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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Security & Safety, Trade Facilitation & International coordination
Protection of citizens and enforcement of IPR

Guidelines for import controls in the area of product safety and compliance

The Guidelines do not constitute a legally binding act and are of an explanatory and subsidiary nature

Generic part

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1. INTRODUCTION

Article 1(2) of Regulation 765/2008[1] establishes that the EU market surveillance framework will ensure "*…a high level of protection of public interests, such as health and safety in general, health and safety at the workplace, the protection of consumers, protection of the environment and security*". This objective must be satisfied by all products made available on the EU market, independently of whether they were produced in the EU or in a third country. The Regulation therefore also provides a framework for controls on products from third countries.

The most effective way to ensure that unsafe[2] or non-compliant imported products are not placed on the market is to carry out adequate checks before those products are released for free circulation. This requires the involvement of Customs, the only service that has a complete overview over trade flows across the EU external border. Furthermore there is a need for uniform enforcement of EU provisions for safety and compliance controls. This can be achieved through systematic cooperation between Market Surveillance Authorities (MSAs)[3] and Customs. This will ensure equal protection of the EU citizens since goods, once released for free circulation, can circulate freely across the Single Market.

The Commission has been coordinating the elaboration of the present Guidelines in which Member States representatives have provided their experiences on customs control procedures, and on the organisation of administrative cooperation between Customs and MSAs. This tool will enable Customs and MSAs to satisfactorily carry out their tasks in protecting more than 500 million citizens.

In order to provide the knowledge authorities need to effectively implement these responsibilities, and to facilitate the implementation of Regulation (EC) No 765/2008, the Commission, together with the Member States, has drafted these Guidelines **for customs use** and for developing cooperation between Customs and MSAs.

The Guidelines are intended as an instrument to assist Customs and MSAs in improving cooperation methods and good administrative practice. At the same time, the Guidelines focus on the practical questions Customs are faced with when performing controls related to product safety and compliance.

The Guidelines consist of a Generic and a Specific Part. The Generic part is essential to understand the overall relevant applicable EU legislation and in particular the

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[1] See OJEU No. L 218 of 13.08.2008, page 30

[2] See Directive 95/2001, Art. 2(b)

[3] A list of the national MSAs communicated to the Commission by Member States according to Article 17 of Regulation (EC) 765/2008 is available via the following link: http://ec.europa.eu/enterprise/policies/single-market-goods/regulatory-policies-common-rules-for-products/index_en.htm

obligations on safety and compliance controls and the cooperation between the relevant national authorities. Fundamental knowledge of the Generic part is also crucial for the proper and efficient implementation of the Specific part.

The specific part of the Guidelines consists of information sheets for individual product groups, as well as check lists for these individual product groups. They will provide customs officers with complete and comprehensive information in order to facilitate product safety and compliance related controls. The Guidelines do not cover further detailed actions under the single responsibility of MSAs related to the decision to prohibit or restrict the placing of a product on the market.

It has to be kept in mind that they give no guidance on border controls provided for in specific pieces of legislation. An indicative list of these specific pieces of legislation is included in Annex of the Guidelines.

Taking into account that the administrative structures are different among Member States, the Guidelines have been drafted in a non prescriptive way when describing the safety and compliance controls and cooperation processes at national level and cannot be considered mandatory. The Guidelines make recommendations based on the best practices and exchanges of opinions between relevant experts, and establish those elements which should be included in agreements between Customs and MSAs.

2. PURPOSE, OBJECTIVES AND TARGET AUDIENCE OF THE GUIDELINES

2.1 Purpose

The main purpose of the Guidelines is to support Customs and MSAs in effectively carrying out the tasks in accordance with Article 15(5) and the provisions enshrined in Articles 27 to 29 *("Controls of products entering the Community market"*) of Regulation (EC) No 765/2008, setting out the requirements for accreditation and market surveillance relating to the marketing of products, which has been applicable since 1 January 2010.

