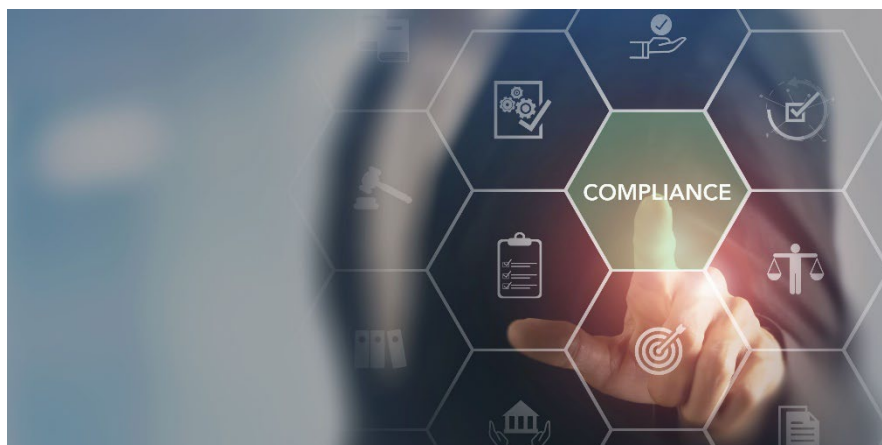


Market surveillance for effective consumer protection in the EU

The role of Market Surveillance Authorities and their cross-border cooperation



Policy Department for Economic, Scientific and Quality of Life Policies
Directorate-General for Internal Policies

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PE 754.190 - October 2023

EN

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Abstract

This study examines the role of market surveillance at EU and Member State level, analysing the EU market surveillance framework, its gaps and challenges, as well as cross-border cooperation between market surveillance authorities and collaboration with and among customs authorities for effective consumer protection.

This document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the Committee on Internal Market and Consumer Protection (IMCO).

This document was requested by the European Parliament's committee on Internal Market and Consumer Protection.

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Original: EN

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Manuscript completed: October 2023

Date of publication: October 2023

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This document is available on the internet at:

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For citation purposes, the publication should be referenced as: Geraci, M., Carletti, G., Gasperini, M., Truc, M., Cantarelli, A., Hassan, E., 2023, *Market surveillance for effective consumer protection in the EU*, Publication for the committee on Internal Market and Consumer Protection (IMCO), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg.

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LIST OF ABBREVIATIONS

AdCos	Administrative Cooperation Groups
AFIS-email	Automated Fingerprint Identification System
BEUC	The European Consumer Organisation
CAMD	Competent Authorities for Medical Devices
CASP	Coordinated Activities on the Safety of Products
CRMS2	Customs Risk Management System
CSN	Consumer Safety Network
DSA	The Digital Services Act
EC	European Commission
ECHA	European Chemicals Agency
EP	European Parliament
ESPR	Ecodesign for Sustainable Products Regulations
EU	European Union
EU CSW-CERTEX	EU Customs Single Window Certificates Exchange System
EUDAMED	European Database on Medical Devices
EUPCN	European Union Product Compliance Network
EUTFs	European Union Testing Facilities
GPSD	General Product Safety Directive
GPSR	General Product Safety Regulation
ICPEN	International Consumer Protection and Enforcement Network
ICSMS	Information and Communication System on Market Surveillance
ICS2	Import Control System 2
ILO	International Labour Organisation

IMCO	Committee on Internal Market and Consumer Protection
INTA	Committee on International Trade
IT	Information Technology
MSA	Market Surveillance Authority
MSR	Market Surveillance Regulation
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office
RAPEX	Rapid Exchange of Information System
RIF	Risk Information Form
SIENA	Secure Information Exchange Network Application
SLO	Single Liaison Office
TARIC	Integrated Tariff of the European Union
UCC	Union Customs Code
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
WCO	World Customs Organisation
WELMEC	European Cooperation in Legal Metrology

EXECUTIVE SUMMARY

Background

Market surveillance activities are conducted to ensure that consumer protection laws and regulations are adhered to, and that goods sold in the internal market meet health, safety, and environmental standards. In an environment where products and services can cross borders seamlessly within the Single Market, effective market surveillance requires a consistent and coherent approach among the Market Surveillance Authorities (MSAs) of all Member States. The governance of market surveillance in the EU evolved following the entry into force of Regulation (EU) 2019/1020 on market surveillance (MSR). These changes were motivated in part by inefficiencies and limitations in the existing framework, as well as barriers limiting their cross-border cooperation with other MSAs, and with customs authorities.

Aim

This study examines the role of MSAs and their cross-border cooperation, taking into account key developments at EU and Member State level, as well as factors such as the rise of e-commerce and the COVID-19 pandemic. The main structure of this study is as follows: Chapter 2 analyses the EU market surveillance framework, looking at the effectiveness of market surveillance governance, activities and powers, followed by the identification of gaps and challenges in EU market surveillance in Chapter 3. Next, Chapter 4 examines cross-border cooperation in market surveillance, while Chapter 5 investigates cooperation with and among customs authorities. Finally, clear key findings and responsive recommendations are presented in Chapter 6.

Key Findings

The EU Market Surveillance Framework

The MSR has fostered more centralised governance and activities of MSAs, established Single Liaison Offices (SLOs) and new coordination mechanisms between MSAs nationally, which were positive developments. There is enhanced information sharing between MSAs via information technology (IT) tools such as the Information and Communication System for Market Surveillance (ICSMS) and Safety Gate, as well as improved cross-border cooperation. However, certain barriers remain, including the sheer volume of EU legislation and requisite product requirements, e-commerce-induced product non-compliance, and disparate resource capacities of MSAs across Member States. This creates gaps that undermine the coherence of the EU market surveillance framework. Nevertheless, the MSR has made significant progress in addressing challenges faced by MSAs, while upcoming EU legislation will respond to many issues currently identified by MSAs.

Gaps and Challenges in EU Market Surveillance

Online sales have increased significantly in Europe over recent years, a trend accelerated by the limited in-person contact resulting from the COVID-19 pandemic. This surge has pressured MSA resource capacity and raised concerns over the safety of products sold online. The MSR has sought to address these issues, implementing stricter rules to hold online vendors accountable. However, certain challenges remain, including those related to product traceability, exacerbated by complex production and distribution chains, new sales avenues, e.g. social media platforms, and difficulties in identifying the responsible economic operator under Article 4 of the MSR, especially for products from third countries. This often leaves MSAs uncertain as to the correct product contracts, and e-commerce

platforms unsure of their precise roles and responsibilities.

Cross-border Cooperation between Market Surveillance Authorities

There are several cross-border mechanisms at EU, national and international level that effectively foster cooperation and information exchange. In particular, the establishment of EU working bodies and SLOs at national level have enhanced cooperation among MSAs. Digital tools (e.g. ICSMS and Safety Gate) are strong channels for cooperation, but adoption of these tools by MSAs is inconsistent. Barriers to cross-border cooperation among MSAs include limited resource capacity, diverging national approaches and priorities, and limitations of EU cooperation mechanisms. Regarding the effects of e-commerce and the COVID-19 pandemic, nearly half of MSAs surveyed find no substantial impact on cross-border cooperation. However, some have noted that cooperation in the form of information sharing and joint projects through EU systems, as well as increased sectoral coordination and digital tools, have improved since the pandemic.

Cooperation with and among Customs Authorities

Cooperation among customs authorities, and between customs and MSAs, is fairly strong, facilitated by digital tools, information exchange networks, and formal agreements. The MSR has brought some improvements to coordination, especially via ICSMS and the creation of SLOs, which promote a unified understanding of various authorities' roles and responsibilities. However, barriers to coordination between MSAs and customs remain, including differences in working methods and limited sectoral knowledge. Among customs authorities, cooperation is curbed by resource constraints and the low quantity and quality of risk information form (RIF) messages. Looking ahead, implementation of the EU Customs Single Window Certificate Exchange System (EU CSW-CERTEX) in 2025 aims to improve communication between MSAs and customs where it is currently lacking. Meanwhile, the growth of e-commerce and the COVID-19 pandemic necessitated greater cooperation.

Policy Recommendations

The EU Market Surveillance Framework

- Expand EU Testing Facilities and establish EU training centres to foster knowledge sharing.
- Enhance IT tools at EU level for market surveillance, including large scale adoption of ongoing pilot projects, e.g. web crawlers and digitisation of conformity documents.

Gaps and Challenges in EU Market Surveillance

- Implement a mandatory EU-based single contact point in online platforms for accountability and follow-up by the MSA.
- Introduce a unique product identifier for all products in the EU market to aid traceability.

Cross-border Cooperation between Market Surveillance Authorities

- Integrate more Member States' national databases with the ICSMS platform API.
- Encourage further participation in joint actions and EU campaigns, targeting under-resourced MSAs and reducing non-resource-related barriers to cooperation.

Cooperation with and among Customs Authorities

- Leverage the EU Single Window Environment for Customs for better information sharing.
- Launch joint training initiatives for customs and MSA staff to clarify roles and responsibilities, and encourage strategic alignment through staff exchanges.

1. INTRODUCTION

1.1. Market Surveillance in the EU

Market surveillance activities are conducted to ensure that consumer protection laws and regulations are adhered to, and that goods sold in the internal market meet health, safety, and environmental standards. It is therefore a critical component of overall consumer protection. Effective market surveillance, especially in an environment where products and services can move across borders more seamlessly within the Single Market, requires a consistent and coherent approach among the Market Surveillance Authorities of all Member States and their respective customs authorities.

The governance of market surveillance in the EU has evolved in recent years, mainly due to the entry into force of the MSR¹. These changes were motivated in part by inefficiencies and limitations in the existing framework, for example in identifying dangerous products and implementing product recalls, low availability of resources, as well as barriers limiting cooperation among MSAs, both at the national and cross-border level, and between customs authorities and MSAs. Recent legislative developments have also been driven by external factors, such as the significant growth of e-commerce and proliferation of online platforms, which have transformed the retail landscape and in turn pose new challenges for market surveillance.

1.2. Overview, scope and objectives of the study

This study examines the role of MSAs and their cross-border cooperation, taking into account key developments at EU and Member State level, as well as other important factors such as the rise of e-commerce and the impact of the COVID-19 pandemic. The findings of this study are based on an extensive selection of sources, including desk research of consumer protection reports, academic literature, and the available national market surveillance strategies of Member States for 2022-2025, among others. This study also draws on the results of stakeholder interviews with EU actors and consumer organisations, as well as a survey of Member States' MSAs, Customs Authorities, and SLOs². The key findings were presented to and validated by the relevant stakeholders in a virtual expert workshop, which further contributed to the final output of this study.

The main objectives and structure of this study are as follows. **Chapter 2 analyses the EU market surveillance framework**, focusing on the effectiveness of market surveillance governance, activities and powers, and their ultimate coherence in view of the MSR. Next, **Chapter 3 identifies key gaps and challenges in EU market surveillance**, including the growth of e-commerce and product traceability concerns. **Chapter 4 examines cross-border cooperation in market surveillance**, while **Chapter 5 investigates cooperation with and among customs authorities** from the perspective of external border control. The study concludes with **Chapter 6**, which presents the clear **key findings of this study and recommendations** for consideration by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO).

¹ [Regulation \(EU\) 2019/1020](#) on market surveillance and compliance of products (the 'Market Surveillance Regulation'). In the remainder of this document this regulation is referred to as the MSR for brevity.

² The full list of stakeholders consulted at each stage of this study can be found in Annex 2: Consultation Activities.

2. THE EU MARKET SURVEILLANCE FRAMEWORK

KEY FINDINGS

The MSR has centralised the governance and activities of MSAs to a degree, introducing SLOs and enhancing national coordination mechanisms, which were viewed as positive developments. Since the entry into force of the MSR, there is more information sharing via IT tools and strengthened cross-border cooperation. However, there are still obstacles presented by the sheer volume of pertinent EU legislation with product requirements, persistent issues with online sales, and uneven resource capacities of MSAs across Member States. This creates gaps that undermine the coherence of the EU market surveillance framework. Overall, the MSR has made significant progress addressing challenges confronting MSAs.

This chapter analyses the EU framework for market surveillance with a view to the effective protection of consumers, focusing on the role of MSAs, and begins with an overview of the existing EU framework, followed by the evolution of market surveillance since the entry into force of the MSR. Finally, the effectiveness and coherence of the market surveillance framework are examined, informed by the results of the various consultation activities conducted for this study.

