



**The Seven Key Principles
of
Market Surveillance
With
Special Emphasis
on
EHAP – a European Home Authority Principle**

Task Leader, Ron Gainsford

Task Coordinator, Noel Toledo

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1. Introduction

Between 2006-2008, during the EMARS-I project coordinated by PROSAFE, the key principles for effective market surveillance were discussed and the task group focusing on gathering best practices had identified 7 key principles which were of particular importance. These key principles were further promoted via the training task group during the EMARS-II project (2009-2011) to inform and ensure consolidation and agreement with as many market surveillance authorities as possible.

In order to continue the good work already done by the EMARS projects, two of the objectives within the Joint Action 2011 for 2012 are to:

- To further develop an outline strategy on how to best implement PROSAFE's key principles with special emphasis on the home authority principle.
- To further develop a description of the "Home Authority" principle in a PROSAFE context.

The 'Home-Authority' Task Working Group has been formed from JA2011 participants who were interested to participate to varying degrees in this particular subject matter. The following participating authorities from various Member States have all assisted to different degrees in developing this document:

- Belgium – FOD Economie
- Czech Republic - Czech Trade Inspection Authority -
- Denmark – The Danish Safety Technology Authority
- France - Directorate General for Competition, Consumer Affairs and Repression of Fraud (DGCCRF)
- Germany - Bavarian State Ministry of Labour and Social Affairs, Family and Women
- Ireland – the National Consumer Agency
- Malta - The Market Surveillance Directorate, MCCA
- Spain - The National Institute for Consumer Protection
- Sweden - Swedish Consumer Agency
- The Netherlands - The National Food & Consumer Product Safety Authority (NVWA)
- UK - Trading Standards Institute (*which is taking a leading role for this task group*)

It is expected that the two objectives will be achieved by the end of 2012 and that the strategies being proposed will be implemented in upcoming joint actions (JA2012 / JA2013 /etc).

2. The 7 Key Principles of Effective Market Surveillance – ‘PREPARE’

In order to further assist market surveillance authorities and officers to remember these seven key principles, the acronym **PREPARE** is being used for this purpose.

Prevention - Taking a preventative approach

*by employing best market surveillance practice and effective communication strategies to **inform and advise** consumers and business*

Risk-based Approach – Targeting unsafe products, services and practices by using a **coordinated risk based approach**

Efficient/Effective - Being efficient and effective

*by working **in partnership with other enforcement agencies** and coordinating operational programmes and practices*

Proportionate - Dealing swiftly and proportionately with problems identified

by ensuring non compliant products, services and practices cease to put consumers at risk

Approach at European level - Resolving problems at source and in a coordinated manner

*by adopting a **home authority approach** as part of a coordinated approach with other enforcement agencies*

RELEVANT policies & strategies - Ensuring that all policies and strategies which affect business are relevant, consistent, transparent, appropriate and clearly understood

by a process of consultation

Education & Training - Ensuring market surveillance officials are appropriately trained

by ensuring they are at the right level of competence, aware of the business context in which they operate, employ best practice and are supported by continuous professional development

These key principles are synonymous with effective market surveillance activities. However, the main focus of attention for this task group has been to develop a practical approach at European level based on knowledge, competence and application of the home authority principle.

3. What is the Approach based on the 'Home Authority' Principle?

The approach based on the home-authority principle was originally developed within the UK some decades ago and has been basically used to minimise inconsistencies in advice being given to businesses as well as ensure a more coordinated approach to market surveillance programmes and enforcement within the UK. Over the years the home authority has been reinforced in the UK by the statutory 'primary authority' and both principles are now available to enforcement bodies and to businesses. The approach and principles have also been adapted and modified to be consistent with today's economic challenges and operational realities. However, various other countries in Europe also have similar arrangements in varying guises.

3.1 The theory behind the proposed approach

The theory and main objective behind this European Approach is **EFFECTIVE COMMUNICATION**. The scope here is **NOT** to create some kind of super authority within Europe with more powers or to have enforcement authorities dependent on a home authority. The objective is merely to get all market surveillance authorities even closer together and working more effectively **WITHOUT** changing their existing responsibilities related to market surveillance and product safety.

The theory itself is based on the following premise. It first tries to divide market surveillance authorities into two main groups. Those where an authority has a manufacturer or a main distributor/importer based within its area or country is called the '**home authority**'. The rest of the market surveillance authorities in various other parts of that country or other Member States are, for all intents and purposes, referred to as '**enforcement authorities**'.

What is the difference between the two?

