

Joint Market Surveillance Action on Harmonised Products

JAHARP2021-11

Support to the implementation of Article 15 of Regulation (EU) 2019/1020

Layman's report



Co-funded by
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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
EEA	European Economic Area
EISMEA	European Innovation Council and SMEs Executive Agency
EU	European Union
EUPCN	EU Product Compliance Network
GA	Grant Agreement
MS	Member State
MSA	Market Surveillance Authority
OJ	Official Journal of the European Union

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.

CORRECTIVE ACTIONS: any action taken by an economic operator to bring any non-compliance to an end where required by a market surveillance authority or on the economic operator's own initiative.

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.

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.

HARMONISED STANDARD: a European standard developed by a recognised European Standardisation Organisation defining the technical specifications used to assess/verify that a product complies with the mandatory ecodesign and energy labelling requirements.

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

LABORATORY VERIFICATION TESTING: testing of products in a laboratory according to the verification procedure set out in the product specific Regulations and following the

applicable harmonised standards, transitional methods, or testing conditions described in the Regulations.

MANUFACTURER: any natural or legal person who manufactures a product or has a product designed or manufactured, and markets that product under its name or trademark

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.

PLACING ON THE MARKET: the first making available of a product on the Union market.

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.

TRIPLE TESTING: the testing of three additional samples/units of the same product model, if the testing of the first unit has revealed a suspected non-compliance.

Executive summary

JAHARP2021 Omnibus

JAHARP2021-11 is part of the Joint market surveillance Action on HARmonised Products 2021 ([JAHARP2021](#)) portfolio of projects, co-funded by the European Union, which comprises 7 product specific actions and 3 horizontal activities.

The shared strategic objective of JAHARP2021 Omnibus is twofold:

To **keep non-compliant and dangerous products outside of the Single Market** through coordinated cross-boundary market surveillance campaigns.

To **support the application of the new Market Surveillance Regulation (EU) 2019/1020**¹ through the development of common approaches, good practices for market surveillance, and synergies with relevant stakeholders.

Scope and objectives of JAHARP2021-11

JAHARP2021-11 aimed to support the **effective enforcement of Article 15 of Regulation (EU) 2019/1020** on market surveillance, which regulates the recovery of costs by market surveillance authorities (MSAs).

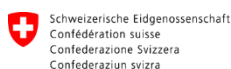
A significant outcome of this EU-funded Joint Action is the **development of guidelines and best practices** designed to assist MSAs in recovering expenses from suppliers distributing non-compliant products. This approach is anticipated to yield lasting effects, particularly for those MSAs that have not yet adopted cost recovery measures.

The impact of successful implementation of cost recovery procedures, is expected to significantly reduce budget constraints for testing and act as a deterrent for non-compliant economic operators (EOs). The anticipated widespread adoption of the guide and accompanying templates across various regulatory sectors and national jurisdictions promises to enhance uniformity and harmonisation in market surveillance, fostering a more cohesive and effective regulatory environment.

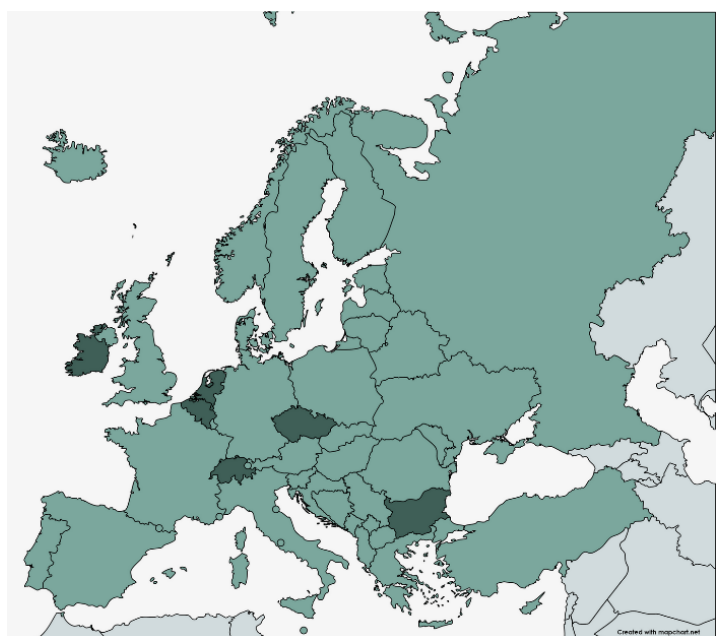
Geographical scope

6 Market Surveillance Authorities from the following 6 Countries have participated in this Joint Action: Belgium, Bulgaria, Czech Republic, Ireland, The Netherlands, and Switzerland (as observer).

