2008

As mentioned above, Regulation EC 765/2008 introduces the provisions for accreditation and market surveillance. The "Goods Package" foresees an increase in responsibilities for MSA. For instance, the MSA are obliged to withdraw dangerous or non compliant products from the market and destroy them if necessary. However, currently in some MS², MSA are not legally allowed to enter the economic operators' premises in search for dangerous products. This will change as of 1 January 2010, when the Regulation enters into force, and will thus allow these MS a much more proactive approach to market surveillance.

Another important new aspect of the Regulation is that systematic control of products from third countries is now introduced. This means that both customs and the MSA have to perform market surveillance controls, and that the two types of authorities are expected to work closer together when performing market surveillance. Additionally, the new package places emphasis on the need to enhance coordination and cooperation both nationally and at the European level. While the precise mechanisms are vague in the initial legal texts, at the time of the drafting of this study, the selection of the ICSMS system as a main tool for communication and coordination is under discussion. The ICSMS was originally a German IT system designed to increase communication and information exchange nationally on tested and detected non-compliant products. ICSMS was used by a restricted number of countries (Austria, Germany and Luxembourg) to begin with and is now operating in 12 MS. Although the ICSMS may be the chosen IT system for the MSA, some practical problems are still hindering a full EU27 agreement, such as the interface between the ICSMS and national or sectoral databases and the yearly fee to pay, which has not yet been determined.

Another new aspect introduced by the Regulation is that the MS are now obliged to periodically inform the Commission of their market surveillance activities and the general results of those activities.

¹ European Parliament (2007): Working Document on the proposal for a Decision of the European Parliament and the Council on a common framework for the marketing of products

² The Czech Republic, Lithuania, Germany, Austria, Romania, Italy, and the UK

This implies putting in place new means of communication between the Commission and the MS, which are to be supported by the Commission with the formulation and support of common initiatives and tools. Yet another obligation concerns organisational aspects. The MS are obliged to put in place "appropriate communication and coordination mechanisms between their market surveillance authorities"³. These mechanisms are interpreted differently in the different MS, from a centralised system in Portugal to decentralised systems with coordinating authorities in, for instance, Sweden and Lithuania, to decentralised systems currently establishing a coordinating unit, such as Denmark and Finland. Some MS, such as Italy and Bulgaria, have not come very far in establishing appropriate communication and actually refer to this lack of communication as the main shortcoming of their national market surveillance system.

³ 765/2008, Chapter III, Sec 2, art. 18, paragraph 1

3. THE CASE STUDIES

The following section presents the case studies carried out for the seven selected MS, namely Germany, Sweden, the Netherlands, Italy, Portugal, Bulgaria, and Latvia. Some of the case studies present a good practice scenario for carrying out market surveillance, while others are examples of MS that struggle to perform market surveillance adequately.

3.1. Germany

Main characteristics: Large, old, decentralised system with coordination

Germany is an old and large MS, and is a federal republic constituted of 16 Länder. As a consequence of this political organisation, every state has a high degree of autonomy, as well as its own government and a particular set of institutions and legally binding rules. Market surveillance is organised along the same lines, being the responsibility of the 16 Länder. In each Länder there is one Ministry taking the lead for market surveillance, each with a number of MSA affiliated, which means that the MS has around 250 different authorities related to market surveillance.

The highly decentralised structure made it difficult for the MSA to effectively coordinate their market surveillance efforts in the past, as there was little possibility for a rapid exchange of information. This sometimes resulted in multiple tests of the same product by different MSA, thus wasting resources. Moreover, the MSA had not established a common ground on how to conduct market surveillance. Over the past years, initiatives focusing on enhancing the level of information exchange and coordination across the Länder have been developed. A Central Council was established for coordinating the market surveillance, which is a council where one or two officials of each state meet once a year in order to discuss the main issues of market surveillance. The members in assembly choose one of the states to occupy the presidency for a term of three years.

Furthermore, an IT system has been designed to increase communication and information exchange nationally on tested and detected non compliant products, a system that later ended up being the foundation for the ICSMS system. The internet-supported information and communication system for market surveillance of technical products (ICSMS) is today a widely used tool in Germany to coordinate the German market surveillance efforts. The MSA in Germany are benefiting from the ICSMS as it makes their market surveillance activities more efficient.

The State of Hamburg has taken the initiative of forming the Baltic States Market Surveillance cooperation. The port of Hamburg is one of the largest gateways into Europe, supplying goods to the Baltic countries, the Scandinavian Countries and the Eastern European countries. The German MSA have no chance of checking all goods entering the EU through this port. Thus, in an effort to structure the cooperation, the State of Hamburg developed the Baltic Cooperation for Market Surveillance initiative. As many of the products are shipped to other countries around the Baltic Sea, the Hamburg MSA coordinates its market surveillance activities with the Baltic ports, so that some of the products are checked at the Baltic ports. The MSA in the countries which are part of the Baltic cooperation system cooperate closely on market surveillance methods to ensure a uniform procedure of checking the goods.

The cooperation between the MSA and customs is one of the areas that could be improved in Germany. The main issue seems to be that market surveillance is a regional competence while the customs is a federal competence, and that the division of power and the cooperation is not very clear-cut. Therefore, it is currently being discussed how the central council for market surveillance could help in improve this cooperation.

Germany is one of the few MS where a resource increase is foreseen by several Länder. The reason for this is that Germany's previous legal framework emphasised conformity statements from producers, which meant that the MSA played a lesser role in ensuring safe products. As a result of this, the funding for MSA decreased accordingly.

This has changed with the introduction of the “Goods Package”, which also means that as market surveillance becomes increasingly more important, the decrease in market surveillance resources witnessed in Germany before the introduction of the “Goods Package” will have to be put to an end. As an example, it can be seen that the Hamburg MSA throughout the 1990s reduced their capacity in terms of human resources. With the increased importance of market surveillance foreseen in the “Goods Package”, the Hamburg authorities now consider themselves understaffed. To handle this understaffing, a shift from an inspection-based approach towards a more risk assessment-based approach has been made, which is expected to enable the authorities to better focus their activities and resources on specific groups of dangerous products.

3.2. Sweden

Characteristics: Relatively large, old, decentralised system with coordination

Sweden is an old and rather large MS. It has a decentralised, sector-specific market surveillance system, but with a large degree of coordination among the different MSA. Sweden’s MSA are organised according to what some interviewed stakeholders have termed a Scandinavian model, a rather decentralised approach where the 15 MSA have sector-specific competences (similar examples can be seen in Denmark and Finland). However, what distinguishes the Swedish model from other Scandinavian models is that in order to ensure coordination, Sweden has created a Market Surveillance Council, for which SWEDAC (the Swedish Board for Accreditation and Conformity Assessment) provides the secretariat. SWEDAC works, nationally and internationally, to enhance the exchange of information and consistent interpretation and application of overall market surveillance principles. SWEDAC thus focuses on creating a forum in which to facilitate discussions on market surveillance, without planning in detail what each MSA should do. This effort aims at creating a common denominator for market surveillance across sectors.

With the creation of SWEDAC, the Swedish organisational approach to the structuring of MSA moved from a rather decentralised and competence based approach into a coordinated approach that still takes into account the sector-specific competences in the different MSA. By placing particular focus on coordination, Sweden is seen as an example of good practice and is inspirational to several MS including the UK, Ireland and Denmark. However, according to the Swedish authorities themselves, there is still room for improvement, mainly in the form of a technical platform for coordination among all the MSA.

Other interesting features:

The market surveillance seems to work in a cost-effective manner in Sweden. This seems to largely rest on the fact that the Swedish authorities are succeeding in effectively coordinating the market surveillance activities among the MSA. Thus, in Sweden’s case, effective coordination is clearly a way of tackling possible budgetary issues. A similar setup has been witnessed in Romania, which has recently invested in an internal database designed to allow the exchange of information between the co-ordinating ministry and the 10 MSA. The IT system is expected to help improve the levels of communication and coordination between the market surveillance authorities, an aspect described as the main shortcoming of the market surveillance system and is actually also one of the features that Sweden itself admits to lack.

3.3. The Netherlands

Characteristics: Small, old, decentralised but formalised with a risk assessment strategy

The Netherlands is one of the founding countries of the EU, and is a small country with a considerable population density. The Netherlands has a rather decentralised system, but one of the MSA, the Food and Consumer Product Safety Authority (VWA), coordinates the monitoring activities amongst the MSA through a number of regional offices specialised in particular technical areas of market surveillance.

The market surveillance in the Netherlands is formalised by a risk assessment strategy. The strategy is based on a number of pre-identified levels of risk (country of origin, type of product etc.), and the MSA prioritise their efforts in the market on high-risk products. This approach involves a great deal of planning, but also works to guarantee that the decentralised MSA work in a similar fashion. This ensures a more coherent market surveillance approach which avoids double-checking products, which in the end is expected to ensure safer products for the customers. For instance, most non-compliant products are from third countries and are therefore almost always checked in cooperation with the customs authorities. The reason for choosing a risk assessment strategy is that the Netherlands in particular, home to the large port of Rotterdam, gets so many containers with products that it is impossible for them to check everything. Instead, they have to target certain characteristics of the product. The risk assessment strategy has been identified by Prosafe as a good practice in ensuring safer products for the consumers on the market.

Other interesting features:

The MS is home to the port of Rotterdam, which is the largest port in Europe, and functions as the main gateway for products from third countries to Europe. As only a marginal fraction of the goods coming into this port can be checked, the Netherlands has chosen two different kinds of strategies. One is the aforementioned risk assessment strategy, where products are grouped according to their level of risk and the MSA focus their priorities accordingly. The second strategy is a close cooperation between the MSA and the customs authorities on market surveillance. The MSAs and the customs authorities thus ensure that they exchange knowledge on the dangerous products detected, helping each other to focus the market surveillance even more.

In order to better ensure the smooth integration of a new piece of legislation, the Netherlands use a model named the "Table of 11" to assist legislators in verifying if a new piece of legislation can immediately be complied with. Moreover, the tool also provides an overview of the strong and weak points of the policy and legislation in terms of enforcement and compliance.

3.4. Italy

Characteristics: Large, old, decentralised

Italy is a large Member State and one of the founding MS of the EU. Its system is decentralised, leaving the market surveillance to sector specific authorities. These authorities submit alerts on non-compliant products to the ministry with jurisdiction over the sector in question. The controlling bodies are Guardia di Finanza, the Chamber of Commerce, the special Antisofisticazioni Nuclei and health NAS, as well as the municipal police. These bodies must submit alerts on the detected non-compliant products to their respective Ministries.