2.1. Overview of the existing framework

2.1.1. EU legislative framework of Market Surveillance

The cornerstone of market surveillance in the EU is the MSR. The primary aim of the MSR is to enhance and modernise market surveillance in the Union with a view to reduce the number of non-compliant products in the internal market and enhance market surveillance. The aim is also to create equal competitive conditions for all economic operators. It repeals and replaces Articles 15 to 29 of Regulation (EC) No 765/2008 as of 16 July 2021. The new regulation includes several changes and additions, some of which concern:

- **Scope.** The new regulation applies to a wider range of non-food products, including those sold online, whereas Regulation (EC) No 765/2008 only applied to products placed on the market. The scope of application of the MSR is broad and concerns the majority of the product sectors that are subject to the EU's harmonisation regulation and products that are imported into the EU which are not subject to specific regulation³.
- **Surveillance of online sales.** The new regulation includes provisions for the surveillance of products sold online. It requires online marketplaces to take measures to ensure that products sold on their platforms comply with EU regulations.
- **Traceability requirements.** Manufacturers and importers must ensure that their products can be traced throughout the supply chain, including information on the origin of the product and the identity of the manufacturer or importer.

³ Regulation (EU) 2019/515 on mutual recognition, on the other hand, is applicable to products for which there is no EU level harmonisation legislation. Specifically, the MSR covers all products subject to one of the product-related harmonisation laws defined in Annex I (Article 2 para. 2).

The MSR further specifies the **organisation, activities, powers, and obligations of MSAs**. It also lays down different **cross-border cooperation procedures** of the MSA and **cooperation with customs authorities** as a new means of enhancing market surveillance. Key articles include:

- *Article 4.* Economic operators in the EU, which can be manufacturers, importers, authorised representatives or fulfilment service providers established in the Union, are responsible for verifying and maintaining certain documents, such as the EU Declaration of Conformity, and making them available to MSAs upon request.
- *Article 9.* Joint activities between MSAs, other authorities and economic operators to promote compliance, identifying non-compliance and provide guidance on EU legislation.
- *Article 10.* Organisational changes that centralise market surveillance at Member State level. This includes the establishment of an SLO in each Member State in order to coordinate MSAs nationally and support cross-border cooperation.
- *Article 11.* Activities of MSAs for the effective surveillance of products sold online and offline such as performing appropriate documentary and physical and laboratory checks on products, and procedures to follow up complaints, among others.
- *Articles 14-21.* Powers and measures of MSAs such as starting investigations on their own initiative, requiring economic operators to provide relevant documents, and instructing economic operators to take measures to end non-compliance or eliminate risk.
- *Articles 22-24.* Mutual assistance of MSAs between Member States, e.g. when an MSA is unable to conclude its investigation due its inability to access certain information, and requests for enforcement measures.

The MSR regulates and defines the activities of MSAs in the EU. These activities are in turn defined and guided by legislation on product safety, as laid down in **Directive 2001/95/EC** on product safety (the 'General Product Safety Directive', or GPSD)⁴. The GPSD complements sector-specific legislation on product safety and mechanisms for alerting the public to dangerous products⁵.

2.1.2. Upcoming changes to Market Surveillance

There are several upcoming legislative developments that will significantly impact market surveillance at EU level. Many of these changes are occurring not only through continued implementation of the MSR, but in other EU initiatives as well, as highlighted by Table 1.

There are also several ongoing developments which may soon impact how market surveillance is conducted at Member State level. For example, according to European Commission (EC) representatives, three IT pilot projects at EU level are currently being implemented in cooperation with certain MSAs:

- **Web crawlers** that use data mining to identify non-compliant products sold online, with the results sent to the MSA to determine whether products are in fact non-compliant.
- **Digitisation of documents** to assist MSA inspectors in analysing compliance documents, including declarations of conformity, to help identify missing information.

⁴ Directive 2001/95/EC on general product safety (the 'General Product Safety Directive'). This directive is referred to as the GPSD in the remainder of this document for brevity.

⁵ Except in cases of food, pharmaceuticals, and medical devices, all of which are covered by separate pieces of legislation.

- **Unique identifier for each product model** available on the internal market, allowing access to product information and accompanying documents.

The cumulative result of these current and upcoming pilot projects and EU legislation, as highlighted below, may resolve many of the market surveillance issues that are highlighted by MSAs in this study, once sufficient time has elapsed for these measures to take effect.

Table 1: Upcoming initiatives impacting the EU market surveillance framework

EU initiative	Impact to market surveillance
Proposal for a regulation on prohibiting products made with forced labour on the Union market ⁶	Published in 2022, this proposal builds on the MSR with the aim of identifying and banning goods which involved forced labour or modern slavery as part of the production process. It is currently in a joint committee procedure with the IMCO committee and the Committee on International Trade (INTA).
The General Product Safety Regulation (GPSR) ⁷	This legislation seeks to modernise the general product safety framework at EU level and make it safer to buy products online . Through the GPSR, online marketplaces and economic operators will have stricter obligations to cooperate with MSAs. The GPSR will apply in December 2024.
The Regulation on a Single Market for Digital Services (Digital Services Act , 'DSA') ⁸	It establishes measures for all online actors to tackle the sale of illegal products and services, including very large online platforms (e.g. Amazon Store) ⁹ . Online marketplaces will be subject to additional requirements regarding the traceability of product traders and must implement procedures to remove illegal products. The DSA applies in February 2024.
Proposed Ecodesign for Sustainable Products Regulation (ESPR) ¹⁰	It introduces a new Digital Product Passport (DPP) for products on the EU market, which will contain information on the environmental sustainability of the product and will assist authorities with carrying out checks and controls ¹¹ . The open public consultations for the ESPR closed in May 2023.
Proposal for regulation on the Union Customs Code and the European Union Customs Authority (UCC) ¹²	It aims to improve product safety and compliance, for example by requiring online platforms to ensure that the products they sell comply with EU customs obligations and by strengthening cooperation between customs and MSAs ¹³ .

Source: Authors' own elaboration.

2.1.3. Main components of market surveillance in Member States

The MSR and accompanying EU legislation provide a foundational framework detailing the scope of market surveillance activities and powers available to Member States. However, the practical application of these provisions can vary significantly depending on the country context, including organisational structure, available resources and technical expertise. Surveyed MSAs across Member States identified what they consider as their main market surveillance activities and powers. The full list

⁶ COM(2022) 453.

⁷ Regulation (EU) 2023/988.

⁸ Regulation (EU) 2022/2065.

⁹ European Commission, 2023, *Questions and Answers: Digital Services Act*, Available at: https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348.

¹⁰ COM(2022) 142.

¹¹ European Commission, 2023, *Ecodesign for Sustainable Products Regulation*, Available at: https://commission.europa.eu/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/sustainable-products/ecodesign-sustainable-products-regulation_en#:~:text=The%20new%20%E2%80%9CDigital%20Product%20Passport,spare%20parts%20of%20a%20product.

¹² COM(2023) 258.

¹³ European Commission, 2023, *EU Customs Reform*, Available at: https://taxation-customs.ec.europa.eu/customs-4/eu-customs-reform_en.

of identified market surveillance activities and powers can be found in Annex 1.

Starting with market surveillance **activities**, the survey findings indicate that product testing, proactive and reactive market surveillance, customs cooperation, documentary checks, corrective actions and information exchange are among the most common and important activities carried out by MSAs in the surveyed Member States and sectors..

In terms of market surveillance **powers**, there is notably less variation between MSAs and Member States. The survey results show that physical product inspections, information gathering, enforcement actions, and product testing were identified as the main market surveillance powers by a significant majority of MSAs, suggesting that these are among the most common and ubiquitous powers being exercised since the entry into force of the MSR.

2.1.4. Evolution of Market Surveillance Authorities' governance

The MSR has introduced several changes to the organisation of MSAs at national level with the intention of centralising market surveillance governance. The most notable development in this respect is the establishment of SLOs in each Member State, as required by Article 10(3) of the MSR, which a small proportion of survey respondents credit with providing a **more centralised oversight, improving coordination between MSAs** at Member State level and their interaction with EU level bodies. Despite these advancements achieved by the MSR through the creation of SLOs – notably enhancing coordination between MSAs nationally – the prevailing sentiment from the survey results is that market surveillance governance at Member State level has generally **remained unchanged since the entry into force of the MSR**.

This common view among surveyed MSAs contrasts with the views of EC representatives, noting that the MSR has made significant progress towards centralising market surveillance activities by strengthening coordination between MSAs within Member States. This discrepancy may be due to the short time period that has elapsed since the entry into force of the MSR in July 2021.

Beyond this general sentiment, some MSAs have noted changes in their market surveillance governance, indicating **a shift towards centralisation in the form of increased national coordination** between existing sectoral or regional MSAs, which has been positively received.

For example, in Germany, where market surveillance is highly decentralised, MSAs reported a shift towards greater centralisation in terms of national coordination and cooperation between different sectoral MSAs. These experiences are consistent with Germany's 2022-2025 National Market Surveillance Strategy¹⁴, which specifies that cooperation mechanisms were established for its national MSAs in accordance with Article 10(6) of the MSR.

Overall, although awareness of recent legislative changes at EU level is limited among MSAs, the MSR has had a clear and direct impact on the governance of market surveillance at Member State level, with increased centralisation in the form of greater coordination and cooperation between national MSAs. In all cases, the shifts towards centralisation were seen as **positive developments**.

2.1.5. Evolution of Market Surveillance Authorities' activities and powers

While the MSR introduces a number of new market surveillance activities, there is a common view among the MSAs surveyed that their core activities have generally remained unchanged. However, although the survey results often suggest that market surveillance activities have not significantly

¹⁴ German Federal Ministry of Economic Affairs and Climate Protection., 2022, *Summary: National Market Surveillance Strategy of the Federal Republic of Germany*.

evolved with the MSR, MSAs report that the frequency of certain pre-existing activities has changed, which, even if not directly attributed, is a consequence of the changes introduced by the MSR. These include:

- **Increased use of ICSMS, Safety Gate, and other IT tools.** Article 34 of the MSR improves and encourages greater use of ICSMS and other IT tools for more effective information exchange. As a result, MSAs widely find that their use of these tools has increased. Yet, the application of these IT tools, especially for ICSMS, is uneven across Member States.
- **More cooperation of MSAs at national level.** This is mainly due to the coordinating role of the SLO following the entry into force of the MSR. It is widely reported among Member States' MSAs that, under the auspices of the SLO, there has been closer cooperation with MSAs across sectors, as indicated by an MSA in Belgium, among others.
- **Increased focus on e-commerce.** MSAs in Slovenia and Germany reported that they are now focusing more on their monitoring and surveillance of online sales. In turn, the number of non-compliant products sold online has increased, leading to more enforcement actions, and thus taking up more resources of the MSAs for activities related to e-commerce.

Few MSAs reported seeing a significant expansion of their market surveillance powers, which they broadly considered sufficient before the MSR came into force. This view runs counter to the range of new and strengthened powers that were granted by the MSR. Furthermore, according to EC representatives, a key aim of the MSR was to provide a minimum standard of market surveillance powers across all Member States.

Where new powers have been identified by MSAs, they are mainly related to the challenges posed by e-commerce. For example, MSAs in Denmark, Sweden and Latvia recognise new powers in relation to e-commerce, in particular the power to block access to non-compliant online retailers. While these powers were not widely recognised by the MSAs, **they are a direct consequence of the significant progress made by the MSR.**

Overall, these findings may be another indication that the short period of time since the entry into force of the MSR is a major reason for the relatively low visibility and recognition among MSAs of the new market surveillance activities and powers now at their disposal.

2.2. Assessment of Effectiveness and Coherence

2.2.1. Effectiveness of market surveillance governance

The effectiveness of market surveillance governance is generally sufficient, with certain characteristics of centralised and decentralised governance giving rise to different trade-offs. As noted in section 2.1.3, there was a minor trend indicated by MSAs of **a shift towards more centralised market surveillance activities**, mainly with regard to greater national coordination between sectoral authorities, for example, as a consequence of Article 10(6) of the MSR. These developments were viewed positively. For example, surveyed MSAs cited enhanced cooperation within countries and a clearer delineation of roles and responsibilities as tangible improvements. The results from the survey identified the following advantages of centralising market surveillance at Member State level:

- **Enhanced national cooperation.** Improved cooperation and coordination between MSAs at national level is largely credited to the establishment of SLOs in each Member State as required by Article 10(3) of the MSR. Moreover, Article 10(6) aimed to improve communication between MSAs in a decentralised governance context via new coordination mechanisms, and to more

clearly define roles and responsibilities. In turn, the survey results clearly indicate that strengthening national cooperation and coordination between MSAs is a benefit of centralising market surveillance governance at the Member State level..

- **Simplified surveillance and enforcement.** For example, an MSA in Austria reports that entry into force of the MSR led to structural changes that centralised the governance of market surveillance at national level. As a result, they report more uniform surveillance actions nationally. Another regional MSA in Germany noted that the structural change of their MSA will lead to fewer authorities being responsible for more sectors and in turn, easier enforcement, especially in cases where several regulations and laws regulate a single product.