Participating EU Market Surveillance Authorities in JAHARP2021-11

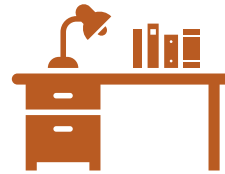


Coordinated by



¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R1020>

Key findings and achievements



Desk research

Highlighting the differences between Article 15 of (EU) 2019/1020 and Cl 5 of Article 8 of (EU) 2017/1369 on energy labelling



Surveys for MSAs

Mapping experiences and procedures in place for recovery of costs in EU MSAs



Good Practice Guidance

Supporting MSAs which do not yet recover costs with guidelines, templates and case studies



Dissemination and recommendations

Sharing findings, results and recommendations with ADCO groups and EUPCN

What
was
achieved?

Introduction: The JAHARP2021-11 Project

Historically, MSAs have faced challenges due to insufficient/scarce resources (human, financial, or technical) to fully deal with the control of non-compliant products in their marketplace. Regulation (EU) 2019/1020, fully effective since July 2021, introduced comprehensive rules for products and economic operators, equipping MSAs with an enhanced toolkit and powers to streamline market surveillance processes. A pivotal element of this regulation, Article 15, endorses MSAs' right to recover costs related to instances of non-compliance.

Despite existing precedents in regulations such as (EU) 2017/1369 and some Member States' long-standing national laws facilitating cost recovery, near 50% of MSAs have not capitalised on these opportunities. This activity delved into the reasons behind this unexpected situation, analysing the experiences of MSAs that have successfully implemented cost recovery and those that have attempted cost recovery but not succeeded. The project team's investigation into the successes and failures of cost recovery efforts has led to the identification of obstacles and challenges. These findings were then aligned with effective solutions employed by other MSAs. Consequently, a comprehensive guide was crafted to aid in the successful adoption of cost recovery procedures and disseminated through ADCOs.

Methodology



Figure 1 Timeline of JAHARP2021-11

The first phase of the project was the **comparative analysis** of Article 15 of Regulation (EU) 2019/1020 and Clause 5 of Article 8 of Regulation (EU) 2017/1369.

Secondly, we prepared a **survey for MSAs** in order to map the experiences and have a picture of the existing situation on the market, concerning how many MSAs were already recovering or attempting to recover costs from EOs, and how many were not yet doing so. The survey had also the aim to gather insight on the main obstacles for MSAs in the implementation of Article 15.

The data collected was then **assessed and analysed**, and a second survey was sent out to the MSAs which reported not to have encountered difficulties in the recovery of costs. The **good practices** so gathered supported the development of the guidelines.

We then proceeded to prepare the **Good Practice Guidance document**, which includes explanations of the type of costs that can be recovered and what should be in place at the national level for the implementation of Article 15. In addition, it includes success stories and templates of letters to be used with EOs.

The participating MSAs which were not yet recovering costs then produced a **memo identifying precursor activities** that would need to take place in their MS in order for them to be able to start implementing Article 15.

The Good Practice Guidance and the lessons learnt were then **disseminated to several ADCO groups and the EUPCN network** and presented during the Final Conference of JAHARP2021-11, held on 22 May 2024.

What does Article 15 say and why it is important?

Article 15 of Regulation (EU) 2019/1020 regulates that:

1. *Member States may authorise their market surveillance authorities to reclaim from the relevant economic operator the totality of the costs of their activities with respect to instances of non-compliance.*
2. *The costs referred to in paragraph 1 of this Article may include the costs of carrying out testing, the costs of taking measures in accordance with Article 28(1) and (2), the costs of storage and the costs of activities relating to products that are found to be non-compliant and are subject to corrective action prior to their release for free circulation or their placing on the market.*

Why it is important

In order to verify compliance with the EU Regulations on product safety and energy efficiency, the MSAs spend a relevant amount of time and resources. They need to verify that the product documentation is correctly completed, and it presents all the required information. In addition, products need to be tested (and triple tested if they failed the first tests) against the relevant harmonised standards.