The home authority is expected to take the lead by being the first contact point / reference point for **COMMUNICATION** for the economic operator. Therefore, the home authority will try to be the main communication channel with both the economic operator as well as the other enforcement authorities.

Ideally, any advice given to the economic operator should possibly go through the home authority. This should be beneficial to the business since the going concern would have one source of information rather than various authorities giving different advice across the country or Europe to different distributors or sub-manufacturing concerns. Such informed and authoritative advice at source enables the business to 'get it right first time' and market its product across the country or Europe with more confidence.

On the other hand, the 'enforcement authorities' in the country or other Member States would ideally keep the 'home authority' informed whenever they find non-compliant or dangerous products pertaining to that manufacturer/distributor/importer. Depending on the case itself and the urgency and risk involved, the enforcement authority within another Member State would need to take a judgement call as to whether:

- (i) To inform the 'home authority' and possibly get some more information **BEFORE** action is taken from its end **OR**
- (ii) To take direct action and inform the 'home authority' **AFTERWARDS**.

Either way, the scope here is to **COMMUNICATE** with the 'Home Authority' and ensure that it is updated on all actions being taken or about to be taken vis-à-vis the products of that particular economic operator.

The whole idea of the concept behind the 'home authority' principle is to ensure:

- (i) Effective Communication between the home authority , the rest of the enforcement authorities and the economic operator
- (ii) A more consistent approach to advice given to businesses
- (iii) A more synergised and proportionate approach to market surveillance in view that authorities will effectively share MORE INFORMATION amongst each other.t

This leads to more effectiveness and efficiency gains to both the businesses as well as to the market surveillance authorities.

3.2 Problems in practice

In practice, there may be problems to implement such an approach at European Level for various reasons. Indeed, this is an ambitious programme and one needs to understand and appreciate the current problems faced by those countries who have tried to adopt something similar in the various regions of their own countries such as in the case of the UK, Germany, France and other relatively large countries.

Case Scenario1 - In certain cases, for example, the home authority may be swamped by too many requests from enforcement authorities who may decide to transfer all the responsibility onto the home authority. This is not an ideal scenario at European Level and one needs to ensure that all enforcement authorities are fully aware that they should still be completely responsible for their own territory and such a home authority principle should be preliminarily used for effective communication and to cross-share information between the authorities and the economic operator in a more structured approach.

Case Scenario 2 – In other cases, the formal advice or risk assessment advice to the economic operator or even enforcement action taken by the home authority is completely imposed upon other enforcement authorities in order to create a completely uniform type of formal advice and enforcement. Although there may be some justification to do this within the same territory of one Member State, this should not be the case when one tries to develop such a principle at European Level. Indeed, although there should be effective communication on any particular divergences, any European principle should NOT try to develop some kind of uniform formal risk assessment or uniform enforcement across Europe since this would go against the principle of subsidiarity.

4. The Proposed Strategic Approach: The European Home Authority Principle – EHAP

When it comes to developing a scheme at European Level which is practical and which can work, one needs to develop simple steps at a time which could then be accepted and implemented by all the Member States within the European Economic Area. The proposed strategy would be as good as its weakest link and therefore, it is extremely important that all the Member States are on board and agree on what needs to be done.

For this reason, it is important to keep in mind the following points before the final strategy in the form of a scheme is finalised.

- It is better to take small steps at a time
- Keep the approach as simple as possible
- Ensure that all market surveillance authorities are on board
- Try to inform the business sector about this approach so that they are aware of what is being done to ensure a more effective communication stream between the Home Authority, Enforcement Authority and the economic operator. - Ensure that consumers are aware of what is being done.

The proposed scheme, which is being called ‘The European Home Authority Principle’ – **EHAP**, will focus upon the following issues:

(i) Identification of product groups to be focused upon.

It is being proposed that EHAP will primarily focus upon GPSD products and in particular, consumer products, with special attention being given to products inspected during joint actions coordinated by PROSAFE. Strong liaison needs to be established with the GPSD Committee and its Network and ensure that everyone is on board. If it is feasible, TOYS and LVD products may also be integrated but possibly this could be done at a later stage once the approach for GPSD products is already working effectively and after ensuring effective discussions with the TOY-ADCO and LVD-ADCO.

(ii) Identification of the type of economic operators to be focused upon

The scheme will primarily include any economic operator which is distributing products (as indicated in section (i) above) across other Member States within the EEA. The decision will be solely up to the ‘home authority’ whether to form part of EHAP or not.

