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Joint Action 2014 GPSD CIMS REVIEW

Agreement No: 666 174

Results, Conclusions & Recommendations

Discussions / reviews between surveillance authorities held
at the Office of Competition and Consumer Protection,
Warsaw, Poland

This document is a non-binding document, intended to give a brief overview of the main findings, results, conclusions and recommendations deriving from the CIMS Review held at the Office of Competition and Consumer Protection (UOKIK) in Warsaw, Poland, held between the 30th September and 2nd October 2015, coordinated by PROSAFE.

Disclaimer:

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The report reflects only the views of the authors. The Consumers, Health and Food Executive Agency (Chafea), PROSAFE or any individual market surveillance authority cannot be held responsible for any use, which may be made of the information contained therein.

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Abbreviations

CCP	Commission for Consumer Protection, Bulgaria
CEN	European Committee for Standardization
Chafea	Consumers, Health and Food Executive Agency
CIMS	Continuous Improvement in Market Surveillance
CPB	Consumer Protection Board, Estonia
DGCCRF	General Directorate for Competition Policy, Consumer Affairs and Fraud Control
GPSD	General Product Safety Directive
ICSMS	Information & Communication System for Market Surveillance
IRSI	Inspectorate of Republic of Slovenia of Interior, Slovenia
MCCAA	Malta Competition Consumer Affairs Authority, Malta
MS	Market Surveillance
UNICAM	UnionCamere, Chamber of Commerce, Italy
UOKIK	Office of Competition and Consumer Protection, Poland

- ✓ Highlights a positive aspect / best practice
- Highlights areas for possible further review by the respective authority to see whether improvement is needed in such areas
- ❖ Highlights issues which may be relevant for a number of authorities or at European level

1. INTRODUCTION

1.1 Introductory Note

One of the main deliverables within JA2014 has been to perform at least two CIMS reviews during the first twelve months of operation. In view of the large number of participants and due to the increase in interest by participants to host CIMS Reviews, it was decided that three CIMS reviews will take place during these 12 months. However, the reviewing participating authorities will, just the same, take part in just two CIMS Reviews throughout the 12 months.

The CIMS Review in Poland has been the first out of these reviews. Another CIMS Review will be held at DGCCRF in France, followed by another one in UNICAM in Italy. It is expected that all three CIMS Reviews will be finished by May 2016.

1.2 The Scope of the CIMS Review

The scope of this CIMS Review was not to perform a full review of particular operations at UOKIK but rather focus on two main particular areas of interest: (i) market surveillance of toys, (ii) Cooperation with Customs.

The objective was to identify:

- Good Practices within UOKIK & other authorities
- Possible Recommendations for Improvement within UOKIK
- Common problems /challenges faced by all.


At the same time, each authority from within the Review Team had also to prepare and be able to share their own best practices in particular subject areas identified for this review. A presentation was also given by each of the review members.

1.3 Participating Officers / Market Surveillance Authorities

The participants involved in this CIMS Review are shown below:

HOST MARKET SURVEILLANCE AUTHORITY		
Country	Name of Expert	Organisation
Poland	Anna Mazurak, Director, Market Surveillance Department	Office of Competition and Consumer Protection, Poland (UOKIK)
Poland	Katarzyna Bednarz Head of Monitoring of Market Surveillance System Unit, Market Surveillance Department	Office of Competition and Consumer Protection, Poland (UOKIK)
Poland	Ewa Domańska - Senior Expert Monitoring of Market Surveillance System Unit, Market Surveillance Department,	Office of Competition and Consumer Protection, Poland (UOKIK)
Poland	Katarzyna Bereza, Senior Expert Executive Office	Office of Competition and Consumer Protection, Poland (UOKIK)

REVIEW TEAM MEMBERS		
Country	Name of Expert	Organisation
Bulgaria	Antoaneta Marinova	Commission for Consumer Protection (CCP)
Estonia	Jana Baljutis-Kütt	Consumer Protection Board (CPB)
France	Thomas Berbach	General Directorate for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF)
Italy	Mariangela Germano	UnionCamere, (UNICAM)
Malta	Michael Cassar, Director (TASK LEADER - CIMS, JA2014)	Market Surveillance Directorate, Malta Competition & Consumer Affairs Authority (MCCAA)
Slovenia	Vojko Kos	Inspectorate of Republic of Slovenia of Interior (IRSI)