A known barrier faced by most MSAs is the **high cost of verification testing in combination with the low budgets** that most MSAs have available for it.

Article 15 provides the MSAs with the possibility of recovering the costs incurred in these verifications if the product results being non-compliant, therefore providing them with the possibility to conduct more investigations.

Who can be charged with the costs?

Any economic operator in the distribution chain (from the manufacturer to the distributor) could be charged with the costs of a control of a product by an MSA where the result of the control is that the product is found non-compliant.

Recovery of costs vs Fines

It is also very important to **distinguish between the recovery of costs and Fines** which may be issued towards non-compliant EOs.

While the costs which can be recovered from the EOs under Article 15 correspond to the exact calculated amounts spent by the MSA for their investigation and tests, **finances are not related to costs incurred by the MSAs** but are one of the possible enforcement actions to be taken in the event of a non-compliance.

Impact

With MSAs having more resources to invest in market surveillance and verification tests, Article 15 favours **higher compliance rates and a safer and fairer single market.**

What is the status of implementation of Article 15?

157 MSAs participated to the survey, from every EU Member State and Liechtenstein, Norway and Switzerland. The answers collected revealed that only around 50% of respondent MSAs had attempted to recover costs from non-compliant Economic Operators.

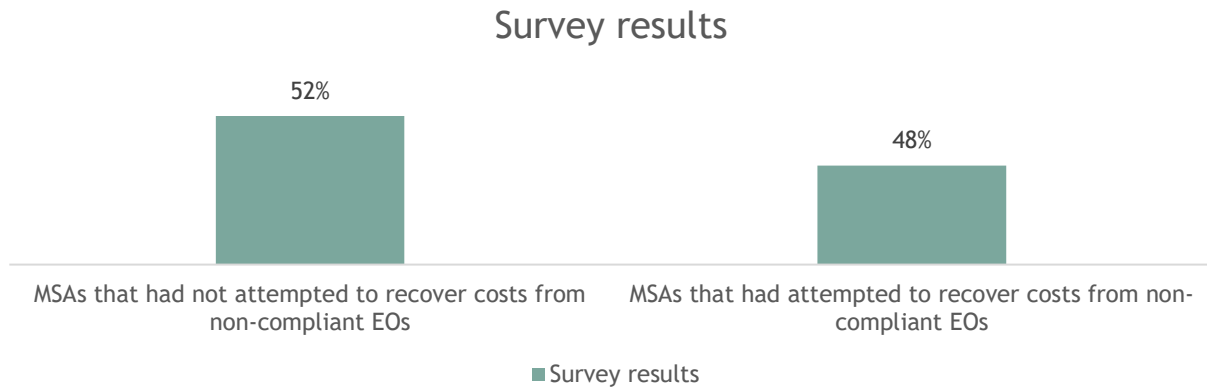


Figure 2 Survey results

Out of the 76 market surveillance authorities who had attempted to recover costs, 93 percent of them had been successful in doing so, with 7 percent of MSAs not succeeding.

It is additionally worth noticing that a relevant percentage (11%) of MSAs which successfully recovered costs from Economic Operators, found the process difficult.