- a. The home authority should inform all EEA ‘enforcement authorities’ that it wishes to act as the ‘home authority’ at EEA level for a particular economic operator selling the following types of GPSD products. There should only be one home authority for any particular economic operator within the EEA. The economic operator should be informed by the ‘home authority’ once there is no objection from any market surveillance authorities about the ‘home authority’. The ‘Home authority’ should ideally serve as a main focal point for these economic operators and the ‘home authority’ should be made aware of any market surveillance / product safety issues within any of the other EEA Member States

- b. If an economic operator wishes to change the ‘home authority’ it may do so by asking the ‘home authority’ whether their request is possible. The ‘home authority’ should in that case discuss this with all market surveillance authorities and if an agreement is reached on a new ‘home authority’, the economic operator will be informed accordingly,

(iii) Identify and describe the basic approach to be adopted

It is being proposed that a simple and clear strategy is adopted. The proposed EHAP approach should concentrate on the following points.

- The primary approach for EHAP should be to build **even better communication channels** and sharing of information between market surveillance authorities as well as with the respective economic operator
- EHAP will NOT try to establish some kind of uniform enforcement or uniform advice across all the EEA. However, whenever there are differences of opinions or different actions being taken, the EHAP approach should help to get the respective surveillance authorities to communicate easily and more effectively between each other and hence understand better the situation or particular case in question.
- The ‘home-authority’ with assistance from the economic operator should try to ensure that all ‘enforcement authorities’ across the EEA are well aware of the products being manufactured by the relevant business and that all the distribution channels in various Member States are well described and updated accordingly.
- The ‘enforcement authorities’ should always try to inform the ‘home authority’ ideally before any action is taken by them or at least immediately inform the ‘home authority’ the type of action that has been taken.

(iv) Is there a need for an IT system?

One needs to eventually assess whether a simple IT system (in the form of a database) can be developed to compliment the two existing systems: RAPEX and ICSMS. Indeed, the system may be possibly integrated within any of these two systems or organised as a stand alone system. Other IT systems such as IMI – Internal Market Information System (http://www.ec.europa.eu/internal_market/imi-net/index_en.html) from the service sector may also be looked into to check whether there could be some lessons that could be learnt from there as well.

The Trading Standards Institute within the UK has a very good home authority database which may be assessed to see whether a similar database can be developed to compliment and possibly be integrated within the ICSMS / RAPEX Systems. Additionally, the French DGGCRF also uses some kind of a simple IT system for a similar purpose.

Indeed, one needs to note that such an EHAP approach will actually serve to further improve and compliment the effectiveness of both systems since this can be seen as a step that needs to be in place BEFORE the ICSMS or RAPEX systems kick in.

5. The benefits derived out of this scheme

Initially, the primary benefits out of this scheme are:

- A more efficient and effective cross-border sharing of information amongst market surveillance authorities, using a more structured approach
- Businesses are able to better understand how market surveillance authorities are working with the advantage of eventually minimising administrative burdens.

Eventually, once the scheme has started to operate, further procedures may be introduced to make this scheme even more effective, such as the introduction of coordinating surveillance programmes at European level via the 'home authority'. Testing may also be done via a synergised approach across Member States by adopting and refining this scheme to include some basic procedures on how to utilise tests performed by the 'home authority' and vice-versa whenever possible. However, this will need more time and one needs to be realistic on what can be achieved in the short term and in the medium to long term.

6. Concluding Remark

The intention of this paper is to bring forward a European Home Authority Principle (EHAP) which could easily be adopted by all market surveillance authorities within the EEA.

It is important to stress that this will NOT create any further administrative burdens on market surveillance authorities but will actually help to reduce them by having clear and pre-established channels of communication amongst them in order to share effectively any kind of information pertaining to certain economic operators who are distributing their products in various Member States across the EEA.

EHAP mainly concentrates on simple and effective communication, ensuring that information is shared quickly so that decisions can be made proportionately and responsibly across Europe.

One of the main key benefits of EHAP is related to resource and funding efficiencies, for both the market surveillance authorities and economic operators alike.

At a time of economic stress, austerity and scarce resources, it is worth thinking about having market surveillance authorities being part of the solution to growth in the EU/EEA (Eurozone) rather than possibly creating problems.

Ultimately, market surveillance should not be seen as a barrier to fair and compliant trade and competition; rather, it should assist fair competition and achieve a more even playing field in the Single Market.

It is hoped that this paper will serve as a basis for further discussions during this year, in particular not only for the participants within this working group but also within all JA2011 participants as well as all other market surveillance authorities from within the EEA and interested external stakeholders from the business and consumer sector.