PROSAFE Projects	Name of Expert	Function
	Noel Toledo	Consultant (Task Coordinator)

2. Overview of UOKIK, Poland

UOKIK is responsible for market surveillance of non-food products and other consumer protection areas. However, it is not the scope of this report to delve into these other functions. The scope here is to give a brief summary of how UOKIK is set up in the area of market surveillance, with particular reference to toys and cooperation with Customs.

With regards to the GPSD, UOKIK is completely responsible for this Directive, from the development of all related legislative aspects, coordination and to the actual implementation. In the case of the Regulation 765/2008, the Ministry for Economic is responsible for transposing this Regulation and New Approach Directives. However, the actual implementation and execution of a number of New Approach Directives related to consumer products, such as toys, is done by UOKIK as well.

There are nine independent governmental inspection authorities at national level as can be seen in Figure 1. These are however coordinated via a **Steering Committee** which is chaired by UOKIK. The “Trade Inspection” within UOKIK is the main inspection function of UOKIK. However, UOKIK does not have any direct control over the other eight inspection authorities. The Steering Committee serves to ensure a good level of cooperation and coordination at national level amongst these inspectors, including Customs, which is also a member of this Steering Committee.

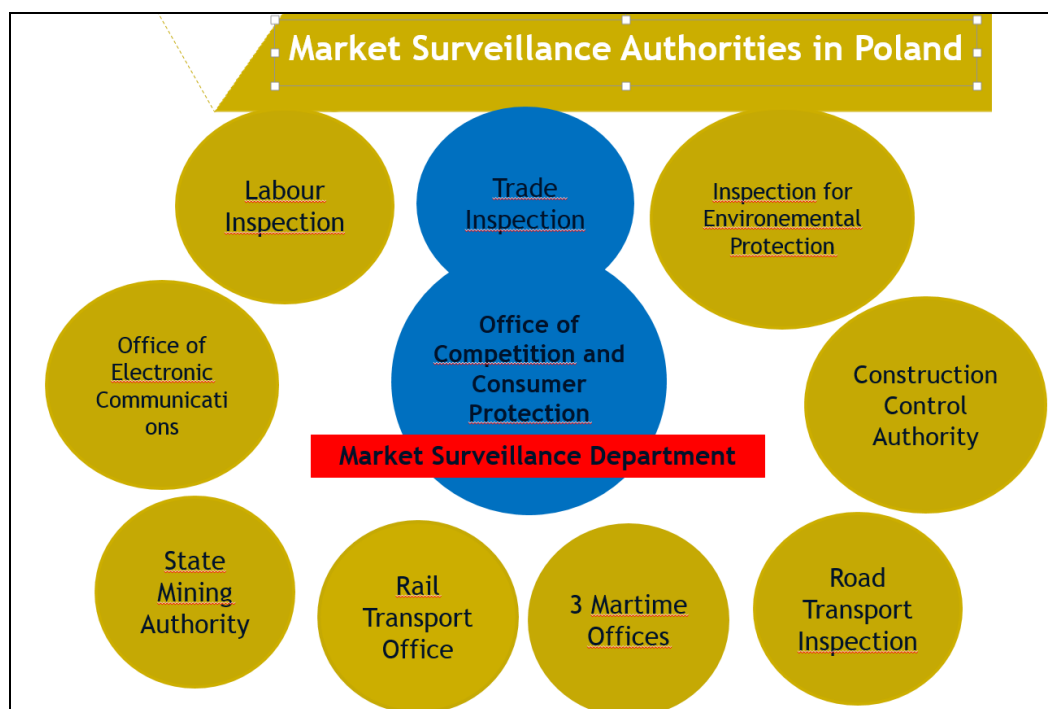


Figure 1 - Independent Inspection Authorities within Poland

The role of UOKIK in the area of product safety is:

- to monitor the market surveillance system and cooperates with other national market surveillance authorities as well as customs authority (e.g. via the Market Surveillance Steering Committee meetings);
- cooperates with the European Commission (e.g. elaborating and publishing National Market Surveillance Programmes, attending Administrative Cooperation Working Groups' and Internal Market for Product - Market Surveillance Group meetings);

- conducts administrative proceedings against non-compliant (New Approach Directives and several delegated acts, such as: TOYS, LVD, Machinery, PPE, MID, Eco-design, Energy labelling) and unsafe consumer products (covered by the General Product Safety Act) - takes legal measures;
- plans and reports market surveillance actions (inspection plans and reports) for the Trade Inspection and gives his opinion to other market surveillance authorities' annual plans;
- operates the national register of unsafe and non-compliant products: (http://publikacje.uokik.gov.pl/hermes3_pub/WebEngine/DocumentSearchForm.aspx?CDC=PublicRWN);
- acts as the national contact point of the EC RAPEX system: (http://ec.europa.eu/consumers/dyna/rapex/rapex_archives_en.cfm);
- acts as the national contact point of the EC ICSMS system since March 2013. (<https://webgate.ec.europa.eu/icsms>)

As can be seen in Figure 2 below, there are 16 regional inspectorates and 34 local offices within the whole area of Poland. The inspectors actually report directly to both authorities which supervised them - the regional authorities (local governors) and the President of the UOKiK. The 480 market surveillance inspectors (in the area of New Approach Directives and product safety) report regularly to UOKiK via annual and quarterly plans and any other requests needed in the area of New Approach Directives and product safety.



Figure 2 - Coordination at Regional level

The Market Surveillance Department itself is made up of three main units as can be seen in Figure 3 below. The Director of this Department, together with the head of the Monitoring Market Surveillance System Unit and the Senior Expert on Toys - also took part in this CIMS Review.

