



European information and co-ordination systems for market surveillance

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Introduction

Ladies and Gentlemen, dear colleagues,

- I work at the French ministry for employment in the labour relations department, where I have responsibility for questions relating to the machinery and personal protective equipment directives, which therefore involves drafting regulations and monitoring their implementation, monitoring standardisation work and organising the feedback from those areas - in a nutshell it means market surveillance of products. As such, I attend the meetings of the machinery and personal protective equipment directives committees, as well as those for administrative co-operation between public authorities in these fields.
- Firstly, the question arises of whether there is such a thing as an "*information and co-ordination system*" for machinery and personal protective equipment. Market surveillance under the "new approach" directives provides evidence through experience that the system works, more especially in terms of the implementation of those directives with a major impact on occupational safety and health, such as the "machinery" or "personal protective equipment" directives. But this activity which is crucial for reliable European harmonisation in full compliance with OSH rights is still for the most part barely known outside a small circle of experts.
- It has to be said that it is still very much early days in the field of co-ordination and information:
 - given the very substantial differences that still exist between countries (in the field both of risk prevention and market surveillance);
 - due to the lack of sufficient funds in various member states;

Monsieur Gambelli has just spoken of the "failure of the new approach" due to inadequate market surveillance. Whilst not going quite that far, I would agree that as a result of many member states and the European Commission not being sufficiently willing to harmonise, as market surveillance comes under "subsidiarity", i.e. the field of national regulations and practices, it remains largely non-existent.

We will first identify:

- 1) why such a system should be set up, then consider:
- 2) a few ideas resulting from what has been set up, before concluding with:
- 3) the outlook

I Why set up such a mutual co-operation and information system?

1 In a Europe of 25 and under the new approach, only a harmonised information and co-operation system is appropriate:

- For effectively preventing the entry onto the market of non-compliant equipment
- For exchanging information about non-compliant products – the single market is a reality and the products covered by some twenty new approach directives form quite a sizeable market. Only co-ordinated, consistent action by all interested parties is able to ensure the proper functioning of the system.
- For more detailed knowledge of the state of the art – today, the technological advances achieved by some manufacturers must be disseminated and be able to be included in the content of standards requirements.
- For improved standards contents – the standardisation system needs continuous feedback, given the problems encountered.
- For putting together community data bases aggregating information collected in particular following accidents involving the products, as these data are useful for the identification of the main features of these products, noise and vibration levels, etc.

2 However, many questions are raised, to which it is not easy to find answers.

For example:

- How can consistency be ensured between the various information networks and systems set up at national and community level?
- How can feedback be guaranteed from the large number of different parties involved (users, supervisory entities, OSH bodies, expert bodies, etc.) to technical standardisation work so as to take on board the problems arising?
- What kinds of knowledge and methods are required in order to organise this information feedback and anticipate on-going developments? We ourselves tend to attribute relatively more importance to information coming from the use of products in a real work situation (not that laboratory test results or fundamental research are ignored).
- How can the confidentiality of the information circulated be ensured, when required?
- How can the necessary technical knowledge required to take the right decision in the case of non-compliant and dangerous equipment be provided?

II A few ideas from past experience

A certain number of networks can be identified that contribute to market surveillance, most often those of the type known as "Adco's", (short for administrative co-operation), that monitor each new approach directive. These are committees made up of authorities from member states responsible for market surveillance of most such directives, and which meet twice a year to exchange information and develop certain common positions. But these are not the only networks. Useful exchange of information also occurs via other specialised networks – co-ordination of notified bodies, manufacturers' trade associations, unionists organised around the European Trade Union Technical Bureau for Health and Safety (which is now a department of the European Trade Union Institute).

What seems above all important to us today is to settle the question of trust between partners, which is why a range of different forums for discussions is required in order to build that trust: between government authorities, between manufacturers and between user representatives (employers, unions, consumers). The information exchanged and the discussions held will relate to the same issues but with possibly different content.

