

# Joint Market Surveillance Action on Harmonised Products JAHARP2021-10

Support to the implementation of Article 4 of Regulation (EU) 2019/1020

## Layman's report



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## List of abbreviations

ADCO	Administrative Cooperation Group
CE	European Conformity (Conformité Européenne)
DG GROW	Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
DOC	Declaration of Conformity
DSA	Digital Services Act (EU) 2022/2065
EEA	European Economic Area
EISMEA	European Innovation Council and SMEs Executive Agency
EN	European Standards
EO	Economic Operator
EU	European Union
EUPCN	EU Product Compliance Network
FSP	Fulfilment Service Provider
GA	Grant Agreement
ICSMS	Information and Communication System for Market Surveillance
MS	Member State
MSA	Market Surveillance Authority
OJ	Official Journal of the European Union
RAPEX	The Rapid Alert System for Non-Food Products
WP	Work Package

# Glossary

## **ADMINISTRATIVE COOPERATION GROUPS:**

European cooperation on market surveillance takes place through informal groups of market surveillance authorities, called Administrative Cooperation Groups (AdCos). EU countries appoint the members of these groups who represent national authorities competent for market surveillance in a given sector. They meet several times per year to discuss market surveillance issues in their area of competence, and to ensure efficient, comprehensive and consistent market surveillance.

**EU DECLARATION OF CONFORMITY:** At the end of the conformity assessment process the manufacturer confirms compliance by drawing up an EU Declaration of Conformity (or 'Declaration of Conformity' or 'DoC') and affixing the CE marking on the product. The EU declaration of conformity is a mandatory document signed by the manufacturer or authorised representative of a product to declare that the product complies with all applicable safety, health, performance, and environmental requirements. The EU Declaration of Conformity must be issued before the product is placed on the EU market.

**EU PRODUCT COMPLIANCE NETWORK:** The EUPCN aims to structure the coordination and cooperation between market surveillance authorities in EU countries and streamline market surveillance practices within the EU that facilitate the implementation of joint enforcement activities by member state authorities, such as joint investigations.

**ECONOMIC OPERATOR:** The manufacturer, authorised representative, importer, distributor, fulfilment service provider, or any other natural or legal person who is subject to obligations in relation to the manufacture of products, making them available on the market or putting them into service in accordance with the relevant Union legislation.

**FULFILMENT SERVICE PROVIDER:** Any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching, without having ownership of the products involved, excluding:

postal services as defined in point 1 of Article 2 of Directive 97/67/EC of the European Parliament and of the Council, parcel delivery services as defined in point 2 of Article 2 of Regulation (EU) 2018/644 of the European Parliament and of the Council, and any other postal services or freight transport services.

**ICSMS DATABASE:** The Information and Communication System on Market Surveillance (ICSMS - [webgate.ec.europa.eu/icsms/](http://webgate.ec.europa.eu/icsms/)) is an IT platform set up and managed by the European Commission which enables the exchange of information between EU-27 market surveillance authorities on non-food product inspections and their results. ICSMS has an internal and a public area. Consumers can access ICSMS' public area to check whether a product model has been inspected and if it is compliant.

**INSPECTION:** Any market surveillance activity aimed at verifying the compliance of products against the requirements and conditions as defined in the legislation and standards.

**MARKET SURVEILLANCE:** The activities carried out and measures taken by market surveillance authorities to ensure that products comply with the requirements set out in Union Regulation.

**MARKET SURVEILLANCE AUTHORITY:** An authority designated by an EU Member State as responsible for carrying out market surveillance in the territory of that Member State.

**NON-COMPLIANCE:** Any failure to comply with any requirement under the Union legislation.

**PRODUCT:** A type or sub-type of a product within a product group/class. For example, electric or gas-fuelled local space heaters are sub-types of the local space heaters family product group.