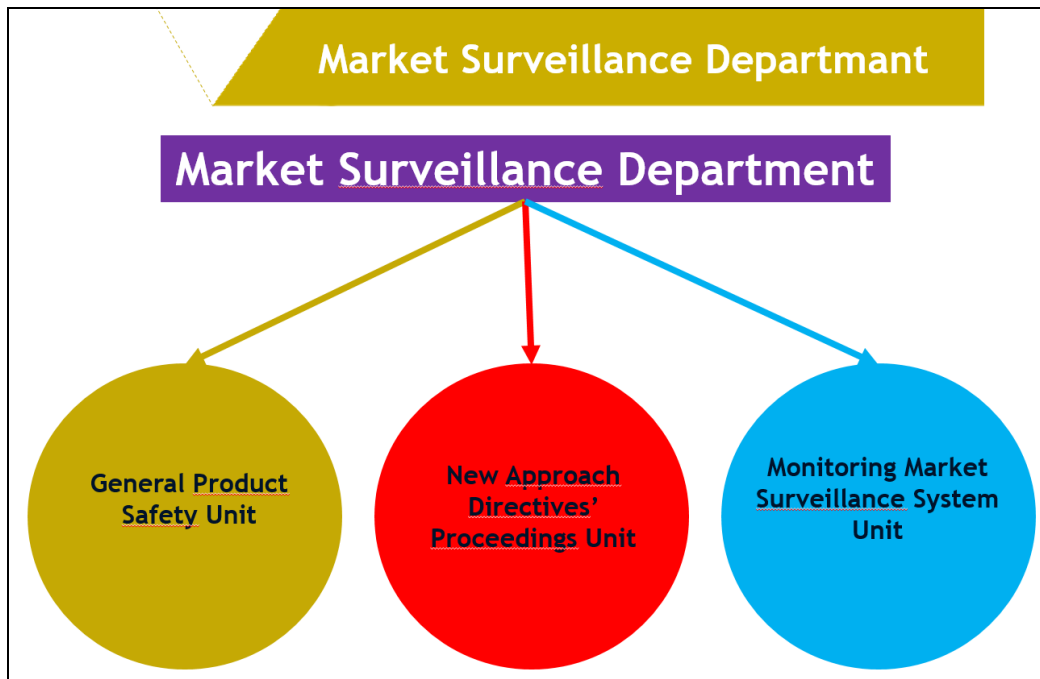


Figure 3 - The Market Surveillance Department

In the area of toy safety, the Market Surveillance Department within UOKiK has one Senior Expert. Although there are other officers within the Department who deal with administrative proceedings in the area of toys (take legal measures against non-compliant or dangerous toys), she is the main focal point for toy safety and is the main contact point for all inspectors within the regional offices. As can be seen within Figure 4 below, the Administrative Proceeding Unit supports the main Department in any administrative proceedings in the area of New Approach Directives, including toys. There are also two internal laboratories utilised in the area of toys. These are accredited in various areas. Any other testing needed will be outsourced to external laboratories.

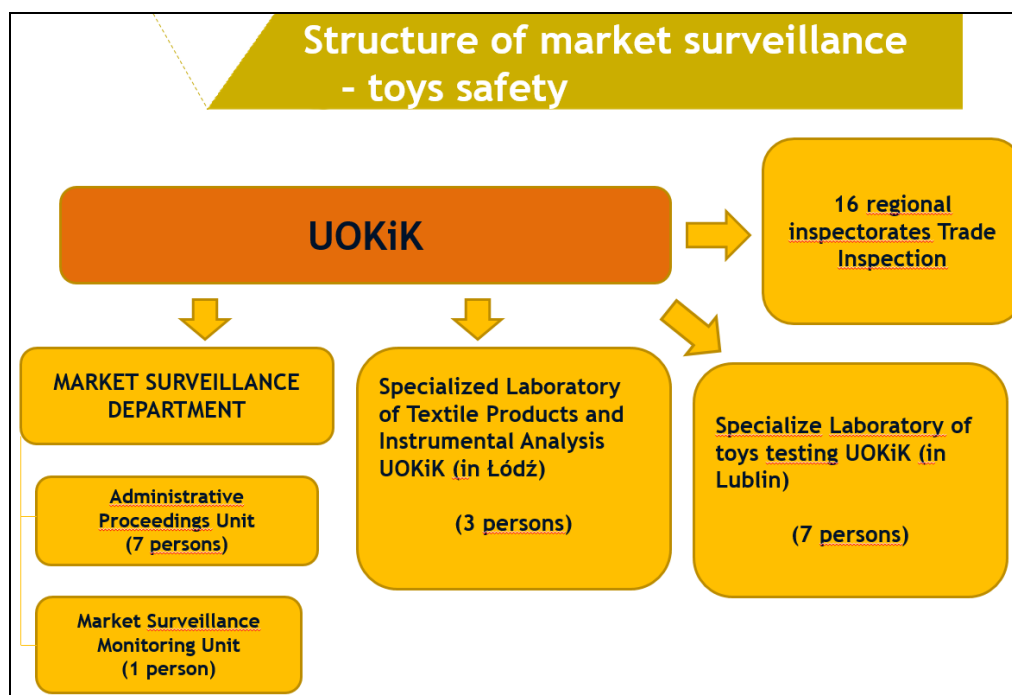


Figure 4 - Toys Safety Structure

UOKiK prepares annual plans for the Trade Inspection around December of each year. Annual plan covers:

- number of economic operators to be checked,
- number and categories of toys to be checked,
- number of samples to be taken for laboratory testing,
- number of regional authorities involved.

Toys are checked regularly - each quarter. Quarterly programmes contain:

- legal framework (European and national ones);
- number of economic operators to be checked;
- number and categories of toys to be checked by each regional authority;
- instructions how to check and do visual inspections, incl. essential requirements and harmonized standards' provisions.

There is good cooperation between Customs authority and the rest of the inspection authorities. Figure 5 shows the number of requests sent to all inspection authorities on a yearly basis. The average number of notifications over the period 2012 - 2014 has been around 1,600 requests.