The Ministry of Economic Development is the authority that coordinates market surveillance; it receives notifications of unsafe products and has the power to order restricting measures. Yet, despite the existence of a ministry with horizontal capacity, the general impression is that Italy lacks proper coordination amongst the market surveillance bodies. This is for instance illustrated in the irregular level of communication amongst the coordinating ministry and the different ministries responsible for the MSA.

There are no formal channels or established procedures through which the different Ministries can coordinate activities. The Ministry of Economic Development has, as the coordinating ministry with the general budgetary and administrative responsibilities, a thorough overview of the MSA activities and budget, and could therefore be expected to undertake a greater coordination role. The ministry itself also believes that in order to coordinate market surveillance, they need to increase their ability to focus their market surveillance on areas where the problems with dangerous products are most pronounced (a strategy resembling the Dutch risk assessment). One of the problems with reaching this goal is that the ministry believes that they are understaffed. Six people are focusing on market surveillance, which is not perceived to be sufficient.

Another problem is that the Italian ministry may have the formal powers over the MSA's activities, but they are not able to come across with their input on how to better focus the resources, as the MSA do not always listen to what the ministry is suggesting. An understaffed ministry again seem to be a problem, as the ministry does not have frequent enough contact with the MSA in order for them to listen.

Additionally, there is a struggle to deal with staff shortages to conduct market surveillance. It is not likely that more human or financial resources will be assigned to the MSA in Italy, but coordination may be able to ensure that the resources available are used in the best possible way, as was the case in both Germany and Sweden.

Other interesting features:

An interesting observation when looking at the Rapid Alert System for Non-Food Products (RAPEX), is that Italy identifies very few products in the RAPEX system. In 2004 and 2005, the number was as low as 2. In 2006, it increased to 6, and in 2007 and 2008 the numbers were 43 and 38, respectively. Part of the explanation seems to be found in the fact that Italy has a very reactive market surveillance system highly dependent on consumer complaints, but the consumers do not have confidence in the system and therefore report very few products to the system.

The consumers have very little confidence in the Italian system, the products and the safety marks etc. and do not alert the MSA. In addition to the low consumer confidence, the Italian consumers are also not aware of their rights in terms of product safety, meaning that even fewer products will be notified to the MSA. This creates a vicious circle of more and more dangerous products flooding into the market without the MSA catching it and the consumers getting less and less confidence in the system. Italy is, however, not cooperating with Prosafe either to solve this problem. This is evident as Prosafe never hears back from Italy whether they would be interested in participating in joint actions. Prosafe generally perceives Italy to be reluctant to share knowledge of and cooperating on market surveillance. The work with this report supports this perception, as Italy has easily been the MS that has been most difficult to get in contact with.

3.5. Portugal

Characteristics: Small, old, centralised approach

Portugal is an old, small MS, and is one of the few MS with a centralised approach to market surveillance. There is one central MSA, which is the Authority for Food and Economical Safety (ASAE), and seven regional offices run by the ASAE. ASAE is a public authority under the jurisdiction of the Ministry of Economy and Innovation, and is specialised in matters concerning food safety and law enforcement. In addition, the ASAE is in charge of its own laboratories located in Lisbon and Porto, as well as five regional offices, three delegations in the continental territory, plus it coordinates the MSA in the two autonomous regions of Madeira and Azores.

In order to consistently perform market surveillance in this broad scope of powers and responsibilities, ASAE carries out a large number of actions when doing market surveillance for both the food and non-food sectors. For example, ASAE holds meetings and discusses future actions with industry, trade and consumer organisations on recent developments and results with regards to market surveillance.

In an approach resembling the Dutch risk assessment strategy, ASAE occasionally proactively plan proactive market surveillance operations according to a pre-selected set of priorities. However, the majority of the market surveillance is carried out as a response to consumer and industry complaints. Portugal has established a system called the "yellow book system". This entails that every public place (including stores) is obliged to have a yellow book (hard copy and online) where customers can report dangerous products immediately. The information from the yellow book is then reported back to ASAE (increasingly through the Internet), which collects the complaints and decides which ones to act upon. ASAE then follows up with the person complaining to check whether the situation has improved.

Other interesting features:

The central authority is both a MSA and a police authority specialised in product safety and inspection of economical activities and agents. Its broad scope of action covers around 800 pieces of national legislation. The criminal justice mandate ensures that the central authority can undertake unannounced inspections. However, the inspection-based system is quite costly and involves many human resources, and is as a consequence not used very often.

3.6. Bulgaria

Characteristics: Relatively large, new, semi-centralised system

Bulgaria has a semi-centralised system, meaning the implementation of the package is overseen by a government agency with a horizontal focus. However, the actual market surveillance is carried out at a decentralised level. Market surveillance is distributed across sectors with specific knowledge of the type of product in question.

Currently, the coordination is not working optimally in terms of securing knowledge sharing among the different MSA. Part of this can be ascribed to the budgetary difficulties facing Bulgaria. Its problems mainly stem from the impact the international economic downturn has had on the Bulgarian economy, as this has forced the national government to cut down on public expenditure, which includes market surveillance. Additionally, Bulgaria will not be able to participate in the Prosafe joint actions prepared for 2010.

Other interesting features:

Bulgaria has been described as having both administrative and budgetary difficulties. In terms of budgetary difficulties, Bulgaria's problems are mainly due to the impact the financial crisis has had on the Bulgarian economy, as discussed above.

As for the administrative problems, they are often rooted in the fact that the industry associations are sometimes reluctant to give the necessary details to the MSA. For instance, the MSA are informed by an industry association that a dangerous product is on the market. However, the product specific characteristics leading to its traceability, such as name, location, or producer, are not disclosed. The industry associations use the need to maintain fair competition as an argument for this. However, according to the Bulgarian MSA, it seems to be a misinterpretation of what the concept of market surveillance entails. Hence, the MSA and the industry organisations differ in their views of what fair competition and non-compliance are. Even though the legal requirements are in place, old habits, mentalities and practices persist.

The development of free markets, the creation of regulatory norms for products, and the adoption of consumer protection policies and rules are rather recent developments in Bulgaria. It is therefore expected for market failures and regulatory gaps regarding consumer rights and obligations to continue for some time in Bulgaria. One important aspect to consider is that even though the *acquis* may have been successfully transposed, it will still take time before the adoption and enforcement of the legislation functions properly. This means a process of change will have to occur, including the behaviour of consumers, enforcement agencies and businesses.

In terms of consumer satisfaction, it can be seen from Bulgaria's consumer satisfaction country report⁴ that it repeatedly scores below the European average when it comes to trustworthiness, reliability, price-quality, and ethical standards of the products. With respect to consumer protection rules, Bulgarian consumers are also less satisfied than the average European consumer. However, in terms of quality of services, value for money and overall satisfaction with the retailer are aspects the Bulgarian consumers are more satisfied with than their European counterparts.

⁴ <http://ec.europa.eu/consumers/strategy/docs/Country%20report%20-%20Bulgaria.pdf>

3.7. Latvia

Characteristics: Small, new, decentralised system with central coordination

The Latvian market surveillance system is a decentralised system with ten MSA under the jurisdiction of ten different ministries. Latvia is modelling the Swedish system by having one ministry, the Ministry of Economy, coordinate the market surveillance and consumer protection of the ten MSA. The MSA actively use the ministry's channels to exchange information with the other market surveillance bodies and responsible ministries on specific cases. However, this coordination is challenged by each of the ten MSA having their own systems and methodology to collect information about complaints. This means there is a need to create common denominators or a unanimous system for all ten MSAs in order to ease the coordination of the MSA, as well as ensure the different authorities can share knowledge and benefit from each other's experiences.

Other interesting features:

Latvia is part of the Baltic Cooperation on Market Surveillance. This means it works actively to encourage the market surveillance activities across borders. As a member of this cooperation, Latvia discusses their market surveillance activities with the other members. In particular, Latvia is trying to align their activities with the German ones. However, the budgetary issues Latvia currently faces make this cooperation and alignment difficult.

These budgetary issues are a result of the financial crisis. Therefore, the public sector has experienced a great deal of cutbacks, both on staff and financing- This has affected the market surveillance activities. The financial crisis has also hit several MSA. For example, a serious reduction of staff is being performed at the Consumer Rights Protection Centre, the main authority for most non-food products and a central body for market surveillance. The budgetary issues are so severe that some MSA have expressed concern that the Latvian public authorities will not be able to perform market surveillance before the end of 2009.

The fact that the market surveillance budget has been severely affected by the financial crisis creates a considerable problem for product and consumer safety. It is often at times of economic difficulty that consumer behaviour emphasises the price factor instead of quality and/or safety. The national budgetary situation and the increasing importance of price create a "dangerous correlation", as a lot of the cheaper products might be non-compliant. This increases the responsibility of the public authorities to perform market surveillance in order to guarantee that products are safe and to assure public health. In order to try and solve this, there is an effort to include the consumer associations in the market surveillance activities to deal with the shortage of human and financial means, as well as to attempt to create synergies among the institutions.

4. MEASURES TAKEN FOR THE EFFECTIVE FUNCTIONING AND STRENGTHENING OF MSA – HUMAN AND FINANCIAL

As previously mentioned, even though the Regulation on setting out requirements for accreditation and market surveillance will only enter into force in January 2010, the MS are at this point in time expected to have taken measures to prepare an effective functioning and strengthening of the MSA.

Since the "Goods Package" entered into force in 2008, only two of the interviewed MS (Romania and Greece) have systematically set aside financial or human resources to prepare for this. Romania has allocated additional resources to enhance coordination and cooperation nationally, as the MS has developed an IT system to improve the cooperation especially among the different Romanian MSA. Part of the funding for this system originates from Structural Funds⁵. Greece has also developed an IT system, expected to be functional from January 2010.

Our Ministry of Finance has allocated more financial resources [*to market surveillance*] this year [2009] in order to prepare for the adoption of the goods package...both for the MSA to carry out their market surveillance activities, but especially to develop the IT system which will be operational from 2010.

Ministry of Economy, Romania

For the remaining MS, the resource situation for market surveillance did not change with the introduction of the "Goods Package". Initiatives within the current financial and human resources framework have however been initiated, which will be discussed later in this chapter.

With respect to the current budget discussion in the MS, rather few MS (Denmark, Romania, Cyprus and some Länder in Germany) have set aside or plan to set aside in their 2010 budgets additional financial or human resources to prepare for the "Goods Package". From the interviews with the MSA, it could be seen that one of the main reasons for this was that the authorities feel that they already have in place the fundamental market surveillance regimes to meet the European obligations, as Regulation 765/2008 builds upon existing Community legislation. As the UK market surveillance authority MSA put it:

As the market surveillance and border controls provisions of Regulation (EC) No 765/2008 apply respectively to existing Community harmonization legislation and existing Community legislation, the UK already has in place competent market surveillance regimes to fully meet its current European obligations. Regulation 765/2008 does create new obligations which we will meet, if necessary by reallocating resources within the market surveillance system [*for e.g. strengthening the cooperation among the different market surveillance authorities*], but we do not envisage fundamental changes to the existing UK system.