**PRODUCT DOCUMENTATION:** Any type of (mandatory and/or non-mandatory) documentation made available in any form by the manufacturer/supplier of a product model and accompanying that model.

# Executive summary

## Project scope and objectives

JAHARP2021-10 on 'Article 4' is an EU-funded Joint Action involving five market surveillance authorities (MSAs) from Belgium, France, Portugal, and Bulgaria, and coordinated by [PROSAFE](#). Having started in June 2022, the project has fully achieved its objectives and helped both MSAs and economic operators (EOs) to efficiently implement Article 4 of Regulation (EU) 2019/1020<sup>1</sup>.

The project focused on a novel aspect of Article 4: compliance of Fulfilment Service Providers (FSP), which are companies that manage the distribution logistics of many products sold online from suppliers outside of the European Union (EU). FSP roles are to store, package, address and dispatch products to EU consumers, and an Economic Operator (EO) undertaking any two or more of those tasks meets the definition.

Article 4 of Regulation (EU) 2019/1020 aims to ensure that products within scope of 18 designated regulations are safe and compliant with EU law. Product types covered by Article 4 include toys, construction products, machinery, low voltage equipment and personal protective equipment (which includes, for example, buoyancy aids for children). For a product to be placed on the Single Market there must be a responsible economic operator in the EU, and if no manufacturer, importer or authorised representative takes on that role, then responsibility falls to any FSP in the supply chain.

The project collected experiences, information and inputs from MSAs, FSPs and Industry Associations, and produced two Guide documents, for MSAs and EOs, with the aim to support them in the full implementation of Article 4, by providing them with good practices and examples.

The lessons learned through this project were shared with the European Commission, with the objective of providing insights to the review of the Regulation (EU) 2019/1020.

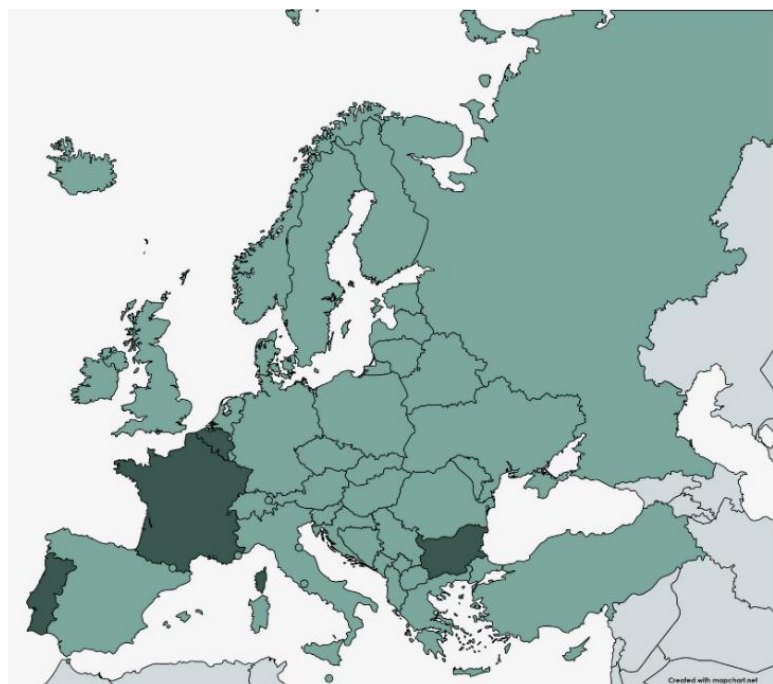
## Geographical scope

5 Market Surveillance Authorities from the following 4 Countries have participated in this Joint Action coordinated by PROSAFE: Belgium, Bulgaria, France, Portugal.

### Participating EU Market Surveillance Authorities in JAHARP2021-10



Coordinated by



<sup>1</sup> [Regulation - 2019/1020 - EN - EUR-Lex \(europa.eu\)](#)

## Key achievements



### Surveys to MSAs and EOs

Surveys to collect information on the status of the implementation of Article 4 of Regulation EU 2019/1020. Focused on FSPs and their role.