The Guidelines refer mainly to the situation in which the Customs authorities are "the authorities in charge of the external border controls" and need to cooperate with national MSAs. This requires the **elaboration of a common approach** for controls by Customs authorities regarding product safety requirements and the achievement of **good and close administrative cooperation and effective communication between Customs and MSAs.**

In addition, effective and efficient cooperation should be ensured since it could be the case that in the Member States more than one authority is responsible for import controls in the area of product safety. In this case those authorities shall cooperate with each other, by sharing information relevant to their function and otherwise as appropriate (Article 27 (2) of Regulation (EC) No 765/2008).

2.2 Objective

The main objective of the Guidelines is to support compliance with the relevant provisions of Regulation (EC) No 765/2008. In particular:

- To provide a tool for Customs and MSAs to assist them in identifying unsafe or non-compliant products before they are released for free circulation.

- To create an appropriate, recommended, and where possible comprehensive approach for safety and compliance controls covered by Regulation (EC) No 765/2008 as regards imported goods.

- To encourage effective control processes based on risk management principles and the development of adequate risk profiles.

- To exchange experiences and best practices in the area of product safety and compliance controls.

- To establish recommendations for enhanced cooperation between Customs and MSAs.

2.3 Target audience

The main target audience are Customs and MSAs in the Member States who will benefit from recommended procedures necessary to carry out import controls in the area of product safety. This should result in benefits for compliant economic operators and also increased protection for the Union citizens.

3. OVERVIEW OF EU LEGISLATION INCLUDING CLARIFICATION OF LEGAL REQUIREMENTS AND SCOPE OF THE BORDER CONTROLS

3.1 Relevant definitions

For the purpose of the Guidelines some specific terminology defined in the Community Customs Code[4] is used, such as:

- Customs controls: the specific acts performed by the Customs authorities in order to ensure the correct application of customs legislation and other legislation governing entry into the Community market, such as Regulation (EC) No 765/2008.

- Release of goods: the act whereby the Customs authorities make goods available for the purposes specified for the customs procedure under which they are placed.

- Release for free circulation of goods: customs procedure that confers on non-Community goods the customs status of Community goods and allows their release into the Single Market. It entails the application of commercial policy measures, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due.

- Simplified procedure: the local clearance procedure and the simplified declaration procedure as defined below.

[4] See OJEU No. L 302, 19.10.1992, p. 1–50

- Simplified declaration procedure: Customs authorities may authorise any person to have goods placed under a customs procedure on the basis of simplified declaration which may omit certain of the particulars and supporting documents required for standard customs declaration.

- Local clearance procedure: enables the entry of goods for the customs procedure at the premises of the person concerned or at other places designated or approved by the customs authorities. This procedure is described in Article 253 of Regulation (EEC) No 2454/1993[5] and entitles economic operators authorised for this purpose not to present the goods physically to the customs authorities at the moment of declaring them for release for free circulation.

- Single Authorisation for simplified procedures, formally known as Single European Authorisation (SEA): the scheme that enables an economic operator to be authorised in one Member State (MS) for all their non-EC import and export freight operations throughout the Community. This enables economic operators to centralise the accounting and payment of customs duties for all transactions in the authorising MS, although the physical control and release of goods may take place in another MS.

- Non-Community goods placed under a customs procedure other than release for free circulation: these procedures are transit, customs warehousing, inward processing, processing under customs control or temporary admission.

The guidelines also make use of some specific terminology defined in Regulation (EC) No 765/2008 such as:

- placing on the market: shall mean the first making available of a product on the Community market.