While the MSR aimed to make the governance of market surveillance more centralised, it remains predominantly decentralised at Member State level (as demonstrated by Table 2 in Annex 1). The survey results highlight that there are both benefits and challenges associated with the decentralised nature of market surveillance governance at Member State level, including:

- **Highly concentrated sectoral expertise.** MSAs in Greece and Italy indicated that the decentralisation of market surveillance according to the sectoral competence of the product category at Member State level is conducive to improved efficiency and product safety.
- **Regulatory duplication.** MSAs highlighted the issue of overlap between different sector-specific legislation and the MSR. An MSA in Ireland noted there is duplication in the applicability of certain reporting requirements between the MSR and the Medical Devices Regulation¹⁵, making sectoral coordination more challenging.
- **Growth of horizontal EU product requirements.** Surveyed MSAs indicated the significant amount of current and future EU legislation with product requirements as a challenge, including the ESPR¹⁶ and proposed Right to Repair Directive¹⁷, among others. The concern is that many of these new product requirements are horizontal in nature, cutting across numerous product categories, sectors, and MSA responsibilities. This in turn may spread MSA resources too thin, limiting the effective enforcement of all necessary product requirements.

2.2.2. Effectiveness of market surveillance activities and powers

The prevailing view among surveyed MSAs is that both the scope of their market surveillance **activities and their powers are sufficient** to achieve product safety objectives for effective consumer protection. While the prevailing sentiment regarding the activities and powers of MSAs is positive, there are several recurring challenges identified by MSAs as limiting factors to their effectiveness. Mainly, these include the lack of sufficient human and technical resources, which are determined at Member State level, and the lack of sufficient tools to deal with the myriad of challenges posed by the growth of e-commerce.

Insufficient resources. The results of the survey indicate that the lack of human and technical resources is hindering the effectiveness of market surveillance activities and powers. A widely expressed challenge is that while the amount of resources made available by Member States to their respective MSAs has generally remained the same since the entry into force of the MSR, MSAs' responsibilities have increased in scope and complexity as a result of the MSR.

¹⁵ Regulation (EU) 2017/746.

¹⁶ COM(2022) 142.

¹⁷ COM(2023) 155.

Human resources. The lack of market surveillance personnel, which is a solely national competence, is the most frequently mentioned factor limiting the effectiveness of the activities and powers of MSAs. The results of the survey point to the following challenges:

- The Czech SLO points out that frequent changes in EU legislation and the training required make it difficult for MSA staff to navigate complex legal requirements, compliance with procedural rules, as well as new and emerging business models given their resources.
- MSAs in Greece, Finland, and Italy note that insufficient staffing levels challenge the ability to carry out efficient and comprehensive market surveillance activities, while other MSAs indicate that persistent staff vacancies are forcing them to prioritise random product checks over more comprehensive or proactive market surveillance.

Technical resources. The MSR has significantly addressed the historical concerns about the technical resource limitations faced by MSAs. In particular, Article 21 of the MSR introduces the creation of European Union Testing Facilities (EUTFs) to increase product testing capacity for more consistent EU-wide market surveillance. The EUTFs initially focused on the radio equipment and toys' sectors, and a call has since been published by the Commission in August 2023 to select EUTFs for construction and eco-design and energy labelling products¹⁸. Despite the progress made by Article 21, the lack of technical resources remains a challenge for many of the MSAs surveyed, particularly for smaller Member States:

- **Lack of sufficient product testing facilities.** This was identified by several MSAs as limiting their ability to carry out effective market surveillance. Some MSAs, such as in Latvia, rely on external accredited laboratories in certain cases because they do not have their own. In other cases, particularly in smaller Member States, MSAs have to transfer products to neighbouring Member States for testing due to the lack of the necessary product testing facilities. This uneven distribution of product testing resources between Member States leads to an inconsistent application of market surveillance across the EU.

Market surveillance activities in response to e-commerce. As noted in section 2.1.4., the MSR has provided MSAs with new and enhanced powers in the area of e-commerce. These powers include the ability to block access to web interfaces of online sellers in instances of persistent non-compliance or risk. However, the survey results indicate that MSAs in general are still **struggling to keep pace** with the monitoring and enforcement of **online sales**.

A major obstacle impeding the effectiveness of market surveillance activities and powers concerns products sold through global online platforms outside the EU. Although Article 14 of the MSR grants powers to MSAs for investigative and enforcement measures against economic operators, many MSAs believe these powers are insufficient for the challenges they face. While certain MSAs view the ability to restrict access to an online retailer's website in the event of persistent product non-compliance or risk as an extreme measure to be used in rare and serious cases, others feel that this power, among others granted by the MSR, **does not go far enough in the context of international e-commerce**:

- In Denmark and Germany, MSAs highlight the challenge in effectively using the MSR's power to block online sales of non-compliant products in practice, noting that this does not prevent such products from being sold.

¹⁸ European Commission, 2023, *Selection of European Union testing facilities - Call for expression of interest GRO/IMA/23/2711/13161*, Available at: https://single-market-economy.ec.europa.eu/calls-expression-interest/selection-european-union-testing-facilities-groima23271113161_en.

- According to authorities from Sweden and Finland, new tools and legal measures are required to better prevent non-compliant products via global e-commerce platforms.

2.2.3. Coherence of the market surveillance framework

The entry into force of the MSR has made significant progress in strengthening the coherence of the EU market surveillance framework. However, certain gaps and challenges remain.

Improved national coordination. The organisational changes introduced by Article 10 of the MSR, including the establishment of SLOs and coordination mechanisms to improve cooperation between MSAs at national level, have led to a more consistent oversight among different national authorities, especially in highly decentralised national structures.

Duplicative market surveillance responsibilities. Regulatory overlap between sector-specific legislation and the MSR was identified as an issue that undermines coherence. As noted by an MSA in Ireland, this challenge limits coordination between competent authorities at sectoral level.

Expanding product requirements. The proliferation of EU legislation setting horizontal product requirements across sectors was identified as a potential threat to coherence in enforcing both product safety and compliance. With many MSAs organised according to sectoral expertise, the rise in horizontal product rules spanning multiple sectors could overwhelm market surveillance personnel and create enforcement gaps.

Inconsistent availability of resources. The MSR has made significant progress in addressing the capacity constraints of MSAs, including through the EUTFs and EU funded joint actions (e.g. the Product Safety Forum of Europe), but gaps remain due to national funding levels and varying access to human and technical resources. These disparities hamper the consistent monitoring and enforcement of market surveillance across the EU. Economic operators may exploit these disparities in product testing resources, thereby jeopardising the coherence of the EU market surveillance framework. Overall, the uneven distribution of product testing facilities compromises the coherence of EU market surveillance, some less well-equipped Member States potentially testing fewer products than others.

3. GAPS AND CHALLENGES IN EU MARKET SURVEILLANCE

KEY FINDINGS

E-commerce sales have increased significantly in Europe over the last decade, accelerated by the COVID-19 pandemic. They have affected market surveillance activities and raised additional concerns about product compliance and safety. The MSR recognises the challenges posed by online shopping and introduces new rules to improve the accountability of actors involved in e-commerce. However, some issues persist, particularly in relation to the traceability of products sold online. Traceability concerns are exacerbated by the complexity of modern supply chains, new sales methods and difficulties in identifying the relevant economic operator under Article 4 of the MSR, making it unclear who to contact if follow-up action is required, especially for products from third countries.

This chapter examines the gaps and challenges in EU market surveillance, focusing on e-commerce. It begins by outlining the growth of online sales in Europe and its impact on the effectiveness of market surveillance. It then delves into the issue of product traceability, investigating its main drivers. The chapter concludes by examining the challenge of identifying products made by forced labour in the context of market surveillance.

3.1. The growth of online purchases and deliveries

A key challenge for effective EU market surveillance is the proliferation of online product sales: based on Eurostat data, 74.6 % of EU internet users bought or ordered goods online in 2022¹⁹, representing an increase of nearly 12 percentage points since 2016²⁰. From the survey results, the increase in online sales was identified as a top concern by a significant share of MSAs.

The COVID-19 pandemic accelerated this trend. In several EU Member States, restrictions limiting in-person contact led to a significant increase in the volume of online purchases and deliveries²¹. Based on data from the UN Conference on Trade and Development (UNCTAD), this rise continued after the end of the pandemic²². A number of MSAs surveyed flagged the increase of e-commerce shopping due to the COVID-19 pandemic²³.

The increased prevalence of online shopping has complicated market surveillance efforts in the EU, as it is easier for consumers to purchase goods from third countries while, at the same time, online retail platforms do not always have effective mechanisms to monitor or recall these products in case of non-compliance or if they pose a safety risk.

Furthermore, the survey results indicate that the rise of **e-commerce has impacted the available resources for market surveillance activities**. For example, the surge of products purchased online

¹⁹ Eurostat, 2022, *Internet purchases by individuals (2020 onwards)*, Available at: https://ec.europa.eu/eurostat/databrowser/view/ISOC_EC_IBGS_custom_7423206/default/table?lang=en.

²⁰ Eurostat, 2022, *Internet purchases by individuals (until 2019)*, Available at: https://ec.europa.eu/eurostat/databrowser/view/ISOC_EC_IBGS_custom_7423206/default/table?lang=en.

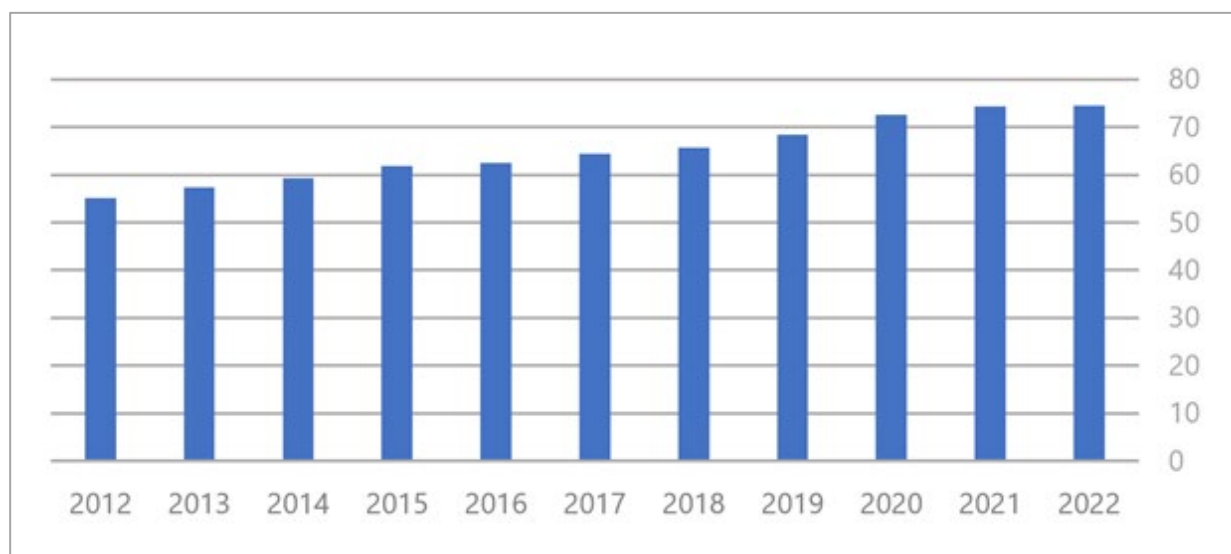
²¹ OECD, 2021, *The role of online platforms in weathering the COVID-19 shock*. Tackling Coronavirus Reports, Paris, Available at: <https://www.oecd.org/coronavirus/policy-responses/the-role-of-online-platforms-in-weathering-the-covid-19-shock-2a3b8434/>.

²² UNCTAD, 2022, *COVID-19 boost to e-commerce sustained into 2021, new UNCTAD figures show*, Available at: <https://unctad.org/news/covid-19-boost-e-commerce-sustained-2021-new-unctad-figures-show>.

²³ For instance, this is what was confirmed by the Austrian Federal Ministry for Social Affairs, Health, Care and Consumer Protection, the Luxembourgish Environment Administration, the Romanian Labour Inspectorate, the German Federal Network Agency, the Hungarian Budapest Government Office, the Latvian Ministry of Economics, the German Federal Motor Transport Authority, the Bulgarian Customs. The Hessian Directorate of Weights and Measures stated that online retail was given a greater focus due to the pandemic.

has led several MSAs to reallocate resources, both human and technological, to this particular area, as underlined by MSAs in the Netherlands and Slovenia. In addition, a number of surveyed MSAs from Finland and Germany, for example, indicated that they did not have sufficient resources to meet the challenges posed by e-commerce.

Figure 1: Evolution of online sales in the EU from 2012 to 2022



Source: Eurostat[isoc_ec_ibuy].

Note: For 2020, estimates are provided. For 2021, there is a break in time series.

Concerns about the safety of products sold online have also been raised. Research conducted by the European Consumer Organisation (BEUC) in 2021 found that 66 % of 250 products tested purchased online were unsafe²⁴. This finding is consistent with the reported experiences of many MSAs surveyed, including those from Portugal and Belgium. Furthermore, an MSA in Germany suspects that the products tested represent only a small fraction of non-compliant products entering the EU market.