### Guide for MSAs

Document to help MSAs understand the role of FSPs in the online sale of goods and how MSAs can engage with FSPs and related EOs to improve compliance of goods sold via the Internet from suppliers outside of the EU.



### Guide for EOs

Document to help fulfilment service providers and e-commerce companies to comply with EU product rules when selling goods online from suppliers based outside of the EU.

### Recommendations

Good Practices for MSAs  
Input to the European Commission's regulatory review of Article 4



# Introduction: The JAHARP2021-10 Project

Article 4 of Regulation (EU) 2019/1020 establishes tasks for economic operators regarding products subject to certain Union harmonisation legislation (18 regulations, among which Machinery, Safety of Toys, Ecodesign requirements for energy-related products, Pyrotechnic articles and Low Voltage Directive).

JAHARP2021-10 had the aim to assess the level of implementation of Article 4, understand the main challenges for Market Surveillance Authorities and Economic Operators and support them in the correct and efficient application of the regulation.

The Project decided to focus on e-commerce and Fulfilment Service Providers (FSPs), as they represent new forms of economic activity that the MSAs need to address in the single market and for which no precedent on how to tackle them was yet established.

The project revealed **highly variable awareness levels and understanding of Article 4 amongst EOs**. Project participants collated knowledge and experience on how to raise compliance into two Good Practice Guides - one for MSA inspectors, and one for FSP and e-commerce companies. The **Guide for MSAs** gives structured recommendations on addressing known challenges and how to identify and deal with attempts to avoid or evade responsibilities. It explains good practice steps for carrying out inspections, effective communication with EOs and working with Customs Authorities. The **Guide for FSPs and e-commerce companies** focuses on knowing who is responsible for compliance and practical steps to ensure that obligations are addressed.

Guides are respectively being disseminated via MSA cooperation channels and via industry associations and are available on the [PROSAFE website](#). The project team also gave input into the Commission's regulatory review of Article 4 of (EU) 2019/1020 to help improve its future effectiveness.

## Methodology



The main phases of the project are described in the graph on the left.

The project group started by *mapping progresses, success stories and challenges* related to the implementation of Article 4. They searched the ICSMS database for cases related to “Fulfilment Centres” and conducted desk research on previous national investigations and studies.

They then prepared two *surveys (one for MSAs and one for EOs)* and collected information and good practice suggestions from organisations all over Europe.

Based on the conducted research, the survey answers and discussions among MSAs and with some of the EOs, a *consensus was reached on the main challenges for MSAs and EOs* in the implementation of Article 4, and how to work towards better compliance in future.

The project then designed *two Guides to support MSAs and EOs* in the correct and efficient application of Article 4, which included recommendations and good practices.

Figure 1 Timeline of JAHARP2021-10



# What are Fulfilment Service Providers (FSPs)?

Regulation (EU) 2019/1020 on market surveillance and compliance of products defines FSP in Article 3(11) as:

*‘Any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching, without having ownership of the products involved, excluding:*

- ❖ *postal services as defined in point 1 of Article 2 of Directive 97/67/EC of the European Parliament and of the Council,*
- ❖ *parcel delivery services as defined in point 2 of Article 2 of Regulation (EU) 2018/644 of the European Parliament and of the Council,*
- ❖ *and any other postal services or freight transport services.’*

Fulfilment service providers located in the EU are generally used to warehouse products offered by online operators to guarantee swift delivery to EU consumers and serve other economic operators. They store products and, further to the receipt of orders, they package the products and ship (dispatch) them to customers. Sometimes, they also deal with returns. Some offer all of the services listed here; others cover them partially and vary from global operators to micro-businesses.