Department for Business, Enterprise and Regulatory Reform, the UK

The above example *could* indicate that the new MS will have to invest more in market surveillance systems, while the old MS can rely on existing structures stemming from years of having complied with Community legislation. However, the evidence from the interviews does not substantiate this hypothesis. What is clear, however, is that a system for cooperation already in place has helped new MS, such as Estonia, Latvia and Lithuania, adapt to the requirements of the "Goods Package". For example, this is demonstrated by the Baltic Cooperation System, a system set up with the purpose of creating a similar approach to market surveillance in the involved countries, i.e. the countries with a Baltic sea coastline. More cross-border systems could possibly facilitate increased coordination and cooperation and at the European level.

An overview of the allocation of financial and human resources to market surveillance authorities in the MS is presented below.

⁵ Interview with Prosafe

4.1. Overview of the situation in all MS

Table 2: Allocation of financial and human resources to market surveillance authorities

Member State	Additional allocation of human and financial resources
Austria	Considers existing resources sufficient
Belgium	No additional allocation of resources
Bulgaria	No additional allocation of resources (unable to participate in Prosafe joint actions)
Cyprus	Additional allocation of financial resources, but not of human
Czech Republic	Cutbacks on human resources
Denmark	Allocation of human and financial resources expected for some MSA – reform of the existing system
Estonia	No additional allocation of resources
Finland	Considers existing resources sufficient - reform of the existing system underway
France	Considers existing resources sufficient
Germany	Allocation of financial and human resources may increase, but not before elections - undergoing reform of the existing system. Some Länder are expecting increases whereas others do not believe this will be the case
Greece	No additional allocation of resources, investment in a national database two years ago
Hungary	No additional allocation of resources
Ireland	Cutbacks (unable to participate in Prosafe joint actions)
Italy	No additional allocation of resources, but protocol signed to cope with staff shortage and lack of financial means (better synergies between the MSA and the Chamber of Commerce)
Latvia	Cutbacks
Lithuania	No additional allocation of resources (unable to participate in Prosafe joint actions)
Luxemburg	Considers existing resources sufficient – reform underway
Malta	No additional allocation of resources - Synergies between different competence centres
Netherlands	No additional allocation of resources
Poland	No additional allocation of resources
Portugal	Considers existing resources sufficient
Romania	Investment in a national database. Will also invest further resources in market surveillance in the future.
Slovakia	No additional allocation of resources
Slovenia	No additional allocation of resources
Spain	No additional allocation of resources
Sweden	Considers existing resources sufficient
United Kingdom	Considers existing resources sufficient, but possible reallocation of existing resources

As mentioned earlier and as it can be seen from the above table, Denmark, Germany, Romania and Cyprus are the only MS where additional financial and human resources are expected to be allocated. It should, however, be noted that at the time of writing, none of the national budgets for 2010 were finally approved, thus no absolute figures of the exact budgetary amount can be given.

In **Denmark**, a reform of the system is underway as a result of the "Goods Package", which aims at ensuring better coordination and cooperation between the different MSA. In order to be able to carry out this reform, additional financial and human resources are expected to be set aside for market surveillance.

In **Germany**, the picture is a bit mixed. Some Länder expect a possible allocation of further resources in Germany as first of all, there is a commitment signed by all Länder to allocate more resources to market surveillance. However, according to several Länder, the actual execution of the additional funding depends on the outcome of the German elections in late September⁶. Secondly, as the MSA have increased in importance with introduction of the "Goods Package", the decrease in market surveillance resources witnessed in Germany until now is for this reason expected to be put to an end. However, no concrete steps have been initiated so far, which is the reason why some Länder doubt whether it will actually happen.

Romania has, as mentioned, recently invested in an internal database designed to allow the exchange of information between the co-ordinating ministry and the 10 MSA, and will continue to set funding aside to develop it. Such an IT system is an aspect described by numerous MS as lacking in their market surveillance system. The Romanian system thus sets out to increase cooperation amongst MSA at a national scale, with similar aims as the European-wide ICSMS system. The ICSMS system has the objective of creating the basis for an effective and efficient cooperation between the market surveillance bodies in Europe, in order to help avoid products imported in Europe being tested by several different surveillance bodies with little coordination among them⁷. The Romanian system has, as mentioned, a similar objective, albeit with a national focus. Thus, it would be advantageous if the Romanian system can work together with the ICSMS system, in order for the Romanian MSA to have only one system in which to register the unsafe products, and for the other MS to benefit from the Romanian findings. Germany has been rather involved in the development of the ICSMS system and is using it to a large extent. Cooperation between Germany and Romania on how to best share the information in the two types of system could therefore be beneficial.

The MS, that have not prioritised to set aside additional funding have different reasons for not doing so. Some MS have been hit hard by the financial crisis and, as a result, three MS foresee cutbacks in the near future – two new MS (Czech Republic and Latvia) and Ireland (cf. the table above). This has a great impact on the market surveillance being performed in the affected MS.

For instance, in **Latvia** the economy has receded by double digit figures and as a consequence, the national public administration has been subjected to very considerable budget cuts which also have affected the market surveillance being carried out, including concerns that the Latvian public authorities are not able to perform market surveillance until the end of 2009. As consumers tend to emphasise the price factor at the expense of quality and/or safety in times of economic difficulty, this makes the need for market surveillance even more acute.

Italy is another MS which has not been able to secure additional financial resources for the MSA. In order to cope with this, the MSA and the Italian Chamber of Commerce have signed a protocol to cope with staff shortage and lack of financial means. The protocol sets out to ensure better synergies between the MSA and the Chamber of Commerce. The Chamber of Commerce has in-depth sector knowledge, thus being able to help the MSA

⁶ The elections are scheduled for 27 September 2009

⁷ <http://www.icsms.org/icsms/App/blankPublic.jsp?threadId=43423&callId=6&winId=1>

focus its resources on sectors (and producers) where dangerous products are likely to occur. The result is expected to be more effective market surveillance, despite of the lack of funding. However, as the case study showed, the coordination between the MSA is not very efficient in Italy, something that could likely be improved if the cooperation between the MSA and the Chamber of Commerce is to be as beneficial as possible. If the cooperation among the MSA is secured, chances are also better that the resources are used more efficiently, as double checking of products are then avoided and resources can be focused on working together with the Chamber of Commerce instead. Other MS, such as **Bulgaria** and **the Netherlands**, will, like Italy, not receive more funding. The ministries in charge of market surveillance have no additional financial resources to allocate although the MSA are asking for it, and it is thus up to the central government to allocate more resources to market surveillance. The two MS state that this is problematic as they believe that the "Goods Package" will increase their workload, meaning that they will have to carry out more work with the same amount of money.

Some of the MS that have not allocated or do not plan to allocate more resources to market surveillance as a result of the "Goods Package", have chosen this because they consider that the resources set aside for market surveillance are adequate to perform the activities foreseen.

One of these MS is **Sweden**, where the assessment seems to largely rest on the fact that the Swedish authorities have already succeeded in effectively coordinating the market surveillance activities among the MSA through the Market Surveillance Council and SWEDAC. The Swedish system has been thoroughly studied by other MS such as UK, Ireland and Denmark, who consider that this way of coordinating market surveillance is a beneficial way of making the most of the resources assigned to them, as few MSA are likely to achieve additional funding or human resources. It is, however, our assessment that setting up such a coordinating body and ensuring that it is well-functioning requires some additional resources, whether it is being taken from existing resources set aside for market surveillance (such as in the case of the UK) or whether additional resources are being added to the area of market surveillance (as in the Danish example). It should be noted that the Swedish system is not new, and is thus not established as a result of the "Goods Package". Nevertheless, the system has helped Sweden comply with the requirements of Regulation 765/2008 of enhancing coordination and cooperation both nationally and at EU level.

Malta has also worked to enhance cooperation and coordination. In order to make up for a lack of resources, a number of Memoranda of Understanding have been set up with other authorities that are not originally engaged in market surveillance, but which provide surveillance in the sectors of their competence. Malta is thus another example of an MS that has used its existing system and necessities to enhance coordination and cooperation, especially on a national level.

Another example of an MS working to increase coordination and cooperation especially at EU level is the aforementioned Baltic Cooperation for Market Surveillance initiated by **Germany**.

As the port of Hamburg is supplying goods to the Baltic countries, the Scandinavian Countries and the Eastern European countries, the Baltic Cooperation initiative was set up in an effort to create a similar approach to market surveillance in the involved countries. The MSA in the countries which are part of the Baltic cooperation system cooperate closely on market surveillance methods to ensure a uniform procedure of checking the goods. The German market surveillance authorities also initiate discussions with other MS (especially Slovenia, Poland) and candidate countries (especially Croatia) on how to create and sustain a well-functioning market surveillance system. The German MSA invites the MSA from these countries to participate in discussions on market surveillance, meaning that the German MSA can increase its awareness of practices, methods and problematic product groups. In return, the new MS also solicit the German opinion or feedback on selected initiatives.

The above-mentioned examples thus show that while the MS discussed have not set aside additional funding for market surveillance as a direct result of the "Goods Package", they can still use their existing structures to comply with the requirements in Regulation 765/2009.

4.2. Conclusion

With the exception of a few countries, the majority of the MS have not allocated more human nor financial resources to market surveillance as a result of the "Goods Package", nor are they planning to do so in the near future. The main reasons for not doing so include budget reductions due to the financial crisis, and a market surveillance system which basically already complies with the requirements laid out in regulation 765/2008.

Some MS believe that the resources set aside for market surveillance are adequate as they have managed to set up a system including a large amount of coordination and cooperation. The prime example, highlighted by numerous MS, is Sweden, where SWEDAC succeeds in effectively coordinating the market surveillance activities among the MSA by continuously holding meetings for the MSAs, thus creating a forum in which to facilitate discussions on market surveillance. The need for coordination and a common approach to market surveillance is further exemplified in the initiative taken by Germany in creating the Baltic Cooperation for Market Surveillance. This system has helped new MS such as Estonia, Latvia and Lithuania adapt to the requirements of the goods package. The ICSMS system is also a beneficial tool for cooperation and should be linked with any similar national initiatives, such as the Romanian IT system.

5. THE SET-UP OF MARKET SURVEILLANCE PROGRAMMES (ART. 18)

The set-up of market surveillance programmes is a prerequisite under Art. 18, paragraph 5 of Regulation 765/2008. The article states that the MS shall "establish, implement and periodically update their market surveillance programmes. Member States shall draw up either a general market surveillance programme or sector specific programmes, covering the sectors in which they conduct market surveillance, communicate those programmes to the other Member States and the Commission and make them available to the public, by way of electronic communication and, where appropriate, by other means"⁸. The deadline for this is 1 January 2010, and it should therefore be expected that all MS have initiated the set-up of market surveillance programmes.