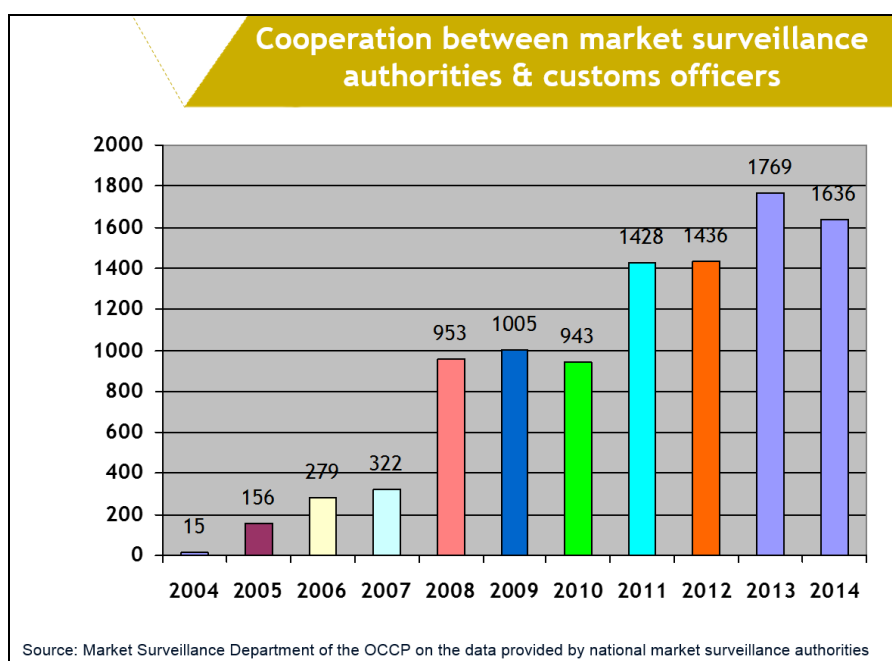


Figure 5 - Notifications from Customs to Inspection Authorities

With regards to notifications from Customs to Trade Inspection related to art. 27-29 of the Regulation 765/2008, there have been around 360 notifications in 2014, out of which more than 95% were confirmed as valid and actions had to be taken on the respective importers - *i.e. goods weren't realised for free circulation unless relevant corrective measures have been applied.*

There is a main coordinator within the Ministry of Finance who ensures that the cooperation and coordination between market surveillance authorities (incl. the UOKiK) and Customs is as effective as possible. In all of the regional Customs offices (16), there is a co-ordinator for product safety issues who is responsible for:

- helping to harmonize customs actions, training of Customs officers, etc.
- providing assistance to customs officers from his/her regional customs office
- carrying out or assisting in risk analysis (depending on local arrangements of a given regional Customs office)
- being the main contact with the central authority (Ministry of Finance).

3. CIMS REVIEW Results

The CIMS Review was mainly held over 2.5 days at the UOKIK's offices in Warsaw, Poland. A visit was also organized to the main Customs Border Post in Warsaw, which is stationed next to the International Airport of Warsaw. The Director of the Market Surveillance Department as well as all staff from UOKIK and Customs officials who took part in this CIMS Review were very cooperative and assisted the review team to understand any particular points or questions raised during the CIMS Review itself.

The main areas that were focused upon for this particular CIMS Review were:

- Market Surveillance of toys
- Cooperation with Customs

The results are based on the findings made from the CIMS Review Team over the period under review. The scope was not to delve into too much detail but try to identify some of the main good practices and challenges / areas for improvement, including any common challenges being faced by the participating market surveillance authorities.

3.1 Good Practices

- ✓ Overall setup & structure within the Market Surveillance Department seems to be well structured to handle market surveillance functions.
- ✓ It is also quite positive to how inspection authorities and Customs are coordinated via the Steering Committee, with assistance from the Monitoring Market Surveillance System Unit of the Market Surveillance Department within UOKIK. Not all Member States have this level of coordination and it is a good way of how Poland ensures an adequate level of coordination amongst all inspectorates.
- ✓ Guidance Documents for Inspectors are prepared by the Senior Experts within the Market Surveillance Department, ensuring consistency in the surveillance and enforcement done by the regional inspectors. These guidance documents have all the information that an inspector needs, including references and information about the respective clauses of a particular standard and the Directive itself, pictures to better identify the type of products to be assessed, the type of non-compliances that can be found and what is needed to be collected from their end for the Market Surveillance Department to take effective legal measures.
- ✓ Good level of annual & quarterly programming. This ensures a high level of interaction / reporting between Head Office and Regional Areas, keeping each other up-to-date on any particular issues.
- ✓ Quarterly reporting / reviewing / collection within detailed spreadsheets - This quarterly reporting shown during presentation given by the Toys Senior Expert showed that:
 - The authority can easily react by the next quarter on any particular adjustments needed to the surveillance programme.
 - Any double sampling is immediately found via the coordination and collection of data by the Toys Senior Expert on all samples to be tested.