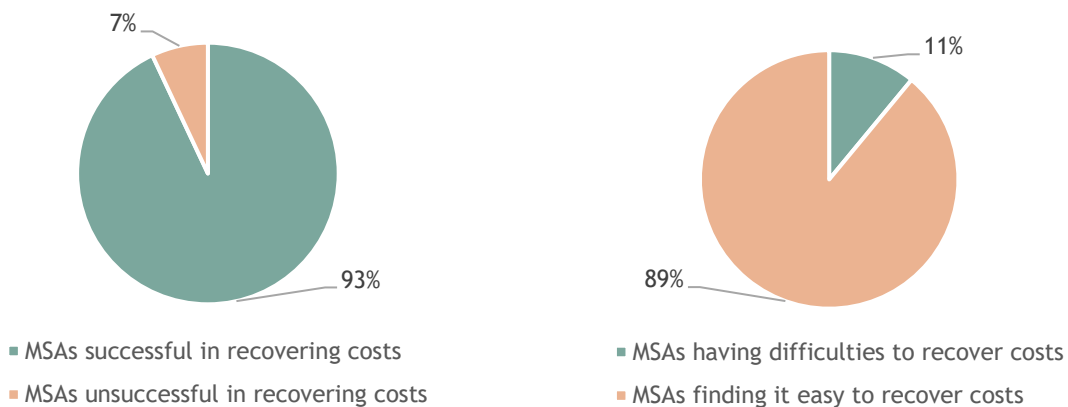


Figure 3 MSAs experience and success in the recovery of costs

Concerning the MSAs which had not attempted to recover costs, the project group asked them to identify the main problems they had encountered in implementing Article 15.

For 27% of the respondent MSAs, the main obstacle was the **lack of national legal framework** which allowed the recovery of costs by the market surveillance authorities.

Main challenges

The project identified two main types of challenges faced by the MSAs in relation to the implementation of Article 15: Legal challenges and Practical challenges.



WHAT IS THE PROBLEM?

Legal challenges

✚ *Lack of National legal framework*

Article 15 states that “*the Member State may authorise their market surveillance authorities to reclaim [costs] from the relevant economic operator...*”. This means that an existent national legal framework for the implementation is required. For the Member States where this is not yet in place, it will take some time before they are in the capacity to request recovery of costs from EOs.

✚ *Legal objections from EOs*

EOs can make legal objections to non-compliance decision and related costs, thus postponing the final compliance assessment and the consequent recovery of costs if finally judged non-compliant.

✚ *Manufactures outside the EU*

When manufacturers are based outside of the EU, recovery of costs from the EO becomes very difficult, as MSAs have limited legal power outside of their jurisdiction.

Practical challenges

✚ *Difficult costs to calculate*

Some costs are more difficult to recover than others, as they can be difficult to calculate at the MSA level (for example, the time effort and relative costs of market surveillance officers and other MSA staff related to determining non-compliance or to the corrective actions taken).

✚ *Lack of skills*

Often the MSAs lack of upskilled staff, as for example lawyers and financial experts, which would be essential for the correct implementation of Article 15.

✚ *Many EOs involved in supply chain*

Many different economic actors are often involved in the production and finishing of the products, which makes it very complicated for MSAs to trace the right EO which should be addressed for costs recovery. In fact, the controlled EO is not always the one bearing the responsibility for placing the product on the market.

✚ *Non-reactive EOs*

Some EOs are non-reactive and never respond to the requests from the MSAs.

✚ *Lack of incentive*

In some cases, funds from recovered costs are diverted directly into the national treasury fund and not to the MSA specific fund, therefore eliminating one of the big incentives for MSAs to implement Article 15.

What did JAHARP2021-11 do to assist MSAs in the recovery of costs?

In order to address all the challenges mentioned in the previous section, and to effectively support market surveillance authorities in their effort to fully implement Regulation (EU) 2019/1020 in all its parts, including Article 15, JAHARP2021-11 published a Good Practice Guidance for MSAs, which includes information and guidance on all most relevant aspects.



Conclusions

The main goals of JAHARP2021-11 were to assess the status of implementation of Article 15 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 survey administered to market surveillance authorities was **a clear split (almost perfectly 50/50) between MSAs which were already recovering costs and MSAs which were not.**

Several challenges to the implementation of Article 15 emerged, some of them easily resolvable with the support of national laws and regulations, others more complicated to solve in the short term. Several MSAs suggested that cost recovery could be more efficiently and effectively implemented if carried out by a specialist agency, instead of falling into the workload of market surveillance officers.

At the same time, it was also clear that, among the MSAs which were attempting to recover costs, most of them were being successful (93%), which gives high hopes to the MSAs that would like to start walking this path.

The **Good Practice Guidance** developed under this project (available on the [PROSAFE website](#)) aims at addressing the identified challenges and providing the MSAs with practical suggestions as to how to successfully implement Article 15 and lower the budget constraints which often obstacle the work of market surveillance authorities.

The Guide has been and will continue to be disseminate to all EU MSAs, through PROSAFE network, the ADCO groups and the EUPCN.

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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