However, the interviews have revealed that the reality is somewhat different. 18 of the MS have initiated market surveillance programmes while the remaining 9 MS are awaiting specifications from the Commission on what exactly the programme is supposed to entail before initiating any setup.

The 18 MS that have initiated the programme have either organised it in national, regional or sectoral programmes.

National programmes gather all sectoral or regional market surveillance activities in one programme structured at national level (typically if a MS has a centralised approach to market surveillance or emphasise the coordination of market surveillance). An example of a MS that has set up a national programme is Sweden, which corresponds to the fact that the MS relies heavily on coordination of the regional authorities. Portugal has also chosen a national approach, which again is logical as the Portuguese approach to market surveillance is centralised with one central MSA and seven regional offices coordinating the market surveillance activities.

Regional programmes are often chosen when the administrative structures of market surveillance are organised on regional levels and the programme reuses this set-up. Germany is a good example of an MS which has chosen a regional set-up, as the market surveillance is organised in the Länder (i.e., at regional level). However, the regional set-up in Germany has a national coordination, in order to ensure some consistency between the Länder-specific approaches. Austria has also chosen to organise its market surveillance activities around regional MSA, and its market surveillance programme is therefore structured along the same lines.

Lastly, **sectoral programmes** are organised according to the MSA's knowledge of the area in question as well as human and financial resources at their disposal. The UK has chosen a sectoral market surveillance system, as the market surveillance is located in different agencies with specific sectoral knowledge due to the fact that enterprises and consumers are familiar with this structure.

As the choice of a national, regional or sectoral programme is anchored in the legal traditions in the different MS, it is not relevant to discuss which of the approaches is the most beneficial. However, some national coordination of the MS choosing a regional or sectoral approach is advisable, thus ensuring a common footing on market surveillance. Germany is executing this and states that the coordination has made it easier for the regional authorities to develop their market surveillance programmes, especially since specifications on how to formulate the programmes have been lacking from the Commission's side.

An overview of the situation in all MS is presented below.

⁸ European Communities (2008): Regulation (EC) No 765/2008 of the European Parliament and of the Council, setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93

5.1. Overview of the situation in all MS

Table 3: The market surveillance programme in the Member States

Type of programme	National	Regional	Sectoral	Waiting for specifications from the Commission
Member States	France Luxembourg Malta Portugal Romania Sweden Slovakia	Austria Germany (with national coordination) Spain	Denmark Estonia Finland Ireland United Kingdom (with national coordination) Italy Czech Republic Lithuania	Belgium Bulgaria Cyprus Greece Hungary Latvia The Netherlands Poland Slovenia

As can be seen from the above table and as discussed above, the exact design of a market surveillance programme is still at this very late stage a matter of discussion in a number of MS. Several MS have requested specific guidance from the European Commission regarding the structure of the programme, the type of information to be included, etc. This issue has also been discussed by the Senior Officials Group for Market Surveillance (SOGs) in an attempt to reach an agreement. The Commission admits that it did not foresee the large role the MS have expected them to play in the market surveillance activities, mainly because the Commission is not used to coordinating such a task within market surveillance. However, the Commission acknowledges that the MS are not used to working together on market surveillance issues and thus may require help in drawing up the market surveillance programmes.

The reason why some MS have decided to further discuss this matter and ask the Commission for advice can partly be explained by the fact that some MS do not have experience in drawing up market surveillance programmes (for instance Bulgaria, Spain and Ireland). This is due to the fact that the MSA focused more on the technical and practical aspects of market surveillance, not on substantiating its activities by drawing up a market surveillance programme and communicating those programmes to the other MS and the Commission, as well as making them available to the public. In **Bulgaria**, the interviewed MSA stated that they are not used to drawing up market surveillance programmes, and more importantly, they do not have the resources to start from scratch at the moment due to Bulgaria's aforementioned severe budgetary problems as a result of the financial crisis.

The cut-down in the market surveillance budgets means that a number of MS, including Bulgaria, are not able to participate in the Prosafe joint actions planned for 2010. It seems that there are no resources left to carry out anything but basic market surveillance, let alone developing market surveillance programmes.

Prosafe

Another issue that is putting pressure on the already limited Bulgarian budgets is the fact witnessed in the case study that Bulgarian industry associations are sometimes reluctant to pass on the needed details in order for the MSA to perform adequate market surveillance. Hence, market surveillance is being complicated further by the industry organisations' behaviour, thus resulting in the MSA spending unnecessary time on identifying dangerous products.

Latvia is as mentioned facing similar severe budgetary issues, and as a result of this, the incentive for the Latvian MSA to invest resources in developing a market surveillance programme is non-existent.

The question of the MS being reluctant to spend a considerable amount of resources on developing the programmes - resources that are scarce in the first place and not likely to be increased for a number of MS - is a concern voiced by other MS as well, for instance Ireland and the Netherlands. In the **Netherlands**, the different MSA are currently discussing how the market surveillance programmes are to be developed and what resources they can spend on developing these. While some authorities, including the Food and Consumer Product Safety Authority (the body coordinating market surveillance in the Netherlands), have developed similar programmes for a considerable amount of time, other Dutch market surveillance bodies have never done so, mainly because the limited financial and human resources have been spent elsewhere. The Consumer Product Safety Authority can assist the other MSAs in developing such programmes, but cannot develop a "one-size-fits-all" programme, as there are considerable differences in the way market surveillance is being carried out by the different Dutch MSA. Thus, for the decentralised MSA, a dilemma emerges with respect to the prioritisation of both financial and human resources: should the MSA formulate the market surveillance programmes from scratch, or spend the resources on performing actual market surveillance? Due to scarcity of resources, this is a real dilemma in the Netherlands, and thus all the help the Commission can provide in terms of guidelines is welcomed.

Another aspect of the MS getting guidelines from the Commission is that the MS will avoid developing 27 different market surveillance programmes with 27 different focuses, but can instead develop a market surveillance programme that is adapted to the national context with cross-national priorities. Thus, if cooperation is to increase at European level as the Regulation 765/2008 foresees, ensuring that the national market surveillance programmes have a similar structure and focus could help facilitate this.

5.2. Conclusion

In sum, 18 of the MS have currently initiated the set-up of a market surveillance programme. The MS that have done so have usually chosen a set-up that reflects the way in which market surveillance is organised in each MS (national, regional or sectoral set-up). It is not relevant to discuss which of the set-ups are most beneficial, as this depends on the legal traditions of the MS in question. However, it can be seen from the interviews with the MSAs that some level of national coordination of the MS who have selected a regional or sectoral approach is advisable in order to ensure a common national footing on market surveillance.

This however also means that the remaining 9 of the MS have not initiated the set-up of market surveillance programmes as of yet, but are waiting for the Commission to specify further what is needed for the programmes in terms of the structure of the programme, the type of information to be included, etc. Many MS have never drawn up a market surveillance programme before, and combined with the limited amount of resources available for market surveillance in many MS, the incentive to start working on the programmes without any guidance from the Commission is at best limited. The Commission in turn had not expected to provide as much information as the MS require, but nevertheless acknowledges that a common ground for market surveillance has never been established before and that assistance may be needed.

6. PRODUCTS OF SERIOUS RISK DISCOVERED IN THE MEMBER STATES

When looking at the number of products of serious risk discovered in the MS, a number of data limitations should be mentioned. Firstly, a number of MS including Germany, Austria and Spain have very decentralised systems. In Germany and Austria, each Länder is locally enforcing market surveillance, and locally collecting the data of products of serious risk discovered. In Spain, autonomous regions also collect these data themselves. Thus, in these countries, it is difficult to centrally aggregate data that is often collected by the regional and local administrative authorities, which means that in these MS there is no single authority who has the overview of the number of products of serious risk discovered, although it was possible to get an indication of the level over the past 5 years.

Apart from the decentralised systems lacking a central collection of risk-products, the "Consumer Markets Scoreboard" published by DG SANCO shows another problem is not having a common methodology: It is difficult for the MS to extract data from the different market surveillance activities in a standardised way and transform it into statistical data, as well as communicating it in a common and standardised way.

The RAPEX system also produces some challenges as there is no clear definition in the RAPEX system of what a product of serious risk is. There is therefore a need to define what a dangerous product that requires immediate and rapid action is; otherwise, (as is the case at the moment) some MS will have a disproportionate amount of products registered depending on how they define products of serious risk. The current lack of common standards also means that some countries, such as Hungary, have notified products that only exist in national markets, which brings them high on the list and defeats the purpose of the RAPEX system. Hungary might think that they are helping the other MS by notifying as many products as possible, whereas other MS feel that they drown in unnecessary information. In improving the RAPEX system, the Rapid Alert System for Food and Feed (RASFF) could be considered. In the RASFF, there is a system of follow-ups on some of the notifications sent, and an analysis of whether or not the notification can be accepted or is in the correct category. All RASFF reports provide information of rejected notifications, and of products tested and rejected at the borders⁹.

With the abovementioned data limitations in mind, it is however possible to assess the number of dangerous products discovered in the last five years as well as discuss the measures taken in different MS to detect dangerous products. This is presented below.

⁹ http://ec.europa.eu/food/food/rapidalert/about_rasff_en.htm

6.1. Number of dangerous products discovered in the last 5 years

The majority of MSA identify a trend of increase of detected products over the course of the past five years. Nevertheless, although the number of detected products has increased, some MSA are also careful to relay that the increase identified in the past is not expected to continue for the forthcoming years. This is not due to a decrease in the effectiveness of the market surveillance system, but rather some stabilisation in the practices and procedures of market surveillance attained throughout the past years. The below table presents the number of notifications in the RAPEX and RASFF systems in the past five years:

Year	RAPEX – Number of dangerous products discovered ¹⁰	RASFF – Number of dangerous products discovered ¹¹
2004	388	5562
2005	701	7170
2006	924	6840
2007	1051	7354
2008	1605	3099

Throughout the past five years, the RAPEX reports have shown a gradual increase of notified products. If comparing the numbers for 2004 (388) with those of 2008 (1605), the amount of detected products in Europe has quadrupled. When analysing the number of detected products in the past five years, it can be seen that from 2004 to 2005, the number of notified products increased by 80%. From 2005 to 2006, the number increased by 32%. From 2006 to 2007, a year with particular activity in terms of toys¹² possibly resulting from the Mattel case¹³, the number of notified products increased by 53%. If the toys are excluded from the number of dangerous products detected, there has actually been a decrease in the number of notified products of 32%. However, toys have been high on the list since 2005 and are one of the product areas where most dangerous products are being found. This is not necessarily because toys are more dangerous than other products; it is also because some products are traditionally subject to more inspections than others¹⁴. From 2007 to 2008, the number increased by 16%. Thus, although the total number of detected products is constantly increasing, the pace with which it increases seems to be slowing down over the years. In the Prosafe action plan, it is foreseen that joint actions will be on toys and child care products, thus continuing the trend of focusing on toys. However, as could be seen with the Mattel case, focus of market surveillance can change if a certain product group receives bad publicity.