- making available on the market: shall mean any supply of a product for distribution, consumption or use on the Community market in the course of a commercial activity, whether in return for payment or free of charge;

- manufacturer: shall mean any natural or legal person who manufactures a product or has a product designed or manufactured, and markets that product under his name or trademark;

- authorised representative: shall mean any natural or legal person established within the Community who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks with regard to the latter's obligations under the relevant Community legislation;

- importer: shall mean any natural or legal person established within the Community who places a product from a third country on the Community market;

- market surveillance: shall mean the activities carried out and measures taken by public authorities to ensure that products comply with the requirements set out in the relevant Community harmonisation legislation and do not endanger health, safety or any other aspect of public interest protection;

[5] See OJEU No. L 253, 11.10.1993, p. 1–766

- market surveillance authority: shall mean an authority of a Member State responsible for carrying out market surveillance on its territory;

- CE marking: shall mean a marking by which the manufacturer indicates that the product is in conformity with the applicable requirements set out in Community harmonisation legislation providing for its affixing;

- Community harmonisation legislation: shall mean any Community legislation harmonising the conditions for the marketing of products

- "harmonised standard" shall mean a standard adopted by one of the European standardisation bodies listed in Annex I to Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services [10] on the basis of a request made by the Commission in accordance with Article 6 of that Directive.

Please note that the meaning of the release for free circulation is different from the concept of placing on the market.

Placing on the market is considered not to take place where a product is not (yet) granted release for free circulation by customs, or where it has been placed under another customs procedure (for example transit, warehousing or temporary admission), or is in a free zone.

3.2 Legal requirements

3.2.1. Customs control provisions laid down in the Community Customs Code

The general legal framework for the Customs authorities to monitor and to carry out controls of non-Community goods is laid down in Regulation (EEC) No 2913/92 (Community Customs Code) and Regulation (EEC) No 2454/93 (Implementing provisions to Community Customs Code). The Community Customs Code refers to the general rules and procedures applicable to goods brought into or out of the customs territory of the EU, and stipulates that Customs authorities shall be primarily responsible for the supervision of the EU's international trade and should put in place measures aimed at protecting the EU from unfair and illegal trade. Customs authorities are responsible for ensuring the security and safety of the EU and its residents, where appropriate in close cooperation with other authorities and in line with border responsibilities assigned at national level. They may carry out all the customs controls they deem necessary, which shall primarily be based on risk analysis.

3.2.2. Safety and compliance controls of products entering the EU market carried out by Customs in application of Articles 1 (2 and 3) and 27 to 29 of Regulation (EC) No 765/2008

With the creation of the Single Market in 1992, common provisions on checks for conformity with the rules on product safety in the case of products imported from third countries were established regarding the suspension of the release of products by Customs authorities. They provided for the involvement of MSAs through Council

Regulation (EEC) No 339/93 of 8 February 1993[6]. In addition, Decision 93/583/CEE[7] established a priority list of the products to be submitted to customs controls and to the suspension of the release. Those provisions were repealed by Regulation (EC) No 765/2008 which, however, enlarged its scope and took over the main provisions of Council Regulation (EEC) No 339/93, in particular those concerning the suspension of the release of goods.

This new Regulation introduces a clear legal framework for the controls of products entering the EU market and clear obligations on national authorities competent for that, e.g. Customs. This implies the need for a more pro-active approach towards controls of imported goods against product safety requirements. It requires the enforcement authorities to carry out appropriate checks on the characteristics of products on an adequate scale, from the moment of entry into the EU and before the products are released for free circulation.

In general, Customs authorities have the following competences under Articles 27 and 28 of Regulation (EC) No 765/2008:

- to suspend the release of products when there is a suspicion that the products are unsafe and/or do not comply with the EU harmonisation legislation or do not fulfil documentation and marking requirements (Art. 27(3));

- not to authorise the release for free circulation for the reasons mentioned in Article 29 (1) and (2);

- to authorise the release for free circulation for any product in compliance with the relevant EU legislation;

Where the release for free circulation has been suspended, Customs have to immediately notify the competent national MSA which is given three working days (see also 3.4) to perform a preliminary investigation of the products and to decide:

- if they can be released since they do not present a serious risk to the health and safety or cannot be regarded as being in breach of EU harmonisation legislation

- if they must be detained since further checks[8] are necessary to ascertain their safety and conformity.

It is the responsibility of Customs to decide to release or to suspend the release of goods. MSAs have the responsibility to determine whether goods to be released for free circulation comply with EU harmonisation legislation and to timely notify Customs about their decision.