Tackling these issues posed by e-commerce is a key focus of the MSR. One of the main objectives of the MSR is to ensure that products comply with EU harmonisation legislation, regardless of whether they are placed on the EU market by online or offline means. Several articles of the MSR address online sales with the aim of improving the compliance of e-commerce goods, for example by facilitating the identification of economic operators involved in this type of sale.

Despite the many advancements in the MSR, certain challenges with online sales remain, as highlighted by many MSAs surveyed, particularly concerning the traceability of products sold on e-commerce platforms. The following section provides further details.

3.2. Product traceability and enforcement

Alongside the issue of online sales is the challenge of product traceability. The ability to trace the origin of a product and its components is a crucial aspect of product compliance. Traceability requirements can enable authorities to further investigate a non-compliant product and take action to remove it from the market, as well as ensure the correct identification of importers, producers, and distributors who can be contacted in case of remedial or punitive action.

²⁴ BEUC, 2021, *Is it safe to shop on online marketplaces?* Available at: https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-004_is_it_safe_to_shop_on_online_marketplaces.pdf.

Many MSAs surveyed confirmed the challenges in tracing products sold online. Two factors appear to be the main drivers of this problem: firstly, the complexity of tracing the production and distribution of goods sold online throughout the supply chain; and second, the difficulty of identifying the relevant economic operator under **Article 4 of the MSR**.

3.2.1. Complex supply chains and novel sales strategies

In the age of globalisation, supply chains have become increasingly complex. With this growing complexity, the breadth and scale of online sales has increased enormously and is, in turn, one of the main concerns of the MSR²⁵.

This concern is shared by several MSAs surveyed, who report **difficulties in tracing products sold via e-commerce** throughout their production and distribution chain. Products sold online make already complex supply chains even more difficult to monitor, especially when the goods sold come from outside the EU. This situation challenges the ability to effectively implement the MSR, especially with regard to economic operators from countries outside the EU.

Difficulties in traceability throughout the production and distribution chain are sometimes reinforced by the novel ways in which online sales are made. For instance, MSAs in Latvia and Iceland point out that **basic information about the products and the distributor is missing** when sales are made via social media. Furthermore, MSAs in Sweden and Poland note that business models such as dropshipping²⁶ make monitoring activities more burdensome.

3.2.2. Article 4 of the Market Surveillance Regulation

Article 4 of the MSR requires that for each product placed on the EU market²⁷, a relevant economic operator established in the Union must be present to carry out certain tasks as mentioned in Section 2.1.1. This economic operator can be either **a manufacturer, an importer, an authorised representative or a fulfilment service provider**²⁸ located in the EU.

However, a number of MSAs report **difficulties in identifying the responsible economic operator** (also called the responsible person) for products sold through online platforms, especially for sellers located outside the EU. Information on distributors is often absent, limiting potential contact with them. For instance, a German MSA expressed concerns about the issue of fake authorised representatives and called for greater efforts by online platforms to ensure product conformity and to report product violations. Conversely, an MSA from Latvia reported that there are increasing cases of products being delivered directly to the consumer from outside the EU with no responsible person within the EU. BEUC representatives also reiterate these challenges, pointing to issues related to Article 4 and emphasising that e-commerce platforms are not sufficiently held liable for non-compliant or dangerous products sold through their services. In a workshop organised with MSAs, customs

²⁵ Regulation (EU) 2019/1020, Recitals 12 and 13.

²⁶ "Dropshipping is an order fulfillment option that allows ecommerce businesses to outsource the processes of procuring, storing, and shipping products to a third party—typically a supplier". Source: Amazon, 2023, *What is dropshipping? How does it work in 2023?* Available at: <https://sell.amazon.com/learn/what-is-dropshipping#:~:text=Dropshipping%20is%20a%20business%20model,without%20handling%20inventory%20and%20fulfillment>.

²⁷ A product placed on the EU Market means a product made available (supplied for distribution, consumption or use on the EU market in the course of a commercial activity, whether in return for payment or free of charge) for the first time on the Union market. Source: European Commission, 2022, *The 'Blue Guide' on the implementation of EU product rules 2022*, Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2022:247:TOC>.

²⁸ Fulfilment service providers are defined in Article 3(11) of the MSR as any natural or legal person that offers, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching, without ownership of the products involved, with the exclusion of postal services.

authorities, EC representatives and other industry stakeholders on the preliminary findings of this study, a BEUC representative underlined that economic operators are able to sign a contract with an authorised representative even before the product they are selling enters the EU market, and once it has entered the EU market, the contract can be terminated.

According to the Guidelines for Economic Operators under Article 4 of the MSR²⁹, 'Products offered for sale online, or through other means of distance sale, are considered to be made available on the market if the offer is targeted at end-users in the EU'³⁰. If an online marketplace is also a manufacturer, importer, authorised representative or fulfilment service provider operating in the EU, it could act as the economic operator referred to under Article 4.

On this note, the question is how actors involved in online sales (and especially e-commerce platforms) fall into one of the economic operator categories listed in Article 4. According to Article 3(8) of the MSR, any legal person who manufactures a product or has a product designed or manufactured under its trademark is to be considered as a manufacturer. The EC's Blue Guide clarifies that the definition is cumulative: if a product is traded under another person's name or trademark, this person is to be considered as the manufacturer³¹.

Accordingly, it appears that vendors based outside the EU who sell products on e-commerce platforms are considered to be manufacturers. Therefore, they must appoint a relevant economic operator within the EU, either an importer or an authorised representative, to perform the task required by Article 4 of the MSR.

When it comes to the role of e-commerce platforms in the context of market surveillance, there appears to be no consistent approach among the largest companies. For example:

- **Amazon** has previously acted as an authorised representative for non-EU vendors wishing to sell their products into the EU market via the Amazon Responsible Person Service. However, the company stopped providing this service to new sellers as of 19 June 2023, and will eventually close the service down on 31 March 2024³². The platform also offers sellers fulfilment through its Fulfilment by Amazon service once the product has arrived in the EU. Amazon provides a list of partners that act as authorised representatives and international shipping companies.
- **eBay's** guidelines for selling to the EU recommend that sellers check whether the non-EU manufacturer of the good on sale has appointed an authorised representative, and if not, to work with the manufacturer to find one. These guidelines also provide a list of authorised representatives³³. Sellers can also use fulfilment service providers. In this regard, eBay launched the eBay fulfilment by Orange Connex in July 2021 in the UK³⁴, which is a direct international service that allows customers to ship to 24 countries, with the option to use a Global Shipping

²⁹ European Commission, 2021, *Guidelines for economic operators and market surveillance authorities on the practical implementation of Article 4 of Regulation (EU) 2019/2020 on market surveillance and compliance of products*, Available at: <https://ec.europa.eu/docsroom/documents/46171/attachments/1/translations/en/renditions/native>.

³⁰ Ibid., p. 6.

³¹ European Commission, 2022, *The 'Blue Guide' on the implementation of EU product rules 2022*, Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2022:247:TOC>.

³² Amazon, n.d., *Market Surveillance Regulation - Responsible Person Requirements*, Available at: <https://sellercentral-europe.amazon.com/help/hub/reference/external/GSDP2QRYVQ5SUFLE?locale=en-GB>.

³³ eBay, n.d., *Selling products with a CE symbol into the EU*, Available at: <https://www.ebay.com/help/selling/selling/CE-mark-EU?id=5225#fulfilment>.

³⁴ eBay for business, n.d., *Your solution to end-to-end fulfilment*, Available at: <https://cloud.forbusiness.ebay.co.uk/fulfilment>.

Programme. This programme allows UK eBay sellers to ship to EU countries as well³⁵. For US sellers, the International Shipping Program is active³⁶.

- **Wish** does not act as 'responsible person' but provides a preferred list of providers of this service³⁷.

Furthermore, the diverse and often unclear range of roles that e-commerce platforms can assume (from authorised representatives to fulfilment service providers) creates additional complexities in the identification of the responsible economic operator and ultimately, in ensuring accountability for products sold online.

It should be underlined that additional provisions to address the issue of traceability of products sold online beyond the MSR have recently been adopted. The **GPSR seeks to address these challenges by establishing specific product safety obligations for both economic operators and providers of online marketplaces**³⁸. For instance, the latter are required to designate a single point of contact to enable communication exchange with MSAs, and a single point of contact to allow consumers to communicate with them on product safety issues.

The DSA also aims to address traceability issues. For example, Article 22 of the Regulation imposes certain obligations on online platforms to ensure that they obtain specific information on the traders that wish to use their services³⁹. Online platforms must also ensure that this information is reliable and request that the trader makes the necessary corrections if the information provided is inaccurate⁴⁰. In addition, the online interface of the platform must be organised in such a way to enable traders to comply with their pre-contractual and product safety information obligations⁴¹.

3.2.3. Products made with forced labour

Another key concern behind traceability is to ensure that products entering and sold on the EU market are not produced using forced labour. The ILO estimates that 49.6 million people were living in modern slavery in 2021, of which 27.6 million were in forced labour conditions, 12 % of whom are children⁴². Forced labour therefore remains a pressing concern.

As the identification of forced labour does not explicitly fall within the scope of MSR, the surveyed MSAs did not raise any product compliance concerns in this regard. However, awareness of challenges related to identifying products made from forced labour were raised by the customs authorities of Belgium and Bulgaria. The former claimed to have provided feedback on the forced labour proposal and raised questions about the competent authority and the exact functioning of the database to

³⁵ eBay, n.d., *Global shipping programme*, Available at: https://www.ebay.co.uk/help/global-shipping-programme/default/global-shipping-programme?id=4646&norover=1&mkevt=1&mkrid=710-153696-560033-8&mkcld=2&mksid=102&keyword=&crp=597787094877_&MT_ID=&geo_id=&rlsatarget=dsa-764521878456&adpos=&device=c&mkttype=&loc=1001010&poi=&abclid=&cmpgn=2033188068&sitelink=&adgroupid=71572595973&network=g&matchtype=&gclid=CjwKCAjwu4WoBhBkEiwAojNdXkiG4SdWBcpKG1IVNQkajzM-kUcsNeQiiAgCekSiNJ1bpo5Igd1MhoC1L4QAvD_BwE.

³⁶ eBay, n.d., *Introducing eBay International Shipping*. Available at: <https://www.ebay.com/sellercenter/shipping/ebay-international-shipping>.

³⁷ Wish, n.d., *How to comply with the EU Market Surveillance Regulation 2019*, Available at: https://merchanthelp.wish.com/s/article/mu1260805801570?language=en_US.

³⁸ Regulation (EU) 2023/988.

³⁹ Regulation (EU) 2019/1020, Article 22 (1).

⁴⁰ Ibidem, Article 22(2) and 22(3).

⁴¹ Ibidem, Article 22(7).

⁴² ILO, 2022, *Forced labour, modern slavery and human trafficking*, Available at: <https://www.ilo.org/global/topics/forced-labour/lang-en/index.htm>.

identify forced labour risks.

In any case, **measures are underway to improve the identification of products made with forced labour**. A proposal for a regulation to prohibit products made with forced labour was published by the EC in 2022⁴³. As outlined by Chapter III of the proposal, the regulation would allow customs authorities to identify and stop products made with forced labour at national borders and national enforcement authorities to withdraw products made with forced labour from the EU market. The chapter foresees close cooperation among customs authorities and between customs authorities and competent authorities, also through the use of electronic means. The proposal has yet to be adopted by the European Parliament and the Council.

4. CROSS-BORDER COOPERATION BETWEEN MARKET SURVEILLANCE AUTHORITIES

KEY FINDINGS

Cross-border mechanisms at EU, national, and international level promote cooperation and information exchange between EU Member States via MSAs. Establishing working bodies and SLOs has improved cooperation with customs authorities. Digital tools such as ICSMS and Safety Gate are effective, but adoption is uneven across Member States. Key barriers include resource constraints, diverging approaches, and EU coordination shortcomings. E-commerce has improved cross-border information exchange and joint projects, while the COVID-19 pandemic has led to improved sectoral coordination and use of digital tools.

4.1. Current state and role of cross-border cooperation

This section provides an overview of cross-border cooperation mechanisms and how they were impacted by the entry into force of the MSR.

4.1.1. Overview of cross-border cooperation mechanisms

MSAs collaborate across borders via a wide variety of mechanisms and channels. The extent and nature of collaboration can vary depending on factors such as the specific sector, product types and the regulatory framework in place. The cross-border exchange of information and collaboration is enabled by several networks and tools at the EU, national and international level.

At EU level, the main **working bodies** are:

- **The EU Product Compliance Network (EUPCN)**: established through the MSR⁴⁴, the EUPCN exists to 'structure the coordination and cooperation between MSAs in EU countries', including cross-border issues and the development of guidance in applying the MSR⁴⁵. It is composed of representatives from each Member State, including representatives from SLOs, optional additional national experts, chairpersons of Administrative Cooperation Groups (AdCos), and EC representatives.