The RASFF numbers have decreased both in 2006 and 2008. In 2006, it was the first decrease ever in the system's 31 years of operation. The reason for these decreases was in both cases due to fewer notifications on specific products, including microbiological contamination and the use of illegal dyes.

RAPEX is however, as already mentioned, an incomplete system. One of the main problems is that does is not clearly defined what a dangerous product is. A working group consisting of selected SOGs members and the Commission are therefore currently trying to define what immediate and rapid danger is, so that only those products which are dangerous are found in the RAPEX database.

¹⁰ From the RAPEX Annual Reports 2008, 2007, 2006, 2005, 2004

¹¹ From the RASFF Annual Reports 2008, 2007, 2006, 2005, 2004

¹² 417 of the notified products were toys

¹³ A case where Mattel had to recall several toys due to toxic levels of lead paint

¹⁴ European Commission, DG SANCO (2008): The Consumer Markets Scoreboard: Monitoring Consumer Outcomes in the Single Market, and European Commission, DG SANCO (2009): The Consumer Markets Scoreboard: 2nd Edition

MS do not have a tradition for working together on market surveillance issues, and have just started this. This means that apart from the RAPEX database, comparable data across borders does not exist¹⁵. An alternative strategy would have been to use the national databases, to the extent that the MS have these. Some of the MS have sectoral databases only, meaning that in order to collect the information from one of these MS, data will need to be collected and compared for all sectoral MSA. The last concern is that when the MS have the national databases, they are not necessarily comparable across borders, as no clear definition of what a dangerous product is exists.

In conclusion, the RAPEX system is not perfect in any way, but according to DG SANCO, DG ENTR and Prosafe, the system is the best way of achieving comparable data on dangerous products. Without this tool, it would be necessary to aggregate all the data from all EU 27 national reports; and for MS with sectoral databases, the individual reports of each MSA. As this information is based on many different criteria, RAPEX is still the tool that enables the best overview of detected dangerous products in EU-27. The Commission and MS are as mentioned aware of the systems' limitations and are working towards improving the system, but until the working group has finalised its work, there is no good alternative to RAPEX.

As an addition to the RAPEX system, however, DG SANCO's Consumer Market Scoreboard can be beneficial in order to better understand consumer's and retailer's perception on the issue of dangerous products.¹⁶ The scoreboard has only been operational for two years (2007 and 2008 figures), but can nevertheless be used to back up or challenge the RAPEX figures. While the overview of unsafe products in the scoreboard is based on RAPEX and RASFF figures, the 2008 Scoreboard¹⁷ provides interesting inputs on how safe consumers and retailers in all MS perceive the products on their markets to be.

The Scoreboard reveals large differences among the MS when it comes to the perception of product safety. A relatively high number of consumers in Greece (39%), Romania (38%) and Cyprus (29%) stated that they perceived a significant number of products to be unsafe, an opinion that is shared by only 3% of the consumers in Finland and 4% of the Dutch consumers¹⁸. However, 38% of the Dutch consumers believe that products may be unsafe, but that it depends on the product, which may mirror the risk assessment strategy chosen by the Dutch market surveillance units of focusing the market surveillance on certain products.

The assessment of product safety among retailers reveal that overall, 55% of European retailers think that a small number of non-food goods are unsafe. 16% think that a significant number of goods are unsafe, and one out of four agrees that essentially all products on the market are safe. Greek (42%), Italian (37%) and Latvian (32%) retailers are most likely to say that a significant number of products in their country are unsafe, against only 2% of retailers in Finland. Only 7% of Greek and 8% of Bulgarian retailers believe that essentially all products are safe¹⁹. Especially the Italian and Latvian assessments are not surprising given the information in the case studies that market surveillance is not working well in these two countries; in Italy due to a lack of coordination and in Latvia as a result of the reduced market surveillance budget.

¹⁵ Interview with DG SANCO, interview with DG ENTR and interview with Prosafe

¹⁶ The scoreboard discusses consumer's and retailer's perceptions on five issues: Complaint, Price, Satisfaction, Switching and Safety

¹⁷ The data on consumer and retailer perception of safety is only available in this edition

¹⁸ DG SANCO (2009): The Consumer Markets Scoreboard: 2nd Edition

¹⁹ DG SANCO (2009): The Consumer Markets Scoreboard: 2nd Edition

Below, an overview of the five MS with the most notifications in RAPEX in the past 5 years is presented below:

Ranking	2008	2007	2006	2005	2004
1	Germany (205)	Germany (163)	Germany (144)	Hungary (122)	Germany (68)
2	Spain (163)	Greece (115)	Hungary (140)	Germany (106)	Hungary (55)
3	Slovakia (140)	Slovakia (114)	Greece (98)	Greece (48)	Spain (38)
4	Greece (132)	Hungary (109)	UK (92)	UK (43)	Lithuania (37)
5	Hungary (129)	Spain (108)	Spain (79)	Portugal (42)	UK (24)

When looking at the table, it should not necessarily be interpreted that countries with the highest number of notifications are the most 'dangerous' countries.

It could also be that they are simply just better at notifying dangerous goods. For instance, in Germany, 60% of the consumers and 76% of the retailers believed that either all products were essentially safe or that just a few products on the market were unsafe²⁰. The German situation more or less reflects the overall perception in EU-27 (65% of the consumers and 80% of the retailers)²¹, meaning that Germany is not a more 'dangerous' country than the average EU MS.

Greece is also one of the countries that is consistently high on the RAPEX list. As a relatively large amount of the Greek consumers and retailers in the Consumer Market Scoreboard perceive a significant number of products in the market to be unsafe, this is an indication that the high RAPEX listing is actually due to a lot of dangerous goods being found in Greece. Thus, the examples of Germany and Greece show that RAPEX system should be interpreted with caution.

The number of dangerous products discovered is, however, probably higher in some countries than the RAPEX figures show, particularly for the following two reasons. Firstly, in some court systems, such as the British, product and producer information is confidential while the court case is taking place, and is only made publicly available after a court decision. Secondly, there is also the case of pre-market surveillance. This process implies testing the conformity of products before the product is released in the market. Therefore, if non-conformity is identified, the producer is given the chance to rectify the situation and change the product accordingly. This product information is not included in a market surveillance database or any form of mechanism such as RAPEX since the product was not actually released in the market²².

In 2008, Germany maintained its position as the MS where most products were detected. Given the size of its market, but also the role played by the ICSMS system, Germany has in the average of the last five years been the country with most RAPEX notifications. Additionally, Spain was also a very active MS in terms of notifications, and it has had rather steadily increasing numbers for notifications. As both these MS are of considerable dimension and population, it is seen as "natural" that bigger countries would have more notifications. However, it is not necessarily logical that a country the size of Hungary or Slovakia would have nearly as many notifications as Germany (Hungary had even more notifications than Germany in 2005), and in some years more than Spain and the UK. In Hungary's case this can however be explained by the fact that Hungary notifies a number of national projects that does not belong in the RAPEX system.

²⁰ DG SANCO (2009): The Consumer Markets Scoreboard: 2nd Edition

²¹ DG SANCO (2009): The Consumer Markets Scoreboard: 2nd Edition

²² Annual Report on the operation of the Rapid Alert System for non-food consumer products (RAPEX) 2005 http://ec.europa.eu/consumers/reports/report_rapex_05_en.pdf

The above discussion also shows that there as mentioned is a need for defining what is meant by dangerous products. Some MS mentioned that without clearer criteria, there is a danger that RAPEX might be seen more as a performance chart rather than a tool for market surveillance. For instance, before a notification is sent, the product's traceability should be checked, as well as the likeliness of it having been distributed to other MS. If a product is only identified in one national market and is not likely to be sold across borders, the product may not need to go in the RAPEX database, but could instead be registered in a national database. This approach makes it easier for the MSA to target specific dangerous products, and not to have to sort through a lot of products that are not relevant to the MS.

Additionally, it must also be noted that the number of notifications in RAPEX for each MS depends on the rationale behind market surveillance in the MS in question. For instance, the Netherlands focuses its strategy on prevention, meaning that the Dutch authorities do not have their main focus on products already *in* the market, which is the focus of the RAPEX system, but rather on stopping products from entering the market at all.

As all products detected at the gateways to Europe do not require notification since they have not been allowed into the consumer markets, these will not be notified in the RAPEX system.

In the MS with the combination of a very reactive market surveillance system and low consumer confidence, few products end up being notified in RAPEX. The prime example is Italy, which has a very reactive market surveillance system highly dependent on consumer complaints, but as the consumers do not have confidence in the system very few products are reported to the system. The same situation can be found in Bulgaria, another country where consumer confidence is low. Thus, the number of RAPEX notifications in these two countries cannot be seen as representative of the number of dangerous products found in these MS.

Another aspect worth mentioning about these reports is the predominance of China as the country of origin of dangerous products (in 2008 59% of all notified products were of Chinese origin). This can partly be explained by the large number of products imported from China, and partly by the MSA's increased focus on Chinese products after a large number of recalls on Chinese products in 2007²³. As a result of this, a RAPEX-China on-line system was drawn up, where DG SANCO provides the Chinese authorities with the information on consumer products originating from China, which have been identified as dangerous and consequently withdrawn from the European market and notified in RAPEX²⁴. It is due to the majority of non-compliant products originating from third countries that synergies between MSA and the custom authorities are so important, and has a great focus in the Goods Package.

6.2. Measures taken to detect dangerous products

All case countries have taken measures to detect dangerous products. In Germany, the MSA are currently undergoing changes, mainly at strategic level. The German MSA initially carried out inspection-based market surveillance activities, but are now leaning towards a much more risk assessment-based approach, including closer cooperation between MSA and custom authorities. This increased cooperation implies that the customs authorities will no longer have the sole jurisdiction of the borders, and will have to include the MSA in the process of checking products coming into the market. The aim of this set-up is to create a stronger alliance in order to prevent dangerous products coming into the German market. The alliance seems even more important given the fact that a large number of products enter the EU through the Hamburg port, one of the largest ports in Europe.

The Netherlands is also working with a risk assessment-based approach. In the view of the Netherlands, a risk assessment-based approach entails that financial and human resources

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<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/597&format=HTML&aged=1&language=EN&guiLanguage=da>

²⁴ <http://www.eubusiness.com/Consumer/rapex-system>

are reallocated to preventing the entrance of dangerous products through the main European gateways, such as the port of Rotterdam.