- ✓ Excellent public relations by UOKIK - A separate team within UOKIK deals professionally with this important area. The officers all specialize in media communication. This was found to be a good form of best practice and it ensured that the information being published is well understood by consumers and economic operators. All this results in an effective website / use of twitter / Vimeo / TV / advertising in popular TV Series, easy to read handbooks for consumers & Economic operators and effective handling of various events.
- ✓ Training of inspectors by using laboratories & external experts. Besides other forms of training, specialized training is given by technical persons within laboratories and external experts to ensure that the inspectors are well trained.
- ✓ A national register of unsafe and non-compliant products has been developed by UOKIK. This is all in Polish and again is easily understood by economic operators and consumers
- ✓ Very good level of cooperation with Customs, with well-structured procedures in place. There are also 16 regional customs officers who act as “train the trainers” on product safety. The Customs authority, with assistance from the Ministry of Finance Coordinator, show a lot of initiative to further improve the overall effectiveness. Additionally, they are trying to engage with other Customs authorities from nearby Member States in order to possibly further learn from joint actions between market surveillance authorities and customs authorities in other neighboring Member States.
- ✓ UOKIK seems to have a good level of cooperation at EU level (with adequate participation in ADCO groups, RAPEX team, PROSAFE joint actions). Additionally, they have introduced ICSMS around two years ago. All this ensures a good level of interaction at European level on product safety matters.
- ✓ UOKIK seems to try to ensure that there is always a good level of interaction with economic operators, even when measures need to be taken. The majority of actions taken, including withdrawals and recalls, are actually done via voluntary measures from the economic operators themselves. This shows that most of the economic operators understand the reasons brought forward by UOKIK. Additionally, UOKIK is giving enough time for the economic operators to react from their end and take action according to pre-agreed deadlines.

3.2 Challenges / Areas for possible Improvement

It is important to note that the points mentioned below are there to assist UOKIK in possibly reviewing these particular areas to further improve the overall effectiveness. Indeed, some of the points were found to be common to other Member States too. However, the CIMS Review team felt that it was important to address them within this report so that UOKIK may then decide whether such issues need further internal reviewing in order to improve that particular aspect.

- Inspectors are subordinate to both regional authorities and UOKIK. This could possibly result in conflict of priorities. Further internal reviews may be needed at both UOKIK and at regional level to see whether this can be possibly improved.