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[6] See OJEU No L 40 of 17.02.1993, page 1

[7] See OJEU No L 279 of 12.11.1993, page 41

[8] Article 27(1) foreseen the types of controls to perform on the characteristics of the product i.e. documentary, physical and laboratory checks

If the MSA ascertain that the products present a serious risk or are non-compliant, the products shall be prohibited to be placed on the EU market. Nevertheless, the MSA may also decide to destroy them or otherwise render them inoperable, where they deem it necessary and proportionate. Where importation is banned, Customs will mark in the commercial invoice, in any other accompanying documents or in the electronic system a notice that the importation of the product is forbidden because the product is dangerous or not in conformity. Although the MSA makes the final decision on the action to be taken, it is obvious that the Customs authorities will play a key role in the prevention of unsafe or non-compliant products reaching the EU market.

3.3. Main obligations of the economic operators concerned[9]

The **manufacturer** is, in general, the only economic operator responsible for the manufacture and/or design of the product in accordance with the relevant EU legislation or if any with other provisions.

For an imported product, the **importer** plays an important role as he is responsible of the product that he has the intention to place on the EU market. Therefore, he shall place on the EU market only safe or compliant products. In addition, before he places a product on the market he shall ensure that:

- the appropriate conformity assessment has been carried out;
- the manufacturer has drawn up appropriate technical documentation, and
- The product bears the relevant conformity markings such as the CE marking if required.

The importer shall indicate on the product (or on the packaging or accompanying documents) his name, registered trade name or registered trade mark and the address at which he can be contacted.

He shall inform the manufacturer and the MSAs if he knows that the product presents a serious risk and take, if possible, the appropriate measures (withdraw the release for free circulation, corrective measures, other customs procedure).

He shall cooperate with the relevant authorities and provide them, on a reasoned request, all the information and documentation to demonstrate the safety or the conformity of the products.

[9] See Article R2, R3 and R4 of the Decision 768/2008 on the marketing of products published on the OJEU No L 218 of 13.08.2008, page 82

3.4 Clarification concerning the period of 'three working days' mentioned in Article 28 of Regulation (EC) No 765/2008

If, within three working days of the suspension of release for free circulation, the MSA has not notified Customs of any action taken by them, the product shall be released for free circulation provided that all the other requirements and formalities pertaining to such release have been fulfilled.

In view of the very tight time-limit it must be ensured that the notification - and where appropriate samples or pictures of the product - immediately reaches the MSA competent for the product concerned in terms of Regulation (EC) No 765/2008.

The entire procedure from the suspension until the release for free circulation or the prohibition of the goods by Customs should be completed without delay to avoid creating barriers for legitimate trade but does not have to be necessarily completed within three working days. The suspension of release can remain valid for the time required by the MSA to carry out appropriate checks on the products allowing them to take the final decision. MSAs must ensure that the free movement of products is not restricted to any extent greater than that which is allowed under Community harmonisation legislation or any other relevant EU legislation.

In this case, the MSA notifies Customs within these three working days that their final decision on the goods is pending. The release for free circulation shall remain suspended until the MSA has made a final decision. That notification empowers Customs to extend the initial suspension period. The goods will remain under customs supervision even if they are allowed to be stored at another place approved by Customs.

4. OPERATIONAL PROCEDURES

4.1 Joint customs and Market Surveillance Authorities approach towards import controls

To carry out the safety and compliance controls on imported products as required by the Regulation, the authorities of the Member States in charge of the control of products entering the EU market, i.e. Customs and MSAs, shall have the powers and resources necessary for the proper performance of their tasks before those products are released for free circulation (Articles 27(1) and 18(3)). This is without prejudice to the possibility foreseen in the Regulation to destroy unsafe or non-compliant goods where they present a serious risk and when this measure is deemed necessary and proportionate (Article 29 (4)).