The Dutch authority VWA and the Dutch SOGs member however do not believe that the regulation support a pro-active and risk assessment-based approach. They state that the focus of the "Goods Package" is on detection and identification of already distributed products, not on preventing the products from entering the European market in the first place. The Netherlands believes that more focus should be put on the MS receiving large amounts of goods through their ports. Ultimately, this leads to a discussion of financial resources, whether these should be equally distributed between the MS, or whether the distribution of the financial resources should represent how exposed the MS are to receiving new products through their borders. As mentioned, the Netherlands, with the port of Rotterdam, is the biggest gateway for products pouring into Europe. With the current amount of money allocated to market surveillance, only 0.0001% of the millions of containers that enter the port are checked, a number that according to the Dutch MSA could be increased if funding were to increase as well.

In Portugal, the MSA and the customs authorities have not initiated formal communications channels, meaning that the MSA are only involved in market surveillance activities if the customs authorities see fit.

This lack of communication calls for extra human resources in coordinating the effort of the customs authorities and the MSA, respectively, and suggests that Portugal could look at the efforts made by Germany to ensure closer cooperation between the two authorities.

6.3. Conclusion

The number of dangerous products discovered has increased in the last five years when looking at the RAPEX system, but decreased when looking at the RASFF system. The decrease was due to less notifications for specific products, whereas the increase can largely be owed to the increased focus of detecting toy products, but also better coordination in some MS such as Germany. This has helped avoid that the same product was checked by several MSA, thus allowing the MSA to check for more products altogether. While the total number of detected products has increased, the pace with which it increases seems to be slowing down over the years. The MSA support this tendency, stating that the increase identified in the past is not expected to continue for the forthcoming years, due to a stabilisation in the practices and procedures of market surveillance attained throughout the past years.

In terms of measures taken to detect dangerous products, Germany and the Netherlands in particular are increasingly focusing on catching dangerous products before they appear on the market. With this, the Netherlands are of the impression that in order to thoroughly prevent the dangerous products from entering the European market in the first place, reallocation of funding is necessary to the countries which through their ports function as the gateways to Europe.

7. ESTABLISHMENT OF CONTROL SYSTEMS IN THE MEMBER STATES TO ENSURE SAFER PRODUCTS

The control systems in the MS to ensure safer products are mentioned in Article 27 of the Regulation 765/2008 on controls of products entering the Community market. It is stated here that the MS "shall carry out appropriate checks on the characteristics of products on an adequate scale, in accordance with the principles set out in Article 19(1), before those products are released for free circulation" (Article 27, paragraph 1). This means that MSA shall perform appropriate checks on the characteristics of products on an adequate scale, by means of documentary checks and, where appropriate, physical and laboratory checks on the basis of adequate samples. When doing so, they shall take into account established principles of risk assessment, complaints and other information (Article 19, paragraph 1). Another area of importance mentioned in article 27 is the need for cooperation and sharing of information if more than one authority is responsible for market surveillance in the MS (Article 27, paragraph 2). Lastly, in Article 29, paragraph 1, it is stated that the MSAs must take measures to prevent a product of serious risk to be placed on the market, which includes notifying the border control authorities.

The case studies have revealed rather different approaches to the control systems in the MS being surveyed. Below, the approaches in the 7 case study countries are discussed.

Germany has chosen to implement the appropriate checks on product characteristics through a proactive approach to market surveillance. The German MSA carry out unannounced inspections, with a special focus on seasonal products (Christmas products and the like) as these are traditionally perceived to be high-risk products. According to the German MSA, the proactive approach ensures a better overview of the products coming into the market and ultimately safer products for the consumers. However, as the German approach to market surveillance is carried out at regional (Länder) level, coordination is needed in order to avoid duplication of work and to ensure that the information about dangerous products being caught is distributed among the different MSA. In order for the coordinating MSA in Germany to have a tool to assist them with this coordination, the internet-supported information and communication system for market surveillance of technical products (ICSMS) is a widely used tool in Germany. Before using ICSMS, the German MSA exchanged information of dangerous products via email. This way of communication was perceived to be time-consuming, especially as it was not very easy to follow up on the information or register and store the information properly. These problems raised the need for an information and communication system which is fast and up-to-date, thus the German federal government and the MSAs decided to develop an IT system which provided the foundation for the ICSMS system. The MSA in Germany are benefiting from the ICSMS system, as it makes their market surveillance activities more efficient. This is illustrated by the fact that Germany for three consecutive years has been the most active country in RAPEX.

With respect to market surveillance, Germany has a further challenge by being home to the port of Hamburg, which as mentioned is one of the largest gateways into Europe. The German MSA thus have no chance of checking all goods entering the EU through this port and had to find a way of carrying out appropriate checks on goods, thus complying with Regulation 765/2008. As many of the products are shipped to other countries around the Baltic Sea, the Hamburg MSA has initiated the aforementioned Baltic Cooperation for Market Surveillance initiative, where the MSA in Hamburg coordinates its market surveillance activities with the MSA in the countries involved in this initiative (the MS with a coastline bordering the Baltic Sea). This implies that some of the products are checked at the ports in the MS involved in this initiative, thereby sharing the market surveillance task with the MSA in Hamburg. The MSA in the countries which are part of the Baltic cooperation system cooperate closely on market surveillance methods to ensure a uniform procedure of checking the goods.

What can still be improved in the German system is the cooperation between the MSA and the customs. As the decision-making power is to be found at regional and national level, respectively, this calls for a clear-cut division of tasks initiated at national level.

As evident from the case study, **Sweden** is using its Market Surveillance Council and SWEDAC to ensure that the checks carried out by the different MSA are done in a similar fashion and to ensure that information about dangerous products reach all MSA. This setup helps the MSA to share knowledge of how market surveillance is best done, thereby joining efforts in making the market surveillance even better and the products safer for customers. Lately, Lithuania and Estonia have taken up a similar model in their market surveillance activities, and the UK has used Sweden for inspiration when they recently formalised the creation of councils or authorities with a coordinating capacity.

Sweden however lacks a technical platform similar to the one developed in Germany, in order to ensure that information about dangerous products is distributed fast, and that it can be registered and stored properly. Sweden is already using the ICSMS system, but a similar system to be used among the different national MSAs could according to the Swedish MSA be the next thing to be developed in Sweden.

The Netherlands have turned the notion in Article 19, paragraph 1 of the regulation 765/2008 on using established principles of risk assessment when conducting market surveillance into an actual strategy, and as mentioned introduced a risk assessment strategy in order to better ensure safer products for the consumers. In order to ensure coordination as well, the Food and Consumer Product Safety Authority coordinates the monitoring activities amongst the MSA through a number of regional offices specialised in particular technical areas of market surveillance.

The focus on risk assessment strategies involves a great deal of planning, especially of the targeting of specific dangerous product groups. The strategy is based on a number of pre-identified levels of risk (country of origin, type of product etc.), and the MSA are prioritising their efforts in the market on the high-risk products. For instance, most non-compliant products are from third countries and are therefore almost always checked in cooperation with the customs authorities. The reason for choosing a risk assessment strategy is mainly the aforementioned large inflow of products due to large port of Rotterdam situated in the Netherlands. Instead of attempting the impossible task of checking all products, the Netherlands has instead chosen to target certain characteristics of the product.

The Netherlands has thus chosen a different way than Germany to handle large amounts of goods. While the German MSAs have chosen to delegate the work to other MS as well, the Dutch approach is to carry out a risk assessment of the products, thus aiming for the product groups where the probability for catching dangerous products is high. The German authorities do this to a certain extent as well, as they are focusing on seasonal products in their market surveillance as these products are traditionally perceived to be of high risk.

The Dutch risk assessment strategy has also been identified by Prosafe as a good practice in ensuring safer product for the consumers on the market, and the Danish MSA Sikkerhedsstyrelsen to some extent also undertakes risk assessments when carrying out market surveillance. The risk assessment strategy has indeed proven to be beneficial to the Netherlands, which is handling a large amount of goods, but it can also be beneficial for MS which deal with lesser amounts of goods to apply a risk assessment strategy in order to focus their effort as much as possible. MS in particular that suffer from budgetary problems are expected to be able to benefit from implementing a risk assessment strategy, especially in the long run. However, as resources are scarce in some MS (notably Latvia), setting aside resources for introducing a risk assessment strategy may prove to be difficult.

The strategy however opens up for a discussion of which control systems work best when seeking to ensure safer products for the customers.

As previously mentioned, the Dutch MSAs are of the opinion that products should be targeted before they go on the market (hence the risk assessment strategy) whereas Regulation 765/2008 leans more towards monitoring and targeting the products once they are in the market, although it does mention that a risk assessment strategy should be taken into account when performing market surveillance.

It ultimately leads to the aforementioned discussion of allocation of resources, as the MS with large ports (especially the Netherlands and Germany) in the first scenario would require larger funding to thoroughly check the products before they are introduced on the market.

Latvia traditionally has a proactive market surveillance system based on inspections, a system which needs large financial and human resources for travelling around the country and collecting samples of products. However, the control system is currently weakened by the financial problems that the country is facing. Under the auspices of the Baltic Cooperation initiative for Market Surveillance, Latvia is working towards getting a common footage with Germany in terms of how to conduct market surveillance, but lacks the finances to effectively undertake this cooperation. Latvia could be a MS which could benefit greatly from having a risk assessment strategy, thus helping them to focus the scarce resources on the product groups which present the highest risk. The budgetary issues may make it impossible for Latvia to set aside resources for creating a risk assessment strategy, but it is definitely something that could be considered in the future, thus making priorities easier in times of restrained budgets.

The last three case study countries, Portugal, Italy and Bulgaria, have chosen to deal with the requirements from Regulation 765/2008 of performing appropriate checks on the characteristics of products on an adequate scale in a rather reactive way. In **Portugal**, the system is very much based on consumer complaints in the form of the aforementioned yellow book system, where the consumers will have to react on dangerous products and the MSAs will have to take action on these complaints. In addition to this, Portugal also has unannounced inspections from time to time. The Portuguese MSA would like to increase their cooperation with the customs authorities, but customs have limited financial resources and have chosen to focus more on drug trafficking than market surveillance.

Italy also has a very reactive system based especially on consumer complaints. However, as can be seen from the consumer market scoreboard, the consumers have very little confidence in the Italian system, the products and the safety marks, and are not inclined to alert the MSA. In addition to the low consumer confidence, the Italian consumers are not very aware of the level of product safety that they can demand from the producers. Combined with a reactive approach, this means that more and more dangerous products enter the Italian market without the MSA catching them, which in turn can decrease consumer confidence even more.