Fulfilment service providers are more than parcel service providers. They have to cooperate with MSAs in relation to the products they handle and, for product within scope of Article 4 of Regulation (EU) 2019/1020, the fulfilment service provider established in the Union becomes the responsible economic operator with respect to the products it handles, where there is no manufacturer, importer or authorised representative established in the EU.

The FSP is one of four EO roles in the supply chain that are defined in Regulation (EU) 2019/1020, with the other three being: manufacturer, importer and authorised representative. For any product subject to one of the 18 designated product regulations (listed in the table below) that is placed on the Single Market, one of these EOs must bear the conformity obligations. Article 4 paragraph 1 makes it explicit that if there is not an EO bearing those conformity obligations, then a product within scope of the 18 designated regulations may not be placed on the Single Market.

*Table 1 List of the 18 regulations that define the scope of products subject to Article 4*

Reference	Topic	Reference	Topic
305/2011	marketing of construction products	2013/53/EU	recreational craft and personal watercraft
2016/425	personal protective equipment	2014/29/EU	simple pressure vessels
2016/426	appliances burning gaseous fuels	2014/30/EU	electromagnetic compatibility
2000/14/EC	noise emission in the environment by equipment for use outdoors	2014/31/EU	non-automatic weighing instruments
2006/42/EC	machinery	2014/32/EU	measuring instruments
2009/48/EC	the safety of toys	2014/34/EU	equipment and protective systems intended for use in potentially explosive atmospheres
2009/125/EC	ecodesign requirements for energy-related products	2014/35/EU	electrical equipment designed for use within certain voltage limits
2011/65/EU	hazardous substances in electrical and electronic equipment	2014/53/EU	radio equipment
2013/29/EU	pyrotechnic articles	2014/68/EU	pressure equipment



Which of the four EOs should bear this responsibility for a given supply chain can be determined by MSAs according to a hierarchy set out in the Commission’s guideline document on Article 4<sup>2</sup> and shown in the figure below. The FSP is the ‘back-stop’ EO - if none of the other defined EOs is found to be responsible based on the supply chain, then it falls to any FSP that handles the product. If no other EO falls responsible and there is no FSP in the supply chain, then ‘offering for sale of the product to EU end-users is not allowed until an importer, authorised representative or fulfilment service provider in the EU is arranged for’.

*The FSP is the ‘back-stop’ EO:*

*If none of the other defined EOs is found to be responsible based on the supply chain, then it falls to any FSP that handles the product.*