In some Member States, depending on the administrative structure, the Customs administrations will take the lead in performing controls, whereas in other cases, MSAs will be responsible for the controls of all or certain goods.

With regard to the operational procedures, two major aspects must be considered in the day-to-day work of Customs and MSAs.

Firstly, the Regulation obliges that appropriate checks are carried out on the characteristics of products on "an adequate scale" before the products are released for

free circulation. Furthermore, Article 27(1) provides that the appropriate checks must comply with the general principles set out in Article 19(1). Those principles empower the authorities in charge of the controls of products entering the EU market to perform documentary, physical and laboratory checks on the basis of adequate samples. Where Customs authorities are engaged in these checks, their activities could be facilitated by receiving appropriate information from the MSAs (Article 27(2) and (5)) on e.g. product categories, high risk economic operators or manufacturers, and any other relevant information about an already identified serious risk or non-compliance case (Article 29(5)). In order to increase the effectiveness of the checks, the Customs authorities should receive this information as soon as possible together with any additional intelligence so as to understand the level of seriousness of the risks involved. This will allow them to set up the necessary safety and compliance control strategy based on risk analysis. Information should be regularly updated.

Secondly, Article 27(3) of Regulation (EC) No 765/2008 obliges the Customs authorities to suspend the release for free circulation of non-Community goods where, in the course of import controls, goods are found to be violating, or suspected to violate Community legislation. Those violations are defined in Article 27(3) as being when:

(a) the product, when properly installed, maintained, and used, displays characteristics suspected to present a serious risk to health, safety, the environment or any other public interest;

(b) the product is not accompanied by the documentation required by the relevant Community harmonisation legislation or is not marked in accordance with that legislation; and/or

(c) the CE marking has been affixed to the product in a false or misleading manner.

When any of those findings are made, the Customs authorities shall suspend the release for free circulation and immediately notify in agreed form the MSA. The MSA, in turn, has to inform the Customs authority within three working days about any action taken with respect to the product for which the release for free circulation has been suspended.

If the MSA considers that the product does not present a serious risk to health and safety and complies with the EU harmonisation legislation, it shall notify Customs of this fact in an agreed form and Customs shall subsequently proceed with the clearance of the goods (i.e. release for free circulation).

Customs will provide the MSA in an agreed form with all available information to determine the conformity with the requirements applicable and will submit or allow the taking of samples of the product, if required to do so.

In cases where the MSAs are not competent for external border controls (depending on the administrative structure of the Member State), MSAs shall provide authorities in charge of external border controls (Customs) with relevant information related to products or economic operators on which a serious risk or non-compliance has been identified, together with any other relevant risk information (including lack of traceability information) that will facilitate the identification of suspected unsafe or non compliant products at the border. Generally, this information is publicly available on the RAPEX system (http://ec.europa.eu/rapex).

The appropriate checks have to take place before the product concerned is released for free circulation. As the length of this period could be counted in minutes, the effectiveness of border enforcement of product safety and compliance should be clearly linked to the adequate use of risk-based approaches and successful implementation of the agreed levels of cooperation between Customs and MSAs for completing the required controls.

Where the product presents a serious risk, Article 29(1) obliges the MSAs to take measures to prohibit the product from being placed on the market. The MSA shall notify the Customs in an agreed form of its decision and instruct Customs not to release the goods for free circulation and to apply the following endorsement on the invoice or any other accompanying document or in the electronic system:

"**Dangerous product – release for free circulation not authorised – Regulation (EC) No 765/2008**"

In case the product does not comply with Community harmonisation legislation, Article 29(2) obliges the MSAs to take appropriate measures and notify the customs office in charge of the procedure in agreed form including, if necessary, instruction to the Customs authorities not to release the product for free circulation and to include the endorsement "**Product not in conformity – release for free circulation not authorised – Regulation (EC) No 765/2008**" on the invoice or any other accompanying document or in the electronic system.

In cases where release for free circulation is not authorised and the products are further declared for another customs procedure (provided that the MSA do not object or require that goods have to be destroyed), the endorsements set out in paragraphs 1 and 2 of Article 29 have to be included on the documents used in connection with that new approved customs procedure (Article 29(3)).