Bulgaria has a very reactive approach, which is mainly due to lack of financial resources. The MS is thus very dependent on consumer complaints. Bulgaria, like Italy, has as mentioned a pronounced problem of low consumer confidence, meaning that the consumers are not very active in notifying the Bulgarian MSA of dangerous products. Another issue working against a sound control system is the fact that the MSA may be informed by the industry organisations that a dangerous product is present on the market but not given the details to trace it, which shows a lack of understanding from the industry organisations of the concept of market surveillance and probably just makes consumer confidence even lower.

For new MS, the Commission did expect that it would take some time for the public to adjust to a new system even though the acquis is in place, thus explaining somewhat the low consumer confidence in Bulgaria. In order to help the country adjust, Bulgaria participated in a twinning project with Germany in the pre-membership phase in order to learn about market surveillance in the EU. However, now being a full member of the EU, Bulgaria is expected to carry out market surveillance on its own. Working against an increased consumer confidence is the lack of cooperation from the industry organisations, and without this it may be hard for the Bulgarian MSA to change consumer confidence.

Thus, Bulgaria seems to be an MS that could do well in rethinking its market surveillance strategy from a reactive one to a more proactive one, or possibly one based on risk assessment.

7.1. Conclusions

In sum, it can be seen that using systems for cooperation on a national level, such as the ICSMS system used extensively in Germany and the Swedish model, has helped the MSAs in these MS share knowledge about which products are checked when and where. The fact that information about dangerous products now is more easily shared improves the control systems in the MS.

Also cooperation across borders, such as the Baltic Sea Cooperation, is beneficial both in order to share knowledge on market surveillance between MS and as a way of controlling more products. The latter has been the case with Germany, where the many products entering the country through the port of Hamburg has implied that Germany cannot check all the products themselves.

From the Dutch example, it can be seen that a risk assessment strategy can be used as a way of handling large amounts of goods coming to the market. However, a risk assessment strategy can also be beneficial in MS which deal with fewer amounts of goods, in order to focus their effort as much as possible. This is especially interesting in MS suffering from budgetary problems.

A reactive control is very dependent upon consumer and retailers notifying the MSA of problematic goods. Thus, the system is not very effective if the consumers do not have faith in it, an issue that especially has been witnessed in Italy and Bulgaria.

8. CONCLUSIONS

Overall, from the case studies it can be seen that good practices for market surveillance seem to be:

- The risk assessment strategy carried out by the Netherlands, as it helps the MSA focus on the most important assignments, thereby helping the MSA to be as cost-efficient as possible. It is furthermore an advantage when handling large amounts of goods which cannot all be checked
- The market surveillance council present in Sweden, as this helps the MSA share knowledge and coordinate their efforts, thus avoiding duplication work
- The cooperation across borders, exemplified by the Baltic Cooperation programme, as this allows numerous MS to assist in checking the large amount of goods coming to the EU through the German port of Hamburg. Moreover, the cooperation gives the MS involved a unique opportunity of learning from each other's systems

Based on the above, a combination of a risk assessment strategy, national coordination and cross-border cooperation seem to be an ideal solution, thus combining a focused effort with avoiding duplication work and learning from other MS.

With the exception of a few countries, the majority of the MS have not allocated more **human nor financial resources to market surveillance as a result of the goods package**, nor are they planning to do so in the near future. The main reasons for not doing so include budget reductions due to the financial crisis, and a market surveillance system which in its basics already complies with the requirements laid out in regulation 765/2008.

Some MS believe that the resources set aside for market surveillance are adequate as they have managed to set up a system including a large amount of coordination and cooperation. The prime example, highlighted by numerous MS, is Sweden, where SWEDAC succeeds in effectively coordinating the market surveillance activities among the MSA. The need for coordination and a common approach to market surveillance is further exemplified in the initiative taken by Germany in creating the Baltic Cooperation for Market Surveillance. This system has helped new MS such as Estonia, Latvia and Lithuania adapt to the requirements of the goods package. The ICSMS system is also a beneficial tool for cooperation and should be linked with any similar national initiatives, such as the Romanian and the Greek IT system.

18 of the MS have currently initiated the **set-up of a market surveillance programme**. The MS that have done so have usually chosen a set-up that reflects the way in which market surveillance is organised in each MS (national, regional or sectoral set-up). The most beneficial set-up depends on the legal traditions of the MS in question, but it can be seen from the interviews with the MSAs that some level of national coordination of the MS who have selected a regional or sectoral approach is advisable in order to ensure a common national footing on market surveillance.

This however also means that the remaining 9 of the MS have not initiated the set-up of market surveillance programmes as of yet, but are waiting for the Commission to specify further what is needed for the programmes in terms of the structure of the programme, the type of information to be included, etc. Many MS have never drawn up a market surveillance programme before, and combined with the limited amount of resources available for market surveillance in many MS, the incentive to start working on the programmes without any guidance from the Commission is at best limited. The Commission in turn had not expected to provide as much information as the MS require, but nevertheless acknowledges that a common ground for market surveillance has never been established before and that assistance may be needed.

The **number of dangerous products discovered in the MS** has increased in the last five years when looking at the RAPEX system, but decreased when looking at the RASFF system. The decrease was due to fewer notifications for specific products, whereas the increase to some extent can be explained by the increased focus of detecting toy products. However, better coordination in some MS such as Germany has also helped avoid that the same product was checked by several MSAs, thus allowing the MSAs to check for more products altogether. While the total number of detected products has increased, the pace with which it increases seems to be slowing down over the years. The MSAs support this tendency, stating that the increase identified in the past is not expected to continue for the forthcoming years, due to better procedures of market surveillance attained throughout the past years, especially in terms of better coordination.

However, the EU is lacking a solid system to store and compare data on dangerous products. While the RAPEX system lacks clear definitions of what a dangerous product is, as well as fails to address whether a MS with numerous notifications is a 'dangerous' country or merely effective in conducting market surveillance, DG SANCO, DG ENTR and Prosafe assess that the system is the best way of achieving comparable data on dangerous products. Without this tool, it would be necessary to aggregate all the data from all EU 27 national reports; and for MS with sectoral databases, the individual reports of each MSA. As this information is based on many different criteria, RAPEX still gives the best overview of detected dangerous products in EU-27. The Commission and MS are, as mentioned, aware of the systems' limitations and are working towards improving the system, but until the working group has finalised its work, there is no good alternative to RAPEX. As an addition to the RAPEX system, however, DG SANCO's Consumer Market Scoreboard can be beneficial in order to better understand consumers' and retailers' perceptions on the issue of dangerous products, thus helping in assessing whether a country is effective in market surveillance or home to an extraordinary amount of dangerous products.

In terms of measures taken to detect dangerous products, Germany and the Netherlands are especially increasingly focusing on catching dangerous products before they appear on the market. The Dutch MSAs are of the impression that in order to thoroughly prevent the dangerous products from entering the European market in the first place, reallocation of funding is necessary to the countries which through their ports function as the gateways to Europe.

When it comes to **establishing control systems in the MS to ensure safer products**, it can be seen that using systems for cooperation on a national level, such as the ICSMS system used extensively in Germany and the Swedish model of coordination and cooperation, has helped the MSAs in these MS share knowledge about which products are checked when and where. The fact that information about dangerous products is now more easily shared improves the control systems in the MS, both as the knowledge is now present in all MSAs and also as duplication work is easier avoided. Also, cooperation across borders, such as the Baltic Sea Cooperation, is beneficial both in order to share knowledge on market surveillance between MS, or as a way of controlling a greater number of products. The latter has been the case with Germany, where the many products entering the country through the port of Hamburg have implied that Germany cannot check all the products themselves.

From the Dutch example, it can be seen that a risk assessment strategy can be used as a way of handling large amounts of goods coming to the market. However, a risk assessment strategy can also be beneficial in MS which deal with lesser amounts of goods, in order to focus their effort as much as possible. This is especially interesting in MS which suffer from budgetary problems.

A reactive control is very dependent upon consumer and retailers notifying the MSAs of problematic goods. Thus, the system is not very effective if the consumers are not confident in the system, an issue that has especially been witnessed in Italy and Bulgaria.

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ANNEX 1: OVERVIEW OF INTERVIEWEES

Name	Position	Organisation	Country
Gerhard Ludwar	Deputy head of section	Federal Ministry of Economy, Family and Youth	Austria
Michaela KÜHN	SOGs Official	Federal Ministry of Economy, Family and Youth	Austria
Ir. Chris Van der Cruyssen	Adviser General SOGs Member	General Direction Quality and Safety - Consumer Safety Service – Ministry of Economy	Belgium
Lyubomira Nesheva	Second Secretary (Internal market)	Permanent Representation of Bulgaria to the EU	Bulgaria
Silvana Lyubenova	Director (SOGs Official)	Directorate – EU Integration, Ministry of Economy, Energy and Tourism	Bulgaria
Dr.Kyriakos Tsimillis	Coordinator (SOGs Official)	Cyprus Organization for the Promotion of Quality	Cyprus
Mirka Přibyllová	SOGs Official	Czech Trade Inspection	Czech Republic
Kocová Ivana	Director	Ministry of Trade and Industry - Department for the technical harmonisation and consumer protection	Czech Republic
Harald Thiele	SOGs Official	Ministry of Economics of Saxony-Anhalt	Germany
Dr. Erika Schmedt	Department of Consumer Protection	Authority for Social Affairs, Family, Health and Consumer Protection – Hamburg -	Germany
Joachim Geiß	SOGs Officer	Federal Ministry of Economy and Technology	Germany
Hans-Georg Niedermeyer	SOGs MSG Officer	Bavarian Ministry Environment, Health and Consumer Protection	Germany
Jan Roed	Head of Department	The Danish Safety Technology Authority	Denmark
Carsten Kjær Joensen	Head of Section, SOGs and SOGs MSG	Internal Market Centre, Danish Enterprise and Construction Authority	Denmark
Helle Aruniit	Officer	Consumer Protection Board	Estonia
Kristel Koiv	SOGs MSG Official	Ministry of Economic Affairs and Communications	Estonia
Harito Piperopoulou	Director Quality Policy	Ministry for Development	Greece

