

The newly proposed European Lead Authority System - ELAS

Annual Market Surveillance Workshop (JA2011)

November 6th 2012

Brussels

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D14.2 – Contribution to final Market Surveillance Workshop

The following organisations / countries have all assisted to different degrees in developing this proposal:

- 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*
- UK** - *Trading Standards Institute (Task Leader of the Group)*

THIS PRESENTATION WILL GO THROUGH:

- ✓ The 7 key principles on market surveillance
- ✓ The historical & theoretical concept behind the **home authority**
- ✓ The proposed way forward - ELAS (the European Lead Authority System)
- ✓ Discussion Time

The 7 Key Principles related to Effective Market Surveillance - ‘PREPARE’

- ✓ Between 2006-2008, EMARS-I project – identified 7 key principles which were of particular importance to market surveillance. *(included in the PROSAFE Book on market surveillance)*
- ✓ Between 2009-2011, EMARS-II project – these were further promoted via the training task group, ensuring consolidation and agreement with as many market surveillance authorities as possible.

- P**revention
- R**isk-based Approach
- E**fficiency / **E**ffectiveness
- P**roportionate
- A**pproach at European level
- R**ELEVANT policies & strategies
- E**ducation and Training

The 7 Key Principles

- ❑ **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 serious and deliberately unfair and unsafe products, services and practices
*- by using a **coordinated risk based approach***

- ❑ **Efficiency/Effectiveness** - 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

The 7 Key Principles

- ❑ **Approach at European level** - Resolving problems at source and in a coordinated manner
 - *by adopting a home / **lead 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*

The historical background behind the home authority . . .

- 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.

UNDERSTANDING THE THEORITICAL CONCEPT

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** or **LEAD AUTHORITY**'.

The rest of the market surveillance authorities in various other parts of that country or other Member States are, for all intends and purposes, referred to as **'ENFORCEMENT AUTHORITIES**'.

THE LEAD AUTHORITY

The lead authority is expected to take the 'lead' by being the first contact point / reference point in COMMUNICATION for the economic operator. Therefore, the lead 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 lead 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.

THE ENFORCEMENT AUTHORITIES

The ‘enforcement authorities’ within the same Member State or in another Member State would ideally keep the ‘lead authority’ informed whenever they find non-compliant or dangerous products pertaining to that manufacturer/ distributor/ importer. The enforcement authority within another Member State would need to take a judgement call as to whether:

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

Either way, the scope here is to COMMUNICATE with the ‘Lead 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 HOME AUTHORITY PRINCIPLE

The primary objective of the home authority principle is to ensure:

- (i) **EFFECTIVE COMMUNICATION** between the lead 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.

THE EUROPEAN LEAD AUTHORITY SCHEME – ELAS

- ❑ When it comes to developing a practical scheme at European Level, 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.

PROPOSED PRODUCT GROUPS TO BE FOCUSED UPON

- ❑ It is being proposed that ELAS will primarily focus upon **GPSD PRODUCTS** and in particular, consumer products.
- ❑ Strong liaison needs to be established with the **GPSD Committee and its Network** and ensure that everyone is on board.
- ❑ Once there is strong commitment at GPSD Committee level, **SOGS** should be approached in order to further discuss this concept with them too.
- ❑ Eventually, other products groups such as TOYS and LVD products may also be integrated but possibly this could be done at a later stage once the system for GPSD products is already working effectively and after ensuring effective discussions with the respective TOY-ADCO and LVD-ADCO.

TYPE OF ECONOMIC OPERATORS TO BE FOCUSED UPON

ELAS will primarily include any economic operator which is distributing GPSD products across other Member States within the EEA. The decision will be solely up to the ‘lead authority’ whether to form part of ELAS or not.

- a. The lead authority should inform all EEA ‘enforcement authorities’ that it wishes to act as the ‘lead authority’ at EEA level for a particular economic operator selling the following types of GPSD products. There should only be one lead authority for any particular economic operator within the EEA.
- b. If an economic operator wishes to change the ‘lead authority’ it may do so by asking the ‘lead authority’ whether their request is possible. The ‘lead authority’ should in that case discuss this with all market surveillance authorities and if an agreement is reached on a new ‘lead authority’, the economic operator will be informed accordingly,

THE BASIC APPROACH TO BE ADOPTED

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

- ❑ The primary approach for ELAS should be to build even better communication channels and sharing of information between market surveillance authorities as well as with the respective economic operator
- ❑ ELAS 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 ELAS system 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 BASIC APPROACH TO BE ADOPTED

- ❑ The ‘lead-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 ‘lead authority’ ideally before any action is taken by them or at least immediately inform the ‘lead authority’ the type of action that has been taken.

IS THERE A NEED OF 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 integrated within any of these two systems or organised as a stand alone system.
- What is important is that **Member States can easily retrieve and share information** which is valid to the effectiveness of such a ssystem.
- Initially, a pilot project may be initiated next year with even just simple spreadsheets shared across a common simple IT platform. This will help to identify any future needs whilst at the same time identify solutions to any practical problems faced by market surveillance authorities in the implementation of ELAS..

THE BENEFITS DERIVED OUT OF THIS SCHEME

- ❑ **More consistency in actions being taken by various market surveillance authorities across the European Economic Area, leading to a more coordinate approach to market surveillance.**
- ❑ **Effective sharing of information amongst lead authority and enforcement authorities within the EEA.**
- ❑ **Businesses are able to better understand how market surveillance authorities are working** with the advantage of eventually **minimising administrative burdens.**
- ❑ **Businesses are able to coordinate more effectively with market surveillance authorities.**
- ❑ **Ultimately, this should lead to efficiency gains and effectiveness to both the business sector and market surveillance activities.**

IT IS VERY IMPORTANT TO NOTE THAT:

- ❑ ELAS will not try to establish a uniform enforcement approach or introduce the concept of uniform risk assessment
- ❑ ELAS will not try to put any additional responsibility on any market surveillance authorities through this system; e.g. by ‘handing over’ any of their responsibility to a ‘lead authority’.
- ❑ No bottlenecks should be created. Enforcement authorities are free to act in line with the current regulations. If, for any reason, they think that they cannot wait for any information from the lead authority, they can proceed accordingly.
- ❑ The philosophy behind ELAS is about **EFFECTIVE COMMUNICATION!**

CONCLUDING REMARKS

- ❑ ELAS 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 ELAS 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.

CONCLUDING REMARKS

- ❑ The intention of this presentation has been to explain the **concept and benefits of having ELAS** (a European Lead Authority System) for market surveillance authorities across Europe.
- ❑ However, **we are still at the very first step of the process at European level**. Your comments and suggestions to further improve and fine-tune this concept is greatly appreciated.
- ❑ Ultimately, what we all wish to have is a **simple and clear communication strategy which is realistic and widely accepted & implemented** by all market surveillance authorities across the EEA. What is important is that we take the first steps together.



The PROSAFE Joint Actions
are funded by the
European Commission

THANK YOU !!

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