⁴³ COM(2022) 453 Final.

⁴⁴ Regulation (EU) 2019/1020, Article 29.

⁴⁵ European Commission, 2023, *EU Product Compliance Network*, Accessed here: https://single-market-economy.ec.europa.eu/single-market/goods/building-blocks/market-surveillance/organisation/eu-product-compliance-network_en.

- **Administrative Cooperation Groups (AdCos):** informal groups of MSAs which are organised by sector and meet multiple times per year 'to discuss market surveillance issues in their area of competence, and to ensure efficient, comprehensive and consistent market surveillance'; their objectives also include increasing the efficiency of market surveillance in light of Member States' different systems, reinforcement of cooperation, and the identification of common approaches⁴⁶. AdCos are coordinated by the EUPCN.
- **The Committee on market surveillance and compliance of products:** a Committee convened by DG GROW which includes representatives from the EC and Member States⁴⁷. The main activities involve the promotion of cooperation in market surveillance and acting as a forum for discussion and exchange of best practice.
- **Consumer Safety Network ('CSN'):** a network made up of experts from EU and EFTA countries (as well as some additional candidate countries and selected stakeholders)⁴⁸. The network discusses consumer safety in relation to products and services, facilitating the exchange of expertise and good practice. It also provides expert advice to the EC on implementing measures before these are submitted to committees.

To foster collaboration at **sectoral level**, there are a number of **expert or working groups** organised by the EC to provide specialist advice and expertise (e.g., Medical Device Coordination Group, Platform of EU MSAs in Cosmetics), as well as sector-specific agencies or organisations (e.g., European Chemicals Agency, ECHA; European Cooperation in Legal Metrology, WELMEC; Competent Authorities for Medical Devices, CAMD). Those have garnered significant recognition and participation from MSAs. In fact, these groups are prominently referenced and endorsed in various national strategies developed by MSAs. Additionally, survey results consistently highlight the **instrumental role these groups** play in facilitating cooperation, enabling the exchange of best practices, and enhancing the collective knowledge and capabilities of MSAs in their respective sectors.

Collaboration is further enhanced by two main **digital tools**. The main interface where MSAs can report products that are identified as dangerous, have been withdrawn, or otherwise require the attention of MSAs in other countries, is the **Safety Gate** rapid alert system for dangerous non-food products⁴⁹ (previously known as the Rapid Exchange of Information System, or 'RAPEX'). This system allows an MSA in one Member State to quickly register recalls or product safety risks, and any voluntary or mandated corrective measures. Information registered within the platform is available to an MSA and other stakeholders as well as the general public, and annual reports are produced which summarise the notices published on the system. **ICSMS** provides a comprehensive communication platform for MSAs to coordinate market surveillance across borders and exchange information⁵⁰. It also allows MSAs to cooperate on cross-border infringement and includes a function where the public can search for recalled products and responsible authorities.

Lastly, MSAs also collaborate at EU level via **joint actions and cross-border projects**. In this regard, joint actions organised by PROSAFE and cross-border projects such as CASP (Coordinated Activities on the Safety of Products) or REF (REACH-EN-FORCE projects organised by ECHA) were found to be

⁴⁶ European Commission, 2023, *Administrative Cooperation Groups (AdCos)*, Accessed here: https://single-market-economy.ec.europa.eu/single-market/goods/building-blocks/market-surveillance/organisation/adcos_en.

⁴⁷ European Commission, 2023, *Committee (C52400) on market surveillance and compliance of products*, Accessed here: <https://ec.europa.eu/transparency/comitology-register/screen/committees/C52400/consult?lang=en>.

⁴⁸ European Commission, 2023, *Consumer Safety Network (E00935)*, Accessed here: <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupId=935>.

⁴⁹ European Commission, 2023, *Safety Gate: the EU rapid alert system for dangerous non-food products*, Accessed here: <https://ec.europa.eu/safety-gate-alerts/screen/webReport>.

⁵⁰ This information system is set up in accordance with Regulation (EC) 765/2008, Article 23.

particularly relevant and useful by survey respondents. In particular, those are perceived as effective tools for addressing specific challenges and resolving ambiguities in harmonisation of legislations, thereby contributing to the unified understanding of product specifications across national borders.

At **national level**, collaboration between Member States often involves shared interests, proximity, or language similarities. For instance, collaboration between Germany and Austria is strong due to market size and corporate linkages, as well as the fact that a large proportion of toy/cosmetic products are shipped to Austria via Germany. Similarly, Luxembourg, Belgium and France collaborate closely due to proximity and shared language. This cooperation typically involves information exchange, guidance and advice, and addressing non-conformities. Regional clusters have also developed. A notable example is cooperation among Nordic countries (Denmark-Finland-Sweden-Norway-Iceland), which leverages on existing solid governance structures, such as the Nordic Council of Ministers, and exchange platforms, such as Nordsyn⁵¹.

At **international level**, only a few Member States report in their National Strategies collaboration with third countries or participation in initiatives organised by international organisations or agencies. Those include: Belgium, which participates in working groups such as RAPEX-China or actions such as awareness raising campaigns by the Organisation for Economic Co-operation and Development (OECD), Estonia, which is part of international cooperation networks such as the International Consumer Protection and Enforcement Network (ICPEN,) and Germany, which highlights its cooperation with Canada and the USA to gather valuable information for further developing market surveillance strategies.

4.1.2. Evolution of cross-border cooperation

Survey results show that while several MSAs report that they did not experience significant changes to their cross-border cooperation mechanisms with the introduction of the MSR, a few others mentioned that it has led to **new avenues for cooperation, harmonisation of practices, and improved communication**. For instance, survey respondents highlighted the benefits of more centralised governance at national level via the establishment of SLOs (Article 10 of MSR) and the vast majority praised the usefulness of EU-level working bodies, mainly the EUPCN and AdCos. Expert working groups and joint actions are also seen as effective tools for addressing specific challenges and resolving ambiguities in harmonisation of legislations. In this regard, interviews with EC representatives, for instance, indicate for instance that the budget for joint actions has increased following the entry into force of the MSR.

The MSR has also **enhanced the usage and scope of the ICSMS** (Article 34), by enlarging the access to the EC, SLOs, and customs and MSAs (also creating a dedicated interface to allow effective communication between the latter two). In this regard, cross-border requests for mutual assistance or information exchange are widely used across MSAs, marking their effectiveness, as elaborated further below.

4.2. Effectiveness of existing cooperation mechanisms

This section begins by assessing the effectiveness of cross-border cooperation mechanisms (i.e., digital tools such as ICSMS and Safety Gate), followed by an overview of the most common cross-border cooperation barriers.

⁵¹ Nordsyn is a collaborative project aimed at promote the work of Nordic countries' authorities with ecodesign and labelling. Source: Nordic Energy Research, 2022, *About Nordsyn*. Available at: <https://www.nordicenergy.org/article/about-nordsyn/>.

4.2.1. Effectiveness of ICSMS and Safety Gate in cross-border collaboration

Two main digital tools, ICSMS and Safety Gate, are **widely used** among MSAs, as reported in their national market surveillance strategies and survey outcomes. They are seen as **valuable tools for cross-border communication and coordination**. For instance, MSAs indicate that ICSMS is used to prevent redundant checks, ensure uniform market surveillance across the EU, also preventing competitive distortions, and simplify the process of transferring responsibilities ("baton passing") to other Member States in cases of enforcement. New capabilities for cross-border requests for information, assistance or enforcement (Article 34 MSR) have streamlined and strengthened cooperation across MSAs. Safety Gate is viewed as particularly effective when it comes to facilitating rapid intervention, sharing information about products with serious risks, and exchanging information on dangerous products and actions taken between MSAs.

However, survey respondents emphasised certain **areas for improvement** in both digital tools. For **ICSMS**, the main factors limiting effectiveness include:

- **Limited harmonisation.** Inconsistent usage of digital tools between Member States, which may create discrepancies and data quality concerns (e.g., non-uniform data-entry, use of the acceptance and inconsistent baton handovers between MSAs).
- **Limited participation.** Not all MSAs regularly use ICSMS for cross-border cooperation, affecting the effectiveness of the tool. For example, this issue was highlighted by an AdCo representative, suggesting that one reason behind limited uptake could be data privacy concerns among some Member States.
- **Sector-specific limitations.** This may result in lower usage of the tool from MSAs dealing with those product types. Examples mentioned by MSAs include: i) limited number of entries in the pressure equipment sector, often lacking quality and detail, ii) lack of suitability for product types and regulations of the chemical sector, iii) lack of agreements on the definition of 'in-depth check of compliance' (as per Article 34(4)) between MSAs within a certain product category (e.g., cosmetics), causing uncertainty in data entries. In addition, many MSAs in charge of medical products use the European Database on Medical Devices (EUDAMED) exclusively⁵².
- **Interoperability with national databases.** As per Article 34 of the MSR, SLOs enter information into the system, such as basic information on the identity of the MSA and their areas of competence, and information on products available on the market, including details of compliance checks and in-depth inspections conducted by authorities. MSAs in Germany and Austria noted that in some cases this information is already compiled in national databases. In addition, AdCo CPR Italy noted that uploading information is very resource intensive (which is particularly a problem in smaller Member States, e.g. Cyprus and Malta). To address these concerns, the EC created an interface to link national databases to the ICSMS, mitigating duplicate entries. However, the process required to set up this solution is time consuming, which is a challenge particularly for Member States with limited market surveillance resources.

For **Safety Gate**, some MSAs reported **limited or no engagement** with the platform. This is mainly due to the fact that the system is less applicable for certain types of products. For instance, medical devices, which are subject to other dedicated systems, as well as marine equipment, radio equipment, and energy-related products in the area of eco-design and energy labelling, are outside the scope of the Safety Gate's applicability.

⁵² According to the MSR, when sectoral legislation already provides for electronic systems for cooperation and data exchange, as is the case of EUDAMED for medical devices, those systems should be kept in use.

4.2.2. Cross-border cooperation barriers

According to the survey, key barriers to seamless cross-border cooperation among MSAs include: **resource constraints**, divergent **approaches and national priorities** between Member States, and **limitations in EU cooperation mechanisms**. These barriers are discussed in turn.

Resource constraints

The level of resources available to MSAs primarily lies within the competence of the Member States. Even so, the survey indicated how different resource capacities of MSAs across Member States can result in the inconsistent application of market surveillance at EU level. The survey results show that resource constraints pose a barrier to cross-border cooperation in terms of overall funding, personnel, and technical infrastructure:

- **Funding** varies between Member States, resulting in an uneven landscape of market surveillance capacity and availability for cross-border cooperation activities. MSAs from multiple Member States identified budgetary limitations as an obstacle preventing their effective participation in cooperation activities.
- **Staff shortages** are another major obstacle. Both regional and national MSAs in Germany cited a lack of qualified staff available for communication and cooperation with other Member States, while an MSA in Slovakia noted the lack of appropriate staff training and their limited language skills as key barriers.
- **Technical infrastructure** for conducting effective market surveillance was identified by several MSAs, such as Malta and Romania, as an obstacle to seamless cooperation. In addition, Cyprus and Ireland highlighted their geographical isolation and the resulting logistical challenges in carrying out product testing as a major constraint.

Divergent approaches and national priorities

The survey results indicate that differences in language, organisational structure, working methods, and national strategic priorities pose a challenge to effective cross-border cooperation. For instance, MSAs from Sweden, Poland, and Latvia, among others, noted that the level of risk assessed by Member States can vary considerably among them as a result of their respective national market surveillance strategies and priorities.

Specific challenges identified include observation by a German MSA noting the limited focus of some landlocked Member States on surveillance of marine equipment, which hampers collaborative initiatives. Meanwhile, a Spanish MSA pointed to differences in the adoption of sectoral legislation between Member States, which makes it difficult to reach consensus on cross-border cooperation.

Differing approaches to market surveillance also limit the effectiveness of digital tools for cross-border cooperation. For example, MSAs in Germany and Latvia cite inconsistencies in the information being uploaded to ICSMS and other tools by Member States as limiting their usefulness. At an organisational level, several MSAs surveyed indicate that the different national market surveillance structures make it difficult to identify the right cross-border contact point.

Limits of EU cooperation mechanisms

Several MSAs identified the **unresponsiveness of their cross-border counterparts** when contacted via EU cooperation mechanisms as a key factor limiting effective market surveillance. As previously discussed, this can be explained in part by the limited capacity of certain MSAs which prevents them from participating in cooperation activities. Another explanation is attributed to what certain MSAs, such as in Germany and Denmark, cite as the administrative burden involved in cross-border

cooperation.