Eleni FERTI	SOGs Official	Quality Policy Directorate - General Secretariat of Industry – Ministry of Development	Greece
Petros Mamalis	SOGs Official	Permanent Representation of Greece to the EU	Greece
Basilio Vicente Brejor	Ministerial Officer	National Consumer Institute, Ministry of Health and Consumers	Spain
Paloma Deleuze	Advisor	National Consumer Institute, Ministry of Health and Consumers	Spain
Kirsti Vilén	Counsellor – SOGs Official	Ministry of Employment and the Economy	Finland
Michel Berger	SOGs Official – Director of DG Industry	Ministry of the Economy, Finance and Industry	France
Silvye Seuffer	Deputy Head of Bureau C2 Security and Alert Resources	General directorate for competition, consumer policy and fair trade (DGCCRF)	France
Catherine Mainguet	Officer Bureau A3 - Management and coordination of the investigation programs	General directorate for competition, consumer policy and fair trade (DGCCRF)	France
Albert Kálmán	Chief Counsellor - Head of the Designation Committee – SOGs Official	Business Environment Dept - Ministry for National Development and Economy	Hungary
József Boldizs	Deputy General Director	Ministry of Social Affairs and Labour	Hungary
Brendan Smith	Officer NSAI, Standards and Product Safety – SOGs Official	Department of Enterprise Trade and Employment	Ireland
Alberto Simeoni	SOGs MSG Official	Italian National Unification Institute	Italy
Rita Novelli	Officer	Office for Product Security and Conformity, DG Surveillance of Technical Normative, Ministry of Economical Development	Italy
Linda Duntava	Deputy head Consumer Rights Protection Division, SOGs MSG Official	Department of Internal market Ministry of Economics	Latvia
Martynas Barysas	Director of Department	EU Affairs and Internal Market Coordination Dpt., Ministry of Economy	Lithuania
Romain Nies	Head of Department - SOGs MSG Official	Luxemburg Institute for Normalisation, Accreditation, Security and Quality of Products and Services (ILNAS) – Market Surveillance Department	Luxemburg
Michael Cassar	Director	Market Surveillance Directorate - Malta Standards Authority	Malta
Tristan Camilleri	Director - Regulatory Affairs Directorate	Malta Standards Authority.	Malta
Marijn Colijn	Officer	Food and Consumer Product Safety	Netherlands

Policy Department A: Economic and Scientific Policies

		Authority (VWA) – Central Office	
Spencer Paul	Head of department – SOGs MSG Official	Department Product Safety, Chemical substances and Injury Prevention of the Ministry of Health	Netherlands
Dirk H. Mejer	Chairman of Prosafe, Regional Director Southwest VWA, SOGs MSG Official	Food and Consumer Product Safety Authority	Netherlands
Katarzyna Bednarz	Head of Unit New Approach Directives – SOGs MSG Official	Market Surveillance Department – Office of Competition and Consumer Protection	Poland
Anna Mazurak	Director	Market Surveillance Department - Office of Competition and Consumer Protection	Poland
Jorge Marques Santos	President – SOGs Official	IPQ – Portuguese Quality Institute	Portugal
Marina Dias	SOGs MSG Official	ASAE – Food and Economic Safety Authority	Portugal
Cristiana Ion	Director for Quality and Infrastructure	Ministry of Economy	Romania
Cosmina Miu	Counsellor	Industrial policy, free movement of goods, standardisation and regulations, SMEs, public procurement, motor vehicles - Permanent Representation of Romania to the EU	Romania
Catalina Groza	Director	Division for International Cooperation, European Affairs - Ministry of Economy	Romania
Elena Perju	Senior Adviser – SOGs MSG Official	Directorate for Quality Infrastructure and Environment - Ministry of Economy	Romania
Anna Stattin	Head of Market Surveillance -	SWEDAC	Sweden
Karin Nordström	SOGs MSG Official	Ministry of Foreign Affairs	Sweden
Helena Hočevar	Officer	Health Inspectorate of the Republic of Slovenia - Sector for Strategy and Planning	Slovenia
Irena Možek Grgurevič	Secretary, Head of Division	Ministry of the Economy, Directorate for Internal Market, Division for technical legislation	Slovenia
Kvetoslava Steinlova	Head of the EU Affairs department	Slovak Office of Standards, Metrology and Testing	Slovakia
Carol Wheeler	Policy Advisor	Dep. For Business Enterprise and Regulatory Reform	UK
Jeff Asser	Assistant Director – SOGs MSG Official	Department for Business, Enterprise and Regulatory Reform	UK

Effectiveness of Market Surveillance in the Member States

Alison Edwards	Policy Officer	Local Authorities Coordinators of Regulatory Services (LACORS)	UK
Stefano Soro	Head Of Unit	Head of Unit 'Product and Service Safety - DG Sanco	EU
Jacques McMillan	Head Of Unit	Issues Linked to the Internal Market, DG Enterprise and Industry	EU
Rita L'Abbate	Administrator in Charge of Market Surveillance	Unit C1 - Regulatory approach for the free circulation of goods European Commission – DG Enterprise and Industry	EU
Peter Baumann	Director	ICSMS	EU
Hoang Liauw	Management Assessment	Conformity CEN	EU

ANNEX 2: OVERVIEW OF THE MARKET SURVEILLANCE PROGRAMMES IN THE 27 MS

Country	Type	System	MS Programme – art. 18	Coordination body	Human means/ Financial means	Relation with Customs	Cooperation with other stakeholders
Austria	Medium Old	Decentralised - federal	Waiting for instructions from COM	Is being set up because of Regulation 765/2008	No additional resources	Channels of co-operation exist	Prosafe, ICSMS AdCo
Belgium	Medium Old	Decentralised	Waiting for instructions from COM	Ad Hoc	No additional resources	Needs to be enhanced	Prosafe; FR AdCo
Bulgaria	Small, New	Semi-Centralised	Waiting for instructions from COM	Yes Market surveillance Directorate	No additional resources	Needs to enhanced	Prosafe AdCo Twining proj.
Cyprus	Small New	Decentralised	Waiting for instructions from COM	The Competition and Consumer Protection Department of Commerce, Industry and Tourism	Yes (financial), No human	Channels of co-operation exist	Prosafe, Euromed AdCo
Czech Rep.	Medium New	Semi-centralised (regional)	Sectoral	Yes, existing previous to the package; Czech Trade Inspection	No additional resources	Close collaboration, however will have to adapt from a fiscal role (provision of training and courses).	Prosafe AdCo; DE; ISCMS (rarely used)
Denmark	Small Old	Decentralised	Sectoral	Considering the creation of a co-ordination body as direct result of the package.	Yes	Channels of co-operation exist	Baltic area, AdCo; Nordic Council
Estonia	Small New	Decentralised	Sectoral	Yes, existing (Market Surveillance Council)	No more	Formal co-operation protocol and direct collaboration with custom authorities	Prosafe, AdCo, Baltica area
Finland	Small Old	Decentralised	Sectoral, based on the annual planning of the market surveillance authorities	Yes – Ministry of Economy policy coordination.	No	Channels of co-operation exist	Prosafe, AdCo, Baltic area
France	Big Old	Centralised	National	Yes – DGCCRF& customs	No	N/A	Internal database, AdCo
Germany	Big Old	Decentralised – federal. One responsible ministry for each Länder.	Regional (with national coordination)	Reinforcement of its co-ordination system directly related to the package. No existing authority above the Länder.	Considering	Channels of co-operation exist	Baltic area, AdCo
Greece	Medium Old	Decentralised	Waiting for instructions from COM	No coordination seen a major shortcoming	No	Need to enhance and re-qualify staff	Prosafe AdCo
Hungary	Medium New	Decentralised	Waiting for instructions from COM (most likely sectoral)	Ad hoc, but considering: discussion between different ministries	No	Formal protocol : first filter at the border	Prosafe, AdCo, twinning projects; PL, central database between al 14 MSA
Ireland	Small, Old	Decentralised	Sectoral	Yes. Inception directly related to the Package	No	Channels of co-operation exist	Prosafe, AdCo
Italy	Big Old	Decentralised	General and Sectoral plans	Yes, M. of Economy policy coordination.	No	Needs to be enhanced	Prosafe, AdCo, Bilateral agre. Algeria
Latvia	Small New	Decentralised	Waiting for instructions from COM	Yes functions as an advisory body, no mandatory decision	No	Needs to be enhanced, re-qualify staff	Baltic area, AdCo, Joint co-operation projects with Estonia and Lithuania

Country	Type	System	MS Programme – art. 18	Coordination body	Human means/ Financial means	Relation with Customs	Cooperation with other stakeholders
Lithuania	Small New	Decentralised 3 general MSA 14 sectoral, total 17	Sectoral	MS identifies its major challenge as the appointment of a coordination body ¹ single co-ordinating authority,	No	Customs is one of the main 3 inspectorates. Active role and have been modernising and adapting since the 1990s, seen as an example of best practice by the MSA	Baltic area, AdCo, STICHTING, PROSAFE, bilateral co-operation with Russia
Luxemburg	Small Old	Semi-Centralised*	Waiting for instructions from COM	Creation of a Committee for Market surveillance (direct result of the package)	No	Channels of co-operation exist	Prosafes ICSMS, AdCo
Malta	Small New	<u>Administration:</u> centralised <u>Competences:</u> Decentralised	National	Ad hoc, network of informal contacts,	No	Channels of co-operation exist	Twining projects, AdCo
The Netherlands	Medium Old	Decentralised	Waiting for instructions from COM	Yes VWA	No	Active network of contacts , training and exchange of staff	Prosafes*, AdCo
Poland	Big New	Semi-Centralised	Waiting for instructions from COM	Yes, existing Office of Competition and Consumer Protection	No	Needs to be enhanced	Prosafes Baltic, AdCo
Portugal	Medium Old	Centralised - Regional	National	Yes - ASAE	No	Needs to be enhanced	Prosafes, AdCo
Romania	Big, New	Decentralised	Sectoral	Yes, previous to the package Ministry of economy has policy coordination	investment in database, no more human resources	Channels of cooperation exist, but need to be strengthened.	Prosafes, AdCo
Slovakia	Small New	Centralised – regional	National	Yes, existing Slovak Trade Inspection	No	present in the inter-ministerial WG meetings change in the relationship	Prosafes, AdCo, other MS
Slovenia	Small New	Decentralised	Waiting for instructions from COM also creation of a national working group to debate the issue.	Yes, existing Council of Inspectorates (borderline issues)	No	Formal protocol in place, provision of training to custom officials	Different types of database, not all databases have compatible information Prosafes, AdCo
Spain	Big Old	Regional	Regional with national coordination	Ad hoc	No	Agreement in place. Focus on detections at the borders and ports.	Prosafes, AdCo
Sweden	Medium Old	Decentralised	National	Yes SWEDAC	No	Channels of cooperation exist	Prosafes, AdCo; Nordic council; Baltic Coop.
UK	Big Old	Sectoral with national co-ordination	Sectoral (with national coordination)	Yes, Market Surveillance Co-ordination created as a result of the goods package	No	Channels of cooperation exist	Prosafes, AdCo

¹ There is however, an authority co-ordinating the GPSD, but no single co-ordinating authority for the “goods package”. In fact, this aspect is referred as the main shortcoming or the “missing link” of the Lithuanian market surveillance system.

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT ECONOMIC AND SCIENTIFIC POLICY **A**

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