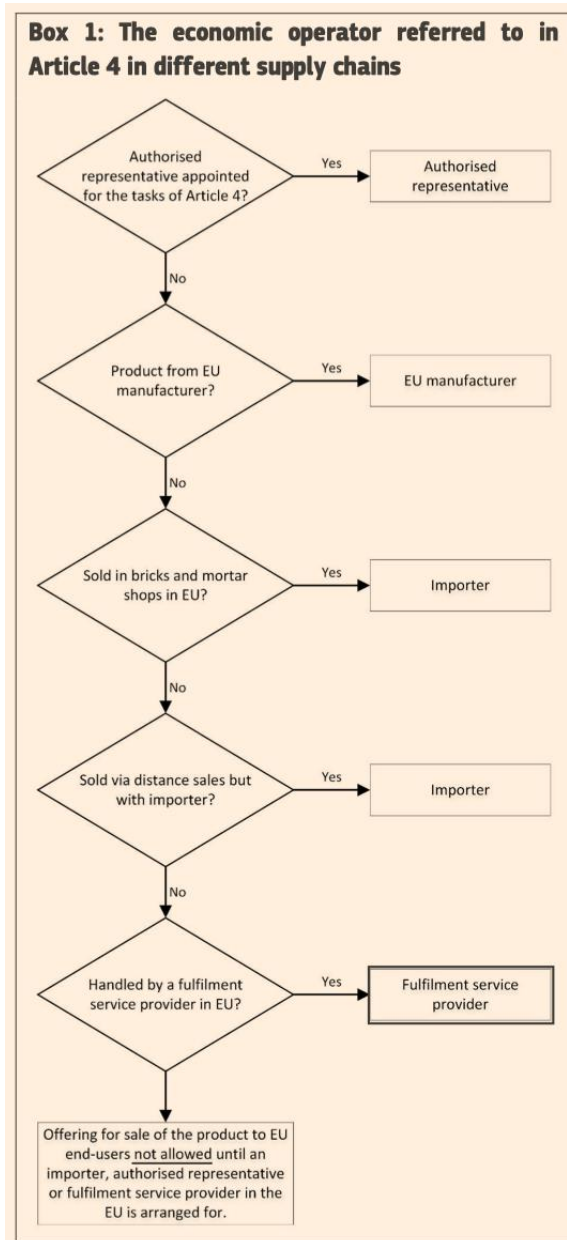


Figure 2 EOs referred to in Article 4

<sup>2</sup> <https://ec.europa.eu/docsroom/documents/44908>

# What is the problem?

## The importance of market surveillance

Market Surveillance Authorities work to ensure that the products circulating on the single market are safe for consumers and the environment, and compliant with the relevant EU regulations.

Market surveillance helps protect:

- ✚ European consumers against unsafe products and general non-compliance increasing their confidence in the single market
- ✚ Businesses from unfair competition coming from those who ignore the rules and avoid compliance costs.

In order for MSAs job to be effective, the Economic Operator responsible for placing of the product on the market needs to be easily identifiable, reachable and cooperative with the authorities.

The Regulation (EU) 2019/1020 included for the first time FSPs in the definition of responsible Economic Operators, in specific cases, as mentioned in the previous section. In addition, the European Commission developed and published the Guidelines for EOs and MSAs on the practical implementation of Article 4. Nonetheless, MSAs still face several challenges in this field.

## Challenges for MSAs

With the emergence and rapid growth of online trade and more complex supply chains, market surveillance officers have to rise to new challenges. These are being addressed through developing good practice and more efficient approaches, as well as through evolution of the regulations that the MSAs enforce. Example challenges include:

### *Difficulty in tracing products or identifying the FSP*

It can be complicated to understand the exact circumstances of sale of the product when several supply chain players are involved.

### *Sheer number of interventions necessary*

Most products bought online are low-value small items sold in large numbers and shipped in small or single item consignments. In addition, these are often shipped from manufacturers or suppliers outside of the EU directly to EU citizens.

### *Avoidance and Evasion of obligations by EOs*

Some EOs exploit legal routes to minimise obligations, while others actively evade obligations.

### *Practical and legal challenges*

Practical barriers include difficulty to identify products enclosed in a package and that end-users often throw out product packaging and lose contact details for follow-up. Legal challenges include clarity around ownership of intercepted products and validity of the appointment of some representative persons.



# What did JAHARP2021-10 do to assist MSAs and Economic Operators?



In order to collect information on MSAs and EOs experience with Article 4, we prepared and circulated two surveys: one for MSAs and one for Economic Operators including industry associations.

MSAs were contacted through the EUPCN network and through several ADCO groups. They answered a series of questions concerning their experience in the implementation of Article 4, particularly in relation to cases involving Fulfilment Service Providers. They provided information on the challenges they faced when investigating FSP compliance and advice for other MSAs dealing with the same obstacles. They also stated what information or assistance they would need in this field.

A second survey was circulated to ecommerce companies, FSPs and Industry Associations, following up with bilateral discussion and some meetings. Representatives helped the project team understand the level of current awareness and challenges they faced with regards to compliance with Article 4, and what further information or support they would like. Some gave insights into their experience with inspections and controls by MSAs and indicated ways in which provisions could be made clearer or improved under the regulatory review.



Thanks to the desk research, information collected through the surveys and experience of the participating MSAs, the project team produced a Guide for EOs, which is mainly directed to FSPs, and e-commerce companies, and focuses on *ensuring compliance with EU product rules when selling products from outside of the EU*.