MSAs also identified **limitations of ICSMS and Safety Gate** in terms of user accessibility. While Article 34 of the MSR has made a number of improvements to the ICSMS in response to previously identified issues with the tool, challenges remain. For instance, the interface is seen as difficult to navigate, and documents attached to the platform tend to be in national languages.

4.2.3. The effect of e-commerce and COVID-19 on cross-border cooperation

While nearly half of surveyed MSAs indicated **no clear direct impact from the rise of e-commerce or the COVID-19 pandemic** on the cross-border cooperation of market surveillance, other MSAs noted that both factors have in fact facilitated greater cross-border cooperation.

The rise of e-commerce

E-commerce led to **more joint cross-border projects** and **improved information sharing** via EU systems. Among survey respondents, there is consensus regarding the ability of EU platforms to facilitate cooperation. For instance, a Polish MSA found EU coordinated joint projects, i.e., The Internet Sweeps and JAHARP 2021, as helpful, and a Slovenian MSA valued EUPCN actions. Furthermore, a Swedish MSA also pointed out the value of regional e-commerce initiatives for Nordic countries. Even so, a Slovenian and a Norwegian MSA highlighted that the growth of e-commerce requires more cross-border cooperation between MSAs.

COVID-19 pandemic

The COVID-19 pandemic has resulted in improved cross-border collaboration in two ways. First, **it prompted enhanced sectoral coordination between Member States** in the field of medical supplies and personal protective equipment. MSAs from Slovenia and Poland underscored the success of the EU-coordinated project CASP Corona2020, while MSAs in Spain and Germany found that information was exchanged swiftly in response to challenges faced by COVID-19.

Secondly, **the pandemic catalysed the use of digital tools among MSAs**, enhancing knowledge sharing and greater participation in workshops and meetings, leading to time savings. For instance, an MSA in Germany noted that the pandemic popularised the use of video conferencing, which improved communication with authorities at EU and Member State level, while a Slovenian MSA implemented organisational changes that aided its participation in cross-border activities.

5. COOPERATION WITH AND AMONG CUSTOMS AUTHORITIES

5.1. Current state and role of cooperation with and among customs authorities

KEY FINDINGS

The national customs authorities and MSAs in the EU have strong cooperation through digital tools, information exchange networks, and formal agreements. The MSR has improved cooperation, especially through ICSMS and SLOs, as well as a common understanding of the roles and responsibilities of the different authorities involved. However, barriers to coordination between MSAs and customs authorities persist, including different working methods and limited sectoral knowledge among customs authorities. For cooperation among customs authorities, limited resources and the low quantity and quality of alerts (RIF messages) are identified as obstacles. Both the growth of e-commerce and the COVID-19 pandemic have elevated the need for cooperation, while also increasing the administrative burden on already resource-constrained customs authorities.

This section provides an overview of the cooperation mechanisms among customs authorities and between customs authorities and MSAs.

5.1.1. Overview of cooperation among customs authorities

There is **strong cooperation among national customs authorities in the EU**, most often between neighbouring Member States. Cross-border cooperation mainly relies on spontaneous declarations and alerts, typically using RIFs on the Customs Risk Management System (CRMS2). This mechanism involves sharing information on customs-related matters such as illegal goods, risks and enforcement actions. Other communication systems used include AFIS-email (Automated Fingerprint Identification System), SIENA (Secure Information Exchange Network Application), and ICS2 (Import Control System 2). These systems enable secure information exchange and coordination.

Other initiatives include:

- **Unique Networks at EU and international level**, such as EU expert groups where customs authorities discuss and share best practices and experiences (e.g., Prohibitions and Restrictions expert group). Additionally, there are a number of EU and international platforms and entities fostering cooperation as well as enhancing the effectiveness of customs authorities' actions (in general and when it comes to targeted customs controls, especially during joint customs' operations). Those include Interpol, World Customs Organisation (WCO), Europol, European Anti-Fraud Office (OLAF), and the EU Rummage Group.
- **Bilateral and trilateral cross-border agreements with neighbouring countries**, for instance between Estonia, Latvia and Lithuania, or among Nordic States, formalised in the Nordic Customs Administrative Council, which consists of several subject-specific sub-groups. On top of this, Denmark and Sweden cooperate closely through a formal bilateral agreement on customs areas of interest in the Øresund-region and through informal cooperation at a day-to-day operational level. Denmark also has strong cooperation with Germany (e.g., via Wadden-Sea Operations) to exchange relevant information and coordinate their operations.

- **Joint actions** related to various aspects including enforcement and control operations. Such actions are often carried out under specific programmes at EU level or agreements such as EMPACT (European Multidisciplinary Platform Against Criminal Threats) and WCO operations.
- **Ad-hoc consultations and expert exchange visits** entailing ad-hoc communication with colleagues from other Member States, mainly to discuss thematic issues or to participate in joint inspections on an as needed basis.

5.1.2. Overview of cooperation between customs authorities and MSAs

National customs authorities partner with their respective MSAs to ensure product safety at external borders. Their cooperation strategies vary among Member States and in response to product specific challenges, organisational cultures, available resources for cooperation, and geography, but generally follow the framework set by the MSR.

Cooperation mechanisms between MSAs and customs authorities typically include:

- **Communication and information exchange** via emails, phone calls and meetings, as well as through the ICSMS and national shared communication channels. Information sharing generally concerns data on suspicious products, alerts on shipments of interest, information on potential risks and trends related to non-compliant or unsafe products entering the market. In addition, in some Member States, such as Cyprus or Italy, seminars and meetings are held between customs authorities and MSAs to better define cooperation procedures.
- **Operational collaboration**, including joint control actions to assess and inspect the safety and compliance of specific products, joint risk-analysis development and coordination of priorities on types of goods to be controlled.
- **Formal mutual assistance agreements** entailing the establishment of formal protocols, mechanisms or frameworks around cooperation. For instance, Danish MSAs have formal cooperation agreements with the Danish customs authorities, which define responsibilities, objectives and procedures. Similarly, in Romania, the main mechanism for cooperation between the two parties is via bilateral protocols. In Latvia, there are also cooperation agreements in place that regulate the scope and procedure of collaboration and information exchange. In Bulgaria, customs authorities have signed interaction instructions with MSAs to better coordinate responsibilities.
- **Capacity building and expertise sharing**, in the form of shared training and capacity building workshops, as well as ad-hoc consultations. In Slovakia, for instance, training sessions are organised annually to exchange information, experiences and develop mutual cooperation. Training events are also common in several other Member States such as Sweden, Slovenia, Italy, the Netherlands and Luxembourg.

5.1.3. Evolution of cooperation between customs authorities and MSAs

The MSR has led to varying degrees of cooperation between customs authorities and MSAs. While some countries have reported **improvements and adjustments** in their cooperation procedures, several countries have noted only **minimal changes**. In the case of the former, Estonia began discussions at national level on IT developments to comply with Article 34 of the MSR. Additionally, several MSAs and customs authorities indicated that the establishment of SLOs and the strengthening of digital tools such as ICSMS have greatly facilitated cooperation. Lastly, Chapter VII of the MSR on products entering the Union market, and especially articles related to the suspension of release for free circulation, has

enhanced the understanding of roles and responsibilities of involved parties.

Indirect challenges as a result of the MSR have also emerged. Irish authorities report that some resources have been redirected away from customs authorities in response to the MSR, and that Article 28(4) has created additional administrative burdens for customs. Legal limitations and confidentiality concerns also hinder the exchange of information between customs and MSAs.

5.2. Effectiveness of existing cooperation mechanisms

This section analyses the effectiveness and limitations of cooperation mechanisms for customs, both in their communication with MSAs and with customs authorities in other Member States.

5.2.1. Effectiveness of cooperation mechanisms

Cooperation between MSAs and customs authorities

The effectiveness of cooperation between MSAs and customs authorities varies considerably between Member States. While the MSR has not had a major impact on cooperation practices directly, several Member States have prioritised ad hoc cooperation mechanisms which are reportedly effective. For example, to overcome legal restrictions and confidentiality concerns that hindered the exchange of information between customs and MSAs, authorities in Ireland established a Memorandum of Understanding, which yielded positive results. Slovenia offers another example, where several joint training sessions have been organised to improve customs' controls. In addition, they have set up a correspondence line in Austria through the integrated tariff database of the EU (TARIC)⁵³.

The results of the survey also identified several **challenges** to cooperation between customs authorities and their respective national MSAs in the use of **digital tools**. For instance:

- **Only a small number of respondents acknowledged the role of Safety Gate (RAPEX)** in facilitating cooperation between MSAs and customs, namely authorities in Ireland, Hungary and Greece. The authorities in the medical devices, mobility and transport, and telecommunication industries have reported a minimal number of cases that were initiated through the platform in their respective sectors. Nevertheless, a German authority expressed the desire to increase the platform's use due to its potential benefits.
- **The lack of interoperability between ICSMS and national customs databases** was identified by customs authorities as a recurring problem limiting their cooperation with MSAs. However, as noted by authorities in Slovenia, Austria, and Sweden, among others, they anticipate that cooperation will improve in 2025 with the full implementation of EU CSW-CERTEX, which has been operational since 2017 through pilot projects⁵⁴.
- **The four-day response time under Article 27** of the MSR, in the event of a product being suspended by border controls, results in a **tight deadline which is difficult for MSAs** to meet, and which may jeopardise the reliability of effective cooperation between the two authorities. At the same time, this short window forces customs to take responsibility for release and to prioritise between different products.

⁵³ European Commission, 2023, *EU Customs Tariff (TARIC)*, Available at: https://taxation-customs.ec.europa.eu/customs-4/calculation-customs-duties/customs-tariff/eu-customs-tariff-taric_en.

⁵⁴ European Commission, 2023, *The EU Single Window Environment for Customs*, Available at: https://taxation-customs.ec.europa.eu/eu-single-window-environment-customs_en.

5.2.2. Cooperation barriers

Cooperation between customs authorities

Although the MSR has not led to any direct changes in the cross-border practices of customs authorities, survey respondents identified several persistent challenges that limit their cooperation in effectively protecting consumers from unsafe products, including:

- **Limited resources.** Customs authorities from Finland, Estonia and Spain reported limited financial and human resources as an impediment to effective collaboration. Furthermore, pre-existing resource limitations were exacerbated by the surge in e-commerce and the influx of medical and personal protective equipment during the COVID-19 pandemic.
- **Quantity and quality of RIF messages.** As raised by French customs authorities, spontaneous declarations from external customs authorities are not always sufficient to provide useful information for the application of targeted controls or risk assessment development.

Cooperation between MSAs and customs authorities

Both Customs authorities and MSAs were surveyed regarding the challenges they face in their coordination efforts. Both types of authorities consider **limited resources** to be a recurring challenge that limits the extent of effective cooperation between MSAs and customs authorities. This constraint was particularly pronounced among customs authorities, who widely indicate that their limited capacity has long been a pressing concern. Additional barriers, which are specific to the inherent organisational differences between MSAs and customs authorities, include:

- **Different working methods.** A large share of MSAs surveyed reported a mismatch in working methods, particularly in data recording, collection, and storage. For example, according to the German and Swedish authorities, customs codes do not always allow products to be accurately identified. In particular, information on the manufacturer is often not stored and the categorisation of products is not sufficiently specific, which makes risk profiling by MSAs difficult. This cooperation barrier is compounded by a problem identified by a German MSA: MSAs and customs authorities speak two 'different languages', which prevents the MSA from fully benefitting from the work of the customs authority at the border. Nevertheless, several respondents are confident that the recent ESPR proposal introducing a Digital Product Passport⁵⁵, as well as the EU customs reform⁵⁶, will help to overcome many of these cooperation challenges.
- **Limited knowledge of mutual rules and regulations.** The survey results show that customs authorities lack the product-specific or sectoral expertise needed to identify non-conformities, which results in a low rate of product checks. For instance, a German MSA pointed out that potentially non-conforming fertilisers are systematically under detected at the border. Customs authorities also recognised that their personnel are largely unaware of the specific requirements for certain product categories and therefore cannot consistently ensure that the correct products are detained for inspection. Customs' shortcomings in this regard are well-known to economic operators, as highlighted by an AdCo representative, noting that many try to exploit these limitations of their expertise. Another challenge is confusion among customs as to which MSA is responsible for a particular product, as mentioned by customs authorities

⁵⁵ COM(2022) 142.

⁵⁶ COM(2023) 258.

in Italy and Slovakia. Customs authorities indicate that the insufficient understanding of customs rules among MSAs further hinders effective cooperation.

Effects of COVID-19 and e-commerce on effective collaboration

When asked about the impact of the COVID-19 pandemic and the rise of e-commerce on their collaborative activities, most survey respondents did not see any major changes, while few reported a need for increased collaboration, which was often met.

The COVID-19 pandemic intensified collaboration between MSAs and customs authorities, resulting in more joint control actions and improved information exchange. In Estonia, for example, a special contact point was established between MSAs and customs. A Danish authority stated that the experience and lessons learned during this period were valuable in promoting long-term cooperation. The pandemic was also reported to be a catalyst for coordination between MSAs and customs authorities at the international level. A Slovenian MSA recalled the "Operation STOP" carried out by the WCO, which was an effective development in combating illegal trafficking, especially during the COVID-19 pandemic. However, despite the increase in effective cooperation between MSAs and customs, the COVID-19 pandemic was also responsible for administrative disruptions and delays in planned activities in some cases, as reported by Swedish and Irish authorities.

The growth of e-commerce from third countries has led to an increased workload for both MSAs and customs authorities. For example, France and Slovakia highlighted the challenge of reduced data availability to customs for risk-based assessment due to the complexity of the international value chains. This has led to an inefficient use of their resources by means of over inspecting low-risk products. Nonetheless, online sales have also led to new ways of working together. In Denmark, for example, where ensuring the safety of e-commerce took on national importance, MSAs produced specific guidance documents to assist their respective customs authorities' in identify non-conforming products at the border.

6. KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS

The MSR has strengthened EU market surveillance, including greater centralisation and coordination of MSAs nationally and cross-border. Yet challenges remain, including uneven human and technical capacity across Member States, persistent challenges posed by e-commerce, limited product traceability, inconsistent use of cooperation tools, and coordination barriers with customs. Still, the full benefits of the MSR and upcoming EU legislation may address many key issues identified in this study.

A set of 7 recommendations are proposed in relation to the 4 key aspects of this study: 1) The EU market surveillance framework; 2) Gaps and challenges in EU market surveillance – e-commerce and product traceability; 3) Cross-border cooperation between Market Surveillance Authorities; and 4) Cooperation with and among customs authorities.

The following section presents clear key findings that are drawn from the main chapters of this study. Policy recommendations are then proposed according to the key challenges identified.

6.1. Summary of key findings

Clear key findings are drawn in accordance with the main aspects of market surveillance that are investigated across the four main chapters of this study:

The EU market surveillance framework:

The MSR introduced organisational changes to further centralise market surveillance at Member State level, including the creation of SLOs and coordination mechanisms between national MSAs. This shift towards centralisation is a positive development.

MSAs believe that their activities and powers are generally sufficient. However, certain challenges remain: (1) uneven human and technical (testing facilities) capacity of MSAs across Member States; and (2) perceiving themselves as ill-equipped to ensure product compliance in response to e-commerce, despite new and strengthened powers via the MSR.

Upcoming EU legislative changes, including the GPSR, DSA, and UCC, represent further positive steps forward in addressing many of the key challenges identified by MSAs.

Gaps and challenges of EU market surveillance:

Online sales have increased significantly in the EU in recent years, accelerated by the COVID-19 pandemic, which has affected the resources available to MSAs and raised concerns over the safety of products sold via e-commerce, especially from third countries.

Traceability of products through complex supply chains is a major challenge, exacerbated by e-commerce. Limitations in identifying responsible economic operators under Article 4 of the MSR also undermine traceability for products sold online, especially from outside the EU. Key issues in this regard are difficulties in: (1) understanding the supply chain of certain products; and (2) identifying the 'responsible person' that can be held accountable under Article 4 of the MSR.

Although linked to supply chain traceability, overall awareness among MSAs of forced labour products is low as they are not covered by the MSR. A legislative proposal to ban and detect products made using forced labour on the EU market is currently underway.

Cross-border cooperation between MSAs:

MSAs cooperate across borders through various mechanisms at EU level, including working bodies, sectoral expert groups, IT tools such as ICSMS and Safety Gate, and joint actions.

While effective communication tools were in place prior to the MSR, cross-border cooperation has improved since its entry into force through SLOs, EUPCN and additional ICSMS functionality, although substantive changes are limited.

Persistent barriers to effective cross-border cooperation include differences in approaches and priorities between Member States, limitations of tools such as ICSMS, and disparities in resource capacity between MSAs.

Cooperation with and among customs authorities:

Cooperation between customs authorities and national MSAs typically involves digital communication channels, operational collaboration on joint product inspections and checks, formal mutual assistance agreements, and shared training sessions to exchange expertise.

While the MSR has improved the understanding of the roles of customs and MSAs, persistent cooperation barriers include resource constraints, inconsistent use of digital tools (e.g. ICSMS), and difficulties for MSAs in responding to customs in the event of a suspended product.

6.2. Policy recommendations

The following recommendations are proposed in accordance with the key aspects of market surveillance that are investigated across the four main chapters of this study:

The EU market surveillance framework:

- **Training and resource allocation for market surveillance.** Recognising that many MSAs lack human and technical resources, the EC may establish joint training centres and programmes for inspectors. These centres could be operated in cooperation with MSAs from different Member States to share knowledge, including training on new technologies, product regulations and enforcement procedures. The creation of EUTFs is a positive step towards increasing the EU's product testing capacity, especially for Member States with limited technical resources. The implementation of this measure should expand, taking into account Member States that are particularly under-resourced and dependent on external facilities to ensure that EUTFs can benefit those most in need of additional technical capacity.
- **Strengthen digital infrastructure and tools for market surveillance.** The EC should continue to invest in and develop digital tools for use by market surveillance staff. Ongoing EU level pilot projects (detailed in section 2.1.1.) should be rolled out on a large scale, including the digitisation of conformity documentation and the integration of web crawlers into market surveillance activities to identify non-compliant products sold via e-commerce.

Gaps and challenges in EU market surveillance – E-commerce and product traceability:

- **More accountability for online marketplaces.** Complex supply chains and the limitations of Article 4 of the MSR pose challenges for MSAs in identifying responsible economic operators, especially for products sold on online marketplaces originating outside the EU. To improve accountability, online platforms should be required to designate a single contact point based in the EU who can be held accountable for follow-up by the MSA, as proposed by upcoming

legislation such as the GPSR⁵⁷ and DSA⁵⁸. These regulations contain further measures to improve supply chain transparency and the compliance of products sold online. However, the EU should monitor whether additional steps are needed to enable MSAs to take the necessary corrective action, particularly in the case of repeat offenders who place their non-compliant product back on the market after their removal. In addition, requiring a unique product identifier on all products placed on the EU market would improve product traceability and assist MSAs in enforcement, in line with the proposed DPP under the ESPR⁵⁹.

Cross-border cooperation of market surveillance:

- **Improve ICSMS and other information exchange platforms.** The effectiveness of ICSMS is limited by uneven adoption and duplicate entries in national systems. Member States should be encouraged to link their national databases to the ICSMS platform API, as only a few Member States have done so, to avoid overlapping data entry efforts for MSAs. The EC should also continue to refine the ICSMS interface to improve its user experience. Ensuring more consistent participation in knowledge sharing platforms and IT tools across Member States should be a key priority. This includes ensuring that guidelines for standardised use of ICSMS across Member States are adhered to through monitoring, incentives and training, while also encouraging more consistent use of Safety Gate and, greater participation in AdCos.
- **Strengthen joint actions and EU campaigns.** Recognising that EU funding for joint actions and campaigns has increased substantially following entry into force of the MSR, priority should be given to minimising the barriers that limit participation in such initiatives, particularly in the case of Member States with MSAs that are under-resourced in terms of both human and technical capacity and would benefit the most. Steps should be taken to further encourage and facilitate cross-border cooperation between MSAs, including by minimising other non-resource-related barriers to cross-border cooperation, such as differences in language, organisational structure and national priorities.

Cooperation with and among customs authorities:

- **Enhance communication and information sharing.** Once implemented, the EU Single Window Environment for Customs⁶⁰ will enable information sharing by linking ICSMS to national customs systems. Beyond digital tools, active dialogue and cooperation between customs authorities and MSAs should be enhanced, including through meetings, training seminars, and joint risk assessments. A repository of contact details for all MSAs should be made available to their respective customs authorities to improve communication.
- **Coordinated actions and joint training.** The need for customs to interpret a growing body of relevant EU legislation challenges the clear delineation of roles and operational responsibilities between customs staff and MSA inspectors. Joint training initiatives focused on legal interpretation, accompanied by staff exchanges, will foster mutual understanding and strategic alignment. Conducting joint inspections at entry points will also merge customs border control with MSA product compliance expertise.

⁵⁷ Regulation (EU) 2023/988.

⁵⁸ Regulation (EU) 2022/2065.

⁵⁹ COM(2022) 142 final.

⁶⁰ European Commission, 2021, *The EU Single Window Environment for Customs*, Available at: https://taxation-customs.ec.europa.eu/eu-single-window-environment-customs_en#:~:text=The%20first%20phase%20will%20come,enforced%20by%20partner%20competent%20authorities.

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ANNEX 1: ADDITIONAL RESEARCH OUTCOMES

Table 2: Organisational structure of market surveillance by Member State

Member State	Market surveillance governance structure
Bulgaria	There is no single authority performing market surveillance functions, nor a separate legislative act regulating its performance. Market surveillance functions are entrusted to various institutions through specialised sectoral laws based on specific product groups and obligations of economic operators.
Estonia	Estonia conducts surveillance on a sector-by-sector basis with six bodies involved in product surveillance.
France	Market surveillance in France is primarily conducted by seven bodies, comprising four ministries and three state agencies, each responsible for monitoring products within their specific areas of competence. These central authorities carry out inspections either directly or through their decentralised departments situated throughout the country.
Greece	In Greece, market surveillance of industrial products is carried out by various authorities under seven different ministries and three independent authorities. The Secretariat-General for Industry, under the Ministry of Development and Investment, plays a central role as it is responsible for 42 out of 70 items of legislation mentioned in Annex I of the MSR.
Romania	Romania has a decentralised supervisory system composed of 16 authorities with responsibilities in market surveillance. The market surveillance activity is centrally coordinated through the Ministry of Economy, where the SLO also operates.
Sweden	Sweden has a decentralised system with a large number of authorities responsible for the implementation of market surveillance. Sometimes, several authorities are responsible for monitoring different aspects of the same product. Coordination support is provided by the Market Surveillance Council, a body composed of 18 State authorities. Sweden chairs the Council and provides its secretariat, and is also Sweden's SLO, within the meaning of Article 10(3) of the MSR.

Source: Authors' own elaboration based on Member States' National Market Surveillance Strategies 2022-2025.

Table 3: Overview of main market surveillance activities among EU Member States according to Market Surveillance Authorities

Prevalence	Activities	Description
High	Product testing and laboratory analysis	Testing and analysis on product samples to verify compliance with regulations. This includes testing at the authority's own facilities or outsourced labs.
	Reactive market surveillance based on complaints and accidents	Investigating consumer complaints, reported accidents, and other issues to identify non-compliant products and take appropriate action.
	Proactive market monitoring and surveillance	Proactive market monitoring through inspections, product document reviews, audits, and sampling at manufacturers, importers, distributors, retailers (including online shops), storage facilities, etc. Often risk-based.
Medium	Customs cooperation	Collaboration with customs authorities to check product compliance during import from third countries.
	Documentation checks	Reviewing product information, labels, user manuals, declarations of conformity, and technical documentation provided by manufacturers/importers for compliance.
	Corrective actions	Imposing penalties, recalls, and prohibitions on non-compliant products; Notifying public of safety issues.
	Information exchange	Using ICSMS, Safety Gate, and other systems for data exchange; Participating in AdCos for collaboration.
Low	Policy guidance and awareness	Educating businesses (economic operators) and consumers on product regulations and compliance; Providing advisory services.
	Strategy development and reporting	Developing national market surveillance strategies and plans; maintaining statistics and publishing reports on activities and results.

Source: Authors' own elaboration.

Table 4: Overview of main market surveillance powers among EU Member States according to Market Surveillance Authorities

Prevalence	Powers	Description
High	Product inspections	Powers to conduct unannounced on-site inspections of products at manufacturers, importers, distributors, storage facilities, retailers, online platforms, etc. This includes document reviews, product examinations, compliance checks, and sampling for testing.
	Information gathering	Authorities to request product information, technical documents, compliance data, supply chain details, and other evidence from economic operators.
	Compliance enforcement	Powers to take corrective actions against non-compliant products or economic operators by imposing penalties, fines, recalls, withdrawals, prohibitions, product destruction, etc.
Medium	Product testing	Powers to acquire product samples and submit them to qualified labs for compliance testing against regulations.
	Market restrictions	Authorities to restrict, suspend, or prohibit the placement or availability of non-compliant products on the market.
	Collaborative mechanisms	Ability to cooperate with customs authorities to check imported products and with other national/EU MSAs to coordinate actions.
	Investigation actions	Authorities to open investigations into suspected non-compliance, based on own initiative or external information.
	Corrective powers	Powers to instruct economic operators to undertake specific corrections to restore compliance.
	Reporting	Authorities to publish information on product risks, unsafe products, and surveillance outcomes to consumers.

Source: Authors' own elaboration.

Table 5: Cross-border coordination mechanisms and channels

Coordination mechanism	Description
EU level	
Working bodies	Platforms for information sharing, coordination of actions and best practices' exchange, serving as structured mechanisms for authorities to collaborate, discuss challenges and develop common approaches to ensure product safety and compliance with the single market.
Sector-specific networks and fora	Platforms enabling collaboration, information and best practices' exchange within specific product sectors, fostering in-depth discussions and addressing sector-specific challenges.
Digital tools	Digital tools facilitating communication and information and data exchange among authorities through online tools and systems.
Cross-border projects and joint actions	Collaborative initiatives, mostly funded at EU level, to address specific market surveillance objectives.
National level	
Direct exchanges or regional cooperation	Collaboration with specific Member States, often neighbouring ones, due to shared interests, geographical proximity, and language similarities.
International level	
Campaigns and other initiatives	Collaborative efforts with international stakeholders to foster product safety at the global level.
Networks	Platforms for authorities from different countries to come together, share knowledge and collaborate on relevant matters.
Direct exchanges	Interactions with third countries to share information, insights and expertise and facilitate mutual understanding and cooperation.

Source: Authors' own elaboration.

ANNEX 2: CONSULTATION ACTIVITIES

Table 6: Respondents to the survey for Market Surveillance Authorities and Single Liaison Offices

Country	Organisation type ⁶¹	Organisation name
Austria	NMSA; SMSA	Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology, Directorate General IV, Transport, Division E6, Supreme Cable Car Authority
Austria	MSA	Federal Ministry for Social Affairs, Health, Care and Consumer Protection
Austria	SLO; NMSA; SMSA	Federal Office of Metrology and Surveying
Belgium	NMSA; SMSA	Federal Public Service Mobility and Transport
Croatia	NMSA	State Inspectorate
Cyprus	SLO; NMSA	Ministry of Energy, Commerce and Industry
Cyprus	SMSA	Department of Labour Inspection
Czechia	SLO	Ministry of Industry and Trade
Denmark	NMSA	The Danish Chemical Inspection Service of The Danish Environment Agency
Denmark	NMSA	The Danish Safety Technology Authority
Finland	NMSA	Finnish Medicines Agency (FIMEA)
Finland	SLO	Finnish Safety and Chemicals Agency (Tukes)
Finland	RLMSA	The Regional State Administrative Agencies of Eastern Finland
Germany	RMSA	State Directorate of Saxony
Germany	SMSA; RLMSA	Hessian Directorate of Weights and Measures
Germany	SMSA; RLMSA	Darmstadt Regional Council
Germany	AdCo Member	Zentralstelle der Laender fuer Sicherheitstechnik
Germany	SMSA; RLMSA	Landesbetrieb Mess, und Eichwesen Nordrhein, Westfalen (LBME NRW)
Germany	NMSA	Federal Maritime and Hydrographic Agency
Germany	SMSA	Arbeitsgemeinschaft der Düngemittelverkehrskontrollstellen der Bundesländer
Germany	NMSA; SMSA	Federal Network Agency
Germany	RLMSA	Free and Hanseatic City of Hamburg Authority for Environment, Climate, Energy and Agribusiness

⁶¹ Note: Each organisation type was self-identified by the participating survey respondent. 'NMSA' refers to National Market Surveillance Authority, 'SMSA' refers to Sectoral Market Surveillance Authority, 'RLMSA' refers to Regional or Local Market Surveillance Authority, 'SLO' refers to Single Liaison Office, and 'AdCo' refers to Administrative Cooperation Group.

Country	Organisation type ⁶¹	Organisation name
Germany	RLMSA	Ministry of Environment, Climate Protection and the Energy Sector Baden,Württemberg
Germany	SMSA; RLMSA	Saxon State Ministry of Economics, Labor and Transport
Germany	NMSA; SMSA	Kraftfahrt,Bundesamt (KBA)
Germany	SMSA; RLMSA	Senator for Health, Women and Consumer Protection
Greece	SMSA	Hellenic Telecommunications and Post Commission (EETT)
Greece	SMSA	Ministry of Maritime Affairs and Insular Policy, Hellenic Coast Guard Headquarters, General Directorate for Ship Inspections
Greece	NMSA	Hellenic Civil Aviation Authority
Greece	SLO	Ministry of Development, General Secretariat for Industry, Regulatory Framework of Business Environment Directorate (Better Regulation Delivery Directorate), Coordination of Surveillance of Economic Activities & Products Unit, SLO Greece
Hungary	RLMSA	Government Office of The Capital City Budapest (BKKH)
Hungary	SMSA	Supervisory Authority for Regulatory Affairs
Iceland	NMSA	The Housing & Construction Authority
Ireland	NMSA; SMSA	Dublin City Council, National Building Control and Market Surveillance Office (DCC, NBCMSO)
Ireland	SMSA	Commission for Communications Regulation
Ireland	NMSA	National Standards Authority Ireland, Legal Metrology
Ireland	NMSA; SMSA	Health Products Regulatory Authority
Ireland	NMSA	Marine Survey Office, Department of Transport
Ireland	NMSA	National Standards Authority Ireland, Legal Metrology
Italy	SMSA	Ministry of the Interior, Department of Public Security, General Administration Office
Italy	NMSA	Istituto Superiore per la Protezione e a Ricerca Ambientale (ISPRA)
Latvia	NMSA	Consumer Rights Protection Centre of Latvia
Latvia	N/A	Ministry of Economics of Republic of Latvia
Liechtenstein	SLO: SMSA	Amt für Volkswirtschaft
Lithuania	SLO; NMSA; SMSA	State Consumer Rights Protection Authority
Luxembourg	NMSA	Institut luxembourgeois de la normalisation, de l'accréditation, de la sécurité et qualité des produits et services (ILNAS)

Country	Organisation type ⁶¹	Organisation name
Luxemburg	NMSA	Administration de l'environnement, Unité substances chimiques et produit
Netherlands	SLO	Human Environment and Transport Inspectorate
Netherlands	NMSA	Nederlandse Voedsel en Waren Autoriteit (NVWA)
Norway	NMSA; SMSA	The Norwegian Water Resources and Energy Directorate (NVE)
Norway	NMSA	Norwegian Building Authority
Norway	NMSA; SMSA	Norwegian Medical Agency (NOMA)
Norway	NMSA	Norwegian Maritime Authority
Poland	NMSA	State labour Inspectorate
Poland	NMSA; SMSA	The Office of the Rail Transport
Poland	NMSA	Main Office of Construction Supervision
Poland	SLO; NMSA	Office of Competition and Consumer Protection (UOKiK)
Poland	NMSA	General Office of Construction Supervision
Portugal	SMSA	National Authority of Medicines and Health Products, I.P. (INFARMED)
Romania	SMSA	Inspectia Muncii
Romania	SMSA	Romanian Naval Authority
Slovakia	NMSA	National Labour Inspectorate
Slovakia	SLO	Ministry Of Economy of the Slovak Republic
Slovenia	NMSA; SMSA	The Market Inspectorate of the Republic of Slovenia
Slovenia	SMSA	Chemicals Office of the Republic of Slovenia, Chemicals Inspection
Spain	NMSA	Ministry of Industry, Commerce and Tourism
Sweden	NMSA	Swedish Energy Agency
Sweden	SMSA	Boverket
Sweden	NMSA	The Swedish Chemicals Agency
Sweden	NMSA	Swedish Consumer Agency

Source: Authors' own elaboration based on responses to the targeted survey provided to MSAs and SLOs.

Table 7: Respondents to the survey for Customs Authorities

Country	Organisation Name
Austria	Customs office Austria
Belgium	Federal Public Service Finance
Bulgaria	National Customs Agency
Cyprus	Customs Department
Denmark	The Danish Customs Agency
Estonia	Estonian Tax and Customs Board
Finland	Finnish Customs
France	DGDDI, Risk Analysis and Targeting Department (Sarc)
Greece	Independent Authority for Public Revenues, DG Customs & Excise, Customs Procedures Directorate (1.2), Directorate of Customs Controls Strategy & Offences (1.3 and 1.4)
Ireland	Revenue (Ireland's Tax and Customs Administration)
Italy	Agenzia delle Dogane e dei Monopoli
Lithuania	Customs Department Under the Ministry of Finance of the Republic of Lithuania
Luxembourg	Luxembourg Customs Administration
Romania	Romanian Customs Authority
Slovakia	Financial Directorate of the Slovak Republic
Slovenia	Financial Administration of the Republic of Slovenia
Spain	Departamento de Aduanas e Impuestos Especiales. Agencia Estatal de Administración Tributaria
Sweden	Swedish Customs
Latvia	The National Customs Board of the State Revenue Service of the Republic of Latvia
Netherlands	Netherlands' Customs

Source: Authors' own elaboration based on the survey responses to the targeted survey provided to customs authorities.

Table 8: Stakeholders interviewed

Country	Organisation name/Role
EU	European Commission, DG GROW
EU	European Commission, DG TAXUD
EU	European Consumers Organizations (BEUC)
Ireland	Fertilizers AdCO Chair
Italy	Construction AdCO Chair

Source: Authors' own elaboration based on interviews conducted for this study.

Table 9: Participants in the Virtual Expert Workshop on Market Surveillance
(7 September 2023)

Country	Organisation name/Role
Austria	Federal Office of Metrology and Surveying (BEV)
Belgium	FPS Economy
Bulgaria	Ministry of Economy and Industry
Bulgaria	Ministry of Environment and Water
Bulgaria	National Customs Agency
Bulgaria	State Agency for Metrological and Technical Surveillance
Croatia	DIRH
Croatia	Državni inspektorat
Czechia	Ministry of Industry and Trade
Denmark	Danish Environmental Protection Agency
Denmark	Danish Safety Technology Authority
Denmark	Danish Safety Technology Authority (Single Liaison Office)
Denmark	Miljøstyrelsen
EU	The European Consumer Organisation (BEUC)
EU	European Commission
Finland	Finnish Customs
Finland	Finnish Safety and Chemicals Agency (Tukes)
France	Direction Générale de Douanes
France	Ministère de l'Economie
Germany	Bundesnetzagentur
Germany	Federal Maritime and Hydrographic Agency
Germany	Hamburg Ministry of Environment, Climate, Energy and Agriculture
Germany	Hessische Eichdirektion (Office for Weights and Measures of State Hesse)
Germany	Market Surveillance of the State of Hesse

Country	Organisation name/Role
Germany	Regierungspräsidium Darmstadt
Germany	Regierungspräsidium Tübingen
Germany	Saxon State Ministry for Economic Affairs, Labour and Transport
Germany	Thür. LA f. Verbraucherschutz
Greece	HCAA
Hungary	Ministry of Justice
Ireland	Department of Agriculture, Food and the Marine
Ireland	Department of Enterprise, Trade and Employment
Ireland	Government
Ireland	Health and Safety Authority
Ireland	HPRA Ireland
Ireland	Marine Survey Office, Department of Transport
Ireland	MSCA
Ireland	National Building Control Office
Ireland	SEAI
Ireland	The Sustainable Energy Authority of Ireland
Italy	Corpo Nazionale dei Vigili del Fuoco
Italy	Istituto Superiore per la Protezione e a Ricerca Ambientale (ISPRA)
Liechtenstein	Office of Economic Affairs
Lithuania	State Consumer Rights Protection Authority
N/A	DQS COMPANY
Netherlands	Dutch Customs
Netherlands	Single Liaison Office of the Netherlands
Norway	Directorate for Civil Protection (DSB)
Norway	DSB
Norway	Norwegian Customs
Norway	Norwegian Medicines Agency
Norway	The Norwegian Directorate for Civil Protection
Poland	General Office of Building Control
Poland	UOKiK Urząd Ochrony Konkurencji i Konsumentów
Romania	ANMDMR
Romania	General Inspectorate for Emergency Situations
Romania	Ministry of Health
Romania	National Environmental Guard

Country	Organisation name/Role
Romania	Romanian Automotive Register Market Surveillance Department
Romania	State Inspectorate for Construction (ISC)
Slovenia	Chemicals Office of the Republic of Slovenia
Slovenia	Financial Administration of the Republic of Slovenia
Slovenia	Republic of Slovenia, Ministry of The Economy, Tourism and Sport
Slovenia	Tržni inšpektorat Republike Slovenije
Sweden	Boverket
Sweden	Swedish Consumer Agency
Sweden	Swedish Energy Agency

Source: Authors' own elaboration based on participants of the expert workshop in response to the preliminary conclusions of this study. Participants included a varied combination of MSAs, customs authorities, SLOs, and representatives from the European Commission.

This study examines the role of market surveillance at EU and Member State level, analysing the EU market surveillance framework, its gaps and challenges, as well as cross-border cooperation between market surveillance authorities and collaboration with and among customs authorities for effective consumer protection.

This document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the Committee on Internal Market and Consumer Protection (IMCO).