- Although there are numerous inspectors employed directly by regional authorities, these seem to all have the same level of generic experience on product safety. It is suggested that, in line with the first point mentioned above, further analysis may be needed to assess whether some of the regional inspectors could be helped to specialize. Taking the example of toys, the Senior Expert on Toys within the Market Surveillance Department, UOKIK, would possibly benefit if a few inspectors are helped to specialize in the area of toys. The reason for specialization could be due to higher number of toy manufacturers or where some of the main importers are based. Additionally, this could result in less strain on the Senior Expert, who currently needs to address all incoming queries on toys from all inspectors. If some of these inspectors are specialized, it could mean that most of the common issues and queries raised by other inspectors in that region could easily be addressed by the respective “senior inspector” specializing on toys. Reference was made to the French DGCCRF Internal Toys Network which was found to be very useful for the Head Office, including periodic meetings to further discuss and ensure full coordination and update each other (both ways) on any possible current issues.
- Although the recruitment of inspectors is solely the responsibility of the regional authorities, it may be useful for UOKIK to try to develop a document mapping out the particular requirements of an inspector. This document could possibly be discussed with the regional authorities so that whenever they have new calls for inspectors, they could possibly be inspired or even adopt the major part of these requirements to the job description for the new call. Further liaison between UOKIK and regional authorities would be needed to see how to best fit such a proposal.
- It seems that both the Market Surveillance Department within UOKIK itself and the regional authorities, need to have more staff with technical background. Although this is difficult due to higher salaries within private enterprise, it may still be worth trying to consider whether something can be done to improve this situation.
- Although the information system is working fine and there is good analysis being done from the data received, (reference to the Toys spreadsheets) UOKIK might benefit from reviewing its IT system at this point in time. It is suggested that there could be some preliminary research in this area by:
 - Possible reviewing other ms authorities’ systems (databases), including ICSMS and whether ICSMS could be used if possibly improved further. This could also mean taking a more active part by sending to the ICSMS expert group meetings with DG GROW what needs to be improved if such a system is to be taken on board at national level.
 - Possibly undertaking an internal review of the IT system - assessing what will be the major improvements and costs (cost / benefit analysis) related to the installation of such a database.
- Although UOKIK has started to investigate some on-line webpages of manufacturers and large importers, it has no particular unit specializing in this area and no internet sweeps have been made till now. Online sales is increasing exponentially across Europe and UOKIK may benefit from possibly having at least one officer specializing in this particular area.

- There could be administrative procedures which are rather strict. (e.g. prior notice of inspection). This could lead to a loss of effectiveness when performing inspections. Although it is ideal to inform economic operators in advance, in some cases, it might be useful to go without any prior notice depending on the particular circumstance such as consumer safety threat.
- Limited financial resource for testing is a common problem faced by many market surveillance authorities across Europe. Although UOKIK has in-house laboratories specializing in particular product testing, it is difficult to have all the resources needed to be able to perform all tests that are required by an authority. However, it is suggested that perhaps UOKIK may benefit to try to see whether neighboring Member States or other Member States across the EEA may have particular in-house testing facilities which UOKIK might not have. Again, in view that UOKIK already has in-house laboratories specializing in particular areas, further discussions with such Member States could lead to possible negotiations whereby mutual benefits could be found between the respective ms authorities.

3.3 Common Issues

❖ ICSMS

It was found that there were no current guidelines / guidance documents by the Commission stemming from the European regulations as to address WHEN and FOR WHICH PARTICULAR MARKET SUVEILLANCE PROCESSES (taking into account effectiveness and usefulness) such a system is to be used by market surveillance authorities. Is it for all individual ms activities or is it just for those products sent for sampling? This is only an example and more guidance is needed to ensure that the system will be used in the same manner by all ms authorities and in a realistic way considering the administrative burden.

❖ Online sales

Online sales was also an area where possibly not enough has been done. Some Member States have started to focus on this particular issue and some even have particular units to address this issue. The authorities are currently still waiting for the guidance document to be issued by the special working group at Commission level. This document was announced as a draft by the end of this summer. However, it has not yet been finalized and ms authorities really need to have some overall guidance in the area of online sales so that one can ensure that there is a basic level of a consistent approach at European level.

❖ Screening Equipment

During the CIMS Review, screening equipment for toys was mentioned a number of times. The small cylinder test and other basic equipment was being used by market surveillance inspectors in the area of toys. In order to try to rationalize available resources and tools between the market surveillance authorities, it was agreed that a list of screening equipment used particularly by inspectors on toys will be listed by each participating authority in a document and sent to the Task Leader and Task Coordinator so that this is further shared with participants from JA2014.

4.0 FINAL CONCLUSIONS

The host authority thanked all the members of the Review Team for participating in this activity. The Task Leader, the head of the CIMS Review Team, also thanked the Director of the Market Surveillance Department within UOKIK as well as all the staff involved in this CIMS Review, including Customs officials, who were also very cooperative and ready to assist the Review Team in their findings. He continued by stating that it was also not only a positive experience for the team members but he was convinced that some of the team members will take back some good practices found within UOKIK to see if they can be possibly adapted to their own respective authorities.