- It should first be specified that a lot of work is already being routinely done within the network of authorities in charge of surveillance of the equipment market via exchanges of specific dossiers concerning especially non-compliant machines (of which there are several hundreds a year in the EU). But today we need better co-ordination and genuine harmonisation in this area.
- But there is firstly the need to ensure effective co-ordination at national level in a number of member states, such as Germany with its Länder or Spain with its Autonomous Communities. In France, this requires co-ordination on two levels: firstly between the ministry for labour, the other ministerial departments and the national OSH bodies (CNAM-TS, INRS, MSA...) on the one hand, and with the regional labour inspectorates and network of OSH specialists from CRAM on the other. This form of co-ordination, drawing in particular on the MADEIRA data base (that identifies and addresses non-compliant machinery) which is administered by the ministry for labour and accessible to the various bodies involved, could be usefully enhanced by the addition of new partners. Further improvements to system responsiveness are also required.
- There is the question of the language barrier. To communicate within the EU a common language is necessary – in this case English. Clearly a lingua franca (as they say in Latin, and in English) or a vehicular language is required; however, over and above this, we must:
 - *provide an interface between the information exchanged at national level, in the national language or languages, and the information at EU level; though in fact this is often more a question of reformulation than translation;*
 - *be pragmatic: when Austrians speak to Germans, or Belgians to French, a language other than English might be preferable..*
- But the issue of foreign languages also raises the question of the need to develop a common language, in the sense of a terminology able to convey the most appropriate technical, legal or ergonomics-related content . The information that is circulated and the data collected must:
 - clearly pinpoint the essential requirements of the relevant directives in the reported non-compliances;
 - provide a wealth of information about the actual conditions in which the equipment (machinery or PPE) has been used.We for our part seek, through a bottom-up approach, maximum feedback of relevant information. But further progress is definitely possible here.
- The issue of confidentiality of the information exchanged also needs addressing:
 - Confidentiality is useful for the exchange between member states of information about products presumed to be non-compliant: *it exists for example for information shared in administrative co-operation committees that concerns a given product*

- Sometimes however the confidentiality principle is applied without justification; for example, government authorities sometimes have difficulty obtaining information on the technical reports of non-compliant products from certain notified bodies, *which is not satisfactory*. This must be corrected.
- And the confidentiality argument is also used improperly when it prevents the publication of decisions taken by the European Commission subsequent to safeguard clauses (i.e. product prohibitions) being adopted by member states, forcing certain others to take action where the Commission failed to. Publicising facts in this way is vital in order to guarantee both users' health and safety and fair trade. *It is for this reason that we have clearly requested that such opinions be published by the Commission.*
We ourselves will publish them in the JORF.
- The questions of control by an EU body and of the financing of information exchange are important. You are well aware that there are various initiatives at EU level: the CIRCA network (the information resource centre run by the Commission), the RAPEX network (rapid information exchange system for consumer products), the ICSMS data base (a scheme for product safety information exchange started by several member states). Each of these networks requires a leader and dedicated funding. Our policy, both for reasons of principle and practicality, is that *we will only take part in a network that has a clearly identified leader (specifically here the EC) and whose cost is financed by an EU budget.*

This LEADERSHIP does not in any way prevent the development of multilateral co-operation projects between government authorities such as those we have already taken part in, for instance with our Italian ISPESL colleagues concerning certain categories of machinery.

In the view of the French ministry with responsibility for labour, these questions have so far been only partly, and insufficiently, answered, given the broad range of different national situations, the fact that the community framework set up is highly informal and the need to allocate existing resources as efficiently as possible. We believe that questions of a similar nature face the various government authorities in member states and at EU level.

We have had opportunities for discussion of these questions in a large number of single- or multi-sector forums at national and community level, for example during the conference on market surveillance organised five years ago in December 2000 in Paris by the French authorities, the most recent one being the conference organised by the German ministry for labour in Berlin in October 2002 – with the support of the European Commission, the ILO and the French ministry for employment – whose main conclusions are still relevant today (viz. the "Berlin declaration"). Point 9 of this declaration was already stressing that:

"The nature of market activity means that appropriate structures are needed to allow horizontal collaboration among market surveillance authorities within and between Member States."

Some of the proposals contained in this declaration have been taken on board in the proposed revision of the "machinery directive" currently being debated in the European Parliament or in the proposals made by the Commission as part of the revision of the

"New Approach".

And we will obviously be gaining some very useful information from today's conference here in Paris.

III Outlook

The revision of the machinery directive, in particular through its new article 19 which clearly sets out the objective of co-operation between member states, opens up some interesting prospects, in that it stipulates both that:

"Member states shall take the appropriate measures to ensure that the competent authorities cooperate with each other and with the Commission and transmit to each other the information necessary to enable this Directive to be applied uniformly." and that:

"The Commission shall provide for the organisation of an exchange of experience between the competent authorities responsible for market surveillance in order to co-ordinate the uniform application of this Directive."

The documents recently submitted by the European Commission for the purpose of the revision of the new approach also propose in the paper entitled "*A community framework for market surveillance*", dated 22 June 2005, some very relevant building blocks for a market surveillance system. The Commission representative will doubtless refer to this in his presentation tomorrow. The French authorities have made a number of contributions to this discussion process, including the proposals we have just referred to, and which we have every confidence will be adopted.

In conclusion we would like to state once again that the feedback of information must be organised using all the available resources. In a European Union faced with the triple challenge of enlargement, deepening and globalisation, a general, harmonised answer to these questions is without doubt necessary for the credibility of the new approach system.

THANK YOU FOR YOUR ATTENTION