Compliance with product safety and compliance rules does not apply to non-Community goods that are not declared for free circulation such as those in transit and placed in free zones and free warehouses. Information can however become available that these goods do not comply with product safety and compliance rules in the EU (but do not present a serious risk that allows immediate destruction as provided for by Article 29 (4) of Regulation (EC) No 765/2008). Such information should be communicated to the relevant authorities to avoid that such goods could be placed on the EU market at a later stage.

Where goods are found not to be compliant with the EU harmonisation legislation, the responsible authorities are allowed to take appropriate actions to ensure that the goods will be modified in an appropriate manner, thus enabling their further release for free circulation.

Where goods, initially declared for release for free circulation, are found not to be compliant with the Community harmonisation legislation, they may be placed into another customs approved treatment or use (an alternative customs procedure other than release for free circulation, Article 29(3)).The MSA might decide to destroy those goods where they present a serious risk and when the authorities deem this measure necessary and proportionate (Article 29 (4)). In any case the final decision concerning acceptance to admit these goods for the other customs approved treatments or uses can only be made by customs as it is only authority competent for this decision.

Re-declaration of goods for release for free circulation that were previously marked as "**Dangerous product – release for free circulation not authorised – Regulation (EC) 765/2008**" or "**Product not in conformity - release for free circulation not authorised – Regulation (EC) 765/2008**" will require customs to ask MSAs to confirm that the necessary modification have been made to the goods that make them comply with the requirements from a product safety and compliance perspective.

Where the MSA informs customs that they can release goods that have been reported to MSA, customs should not further block these goods as long as further customs obligations have been met. If any further corrective measures on these goods might be necessary, the MSA should follow up on this.

In some cases the place of declaring the goods for free circulation could be different from the point of entry of the goods. It does not preclude the responsible authorities to carry out appropriate controls at the point of entry. Nevertheless, if the goods are declared for free circulation at a later stage, the responsible authorities that carried out controls at the place of entry should provide the customs authorities at the place of declaration with adequate information to ensure that only safe and compliant goods are released for free circulation. Forwarding of control results at the point of entry could also be used to avoid double-checks at a later stage.

The control authorities responsible for the first screening and control of goods should be fully informed about possible risk factors related to the imported goods. For that purpose, they may use the tools available in the specific part of the Guidelines. It will allow them to set up and further implement adequate control strategies and to focus on product categories in which a serious risk or non-compliance has been identified. For this purpose the exchange of information between the responsible authorities (MSAs and Customs) must be ensured.

When customs in the course of a post clearance control finds indications that a product that has already been released for free circulation might not comply with the products safety requirements in force, they should immediately report this information to the relevant MSAs so as to allow further corrective action by the MSAs on the internal Market at a later stage, if necessary and in accordance with relevant applicable legislation.

Customs authorities, whilst conducting the other fiscal and anti-smuggling controls that form the normal part of their everyday duties, should consider making use of the available product safety and compliance checklists and information sheets include in the Specific part of the Guidelines during the course of these activities. To ensure mutual information, they shall share relevant information with the MSAs.

Customs analysts and resource managers should consider making use of the wide range of available product safety and compliance checklists and information sheets for a preliminary assessment of the risks of products that may pose significant public safety concerns. Customs may consider making intelligence led resource deployments to address areas identified to be of greatest risk. Ideally Customs will do this in conjunction with their MSA, but may also do so independently.

4.2 Controls under simplified customs procedure

MSAs can also be responsible for certain controls of goods for which operators use a simplified customs procedure. As simplified customs procedures are very often used by economic operators it is necessary to ensure that the procedure for granting the simplified procedure authorisation takes account of the operator's knowledge about the potential risks related to the goods to be imported under that procedure. Therefore, it is recommended to take the decision to forbid or allow the use of simplified procedures for certain goods through consultation between Customs and the national MSA.