The Guide is structured as below:

- a. Defining Fulfilment Service Providers and their roles
- b. Product rules and regulations impacting e-commerce
- c. Recommended good practice for FSPs and E-commerce companies to improve compliance:
  - i. Know who is responsible for compliance
  - ii. Listing of obligations for EOs based outside of the EU
  - iii. How to ensure obligations are addressed
  - iv. How to appoint and ensure compliance through authorised representatives and contractors
  - v. Marking requirements for products and information on websites
  - vi. Need for a protocol for if an unsafe product is identified.



The project also produced a Guide for MSAs, with the objective to *help MSAs understand the role of FSPs in the online sale of goods and how MSAs can engage with FSPs and related EOs to improve compliance of goods sold via the Internet from suppliers outside of the EU.*

The Guide is structured as below:

- a) Defining Fulfilment Service Providers and their roles
- b) Rules impacting FSPs - mandatory, voluntary and good practice
- c) Recommended good practice for MSAs to improve compliance:
  - i. Planning campaigns
  - ii. Working with Customs Authorities
  - iii. Dealing with attempts to avoid or evade responsibilities
  - iv. Good practice for carrying out inspections (with examples)
  - v. Effective communication with EOs - what they have asked to know
  - vi. Conclusions



Recommendations of good practice for MSAs and for EOs were included in the respective Guides, for more effective and efficient implementation of Article 4 as it stands now.

In addition, the project collected and drafted observations and evidence for the European Commission and its contractors to take into account in *the Commission's regulatory review of Article 4* which was ongoing in parallel with this JAHARP2021 project.

Evidence and suggestions about improving the effectiveness of Article 4 were discussed with DG GROW and the Commission's review study contractors and summarized during the Final Conference of the project.

Practical suggestions were made to provide for a clearer and easier path for EOs to comply with Article 4 of Regulation (EU) 2019/1020 and to help MSAs to verify and enforce compliance.

# Contribution to effective policy

The main goals of JAHARP2021-10 were to assess the status of the implementation of Article 4 of Regulation (EU) 2019/1020 on market surveillance and compliance of products and to support MSAs in their path towards a safe and fair single market for consumers and businesses.

What emerged from the desk research conducted and from the surveys administered was a clear picture of **various challenges and complications affecting both national authorities and businesses** placing their products on the European Single Market.

The two Guides produced through this project support the work of EOs and MSAs and help them understand the implications Article 4, their respective roles and responsibilities and good practice to fulfil those efficiently and effectively. The Guides have been very well received and disseminated through various networks and are already achieving their goal of raising product compliance.

The European Commission is moving forwards on its policy review and revision of Article 4, to better clarify and regulate roles and ensure identification of the responsible Economic Operator. Ecommerce and Fulfilment Service Providers remain important in this regard.

JAHARP2021-10 contributed to the review of Regulation (EU) 2019/1020 and its Article 4 by providing well-founded evidence and observations to the European Commission.

## Conclusions

FSPs play a role in the delivery of products purchased via ecommerce and effective ways to help them achieve better compliance in their obligations have been identified and communicated to the relevant industry associations and key players. MSAs also now have **accessible and practical good practice guidance** to help their enforcement of Article 4 on ecommerce become more efficient and effective.

Authorities and industry players will continue to use the outputs of this project to improve compliance of products sold online from suppliers outside of the EU, so that rules are fairly enforced. Furthermore, the project has assisted the Commission's Article 4 regulatory review process to help ensure more effective regulation in future.

PROSAFE is coordinating a number of other projects and Joint Actions with the aim of contributing to the implementation of Regulation (EU) 2019/1020, together with other regulations concerning products safety and energy efficiency. We will keep working with market surveillance authorities, consumer and business associations to ensure a safe and healthy environment for all Europeans and for our planet.



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