Furthermore, to permit effective controls of goods that may be subject to restrictions related to product safety requirements, Member States must ensure that the customs joint control plan clearly specifies the roles and responsibilities of the customs administrations and that this control plan highlights the need of collaboration for that purpose with MSAs.

The joint control plan set up for each authorisation should specify in detail how restricted goods should be controlled. The plan should set out precisely how controls are to be processed and the time scales for doing so.

It should be noted that the holder of an authorisation to make use of simplified customs procedures must also be in the possession of the appropriate documentation related to product compliance with the EU or national legislation requirements (for example Declaration of Conformity, technical documentation and test reports) before the goods are released for free circulation.

The use of simplified procedures where formalities are undertaken in one Member State and imports take place in another is subject to agreements between the Member States involved. This because one Member State cannot be expected to enforce specific national requirements of the importing Member State when they are not applicable in the Member State where the formalities are carried out. However, Member States may agree to do so provided that satisfactory controls can be set up.

5. PRINCIPLES OF COOPERATION BETWEEN CUSTOMS AUTHORITIES AND MSAS

One of the main objectives of the Guidelines is to ensure that a proper cooperation between Customs and MSAs is established and/or enhanced so that the legal framework covering safety and compliance controls for imported products is applied in a harmonised way and with the same strength throughout the entire EU.

Article 27 (2) of Regulation (EC) No 765/2008 foresees the obligation for co-operation between customs officers and market surveillance officers. Obligations for cooperation are also included in Article 13 of the Community Customs Code which establishes that controls performed between customs and other authorities **are undertaken in close cooperation between each other**. In addition, the principles of cooperation between the Member States and the Commission established in Article 24 of the Regulation are extended to authorities in charge of external controls, when relevant (Article 27(5)).

These legal provisions ensure proper implementation, despite the fact that various ministries and authorities could be responsible for the implementation of Regulation

(EC) No 765/2008. It should allow for a common approach taken by Customs and MSAs during the control process.

In general, cooperation between Customs and MSAs should be based on formal agreements that cover all necessary aspects and elements to ensure that the control process will be carried out in an appropriate manner. All decisions on responsibilities (*who?*), the appropriate moment and place of intervention by the authorities concerned (*when and where?*), the description of the reasoning of the approach chosen (*why?*) and the methodology to be used (*how?*) have to be clearly determined in order to allow the responsible Customs or MSAs to adequately fulfil the requirements described in the Regulation). This implies the need to develop a common cooperation approach on product safety and compliance for the entire target audience - i.e. Customs, MSAs and economic operators taking into account recommendations and elements from these Guidelines.

The agreed elements, described in the present Guidelines, should be implemented in a uniform manner at national level. Common implementation process should ensure that the control process is more transparent and uniform in all Member States. In practice it is therefore recommended that the current situation in the Member States should be monitored and evaluated to guarantee that:

1. already adopted agreements between responsible authorities at a national level in Member States are subject to revision to ensure that those agreements have given appropriate consideration to all recommended elements described in the Guidelines;

2. the procedures for the establishment of a new agreement, based on the recommendations in the Guidelines, are implemented as soon as possible in those MS where no such agreements exist yet.

Uniform implementation of the requirements set out in the Guidelines is an important element for future common actions in the area of safety and compliance controls. These common actions should further result from the cooperation based on the agreed principles and elements of the Guidelines.

Prior to the initiation of practical cooperation between the responsible authorities, the following steps should ideally have been concluded:

1. Establishment of contacts between Customs and MSAs – strategic, management and operational expert level (footnote 1 of the Guidelines includes a link to the official list of national MSAs).

2. Finding of an appropriate approach to ensure that agreements will be established in a proper way.

3. Determination of "national terms of reference" of the agreements on which further common cooperation between Customs and MSAs will be based. These national terms of reference should be based on the recommendations in the Guidelines, and should take account of the specific provisions in the national legislations and/or administrative structure.

4. Implementation of the agreements into practical procedures to be carried out during the control process.

5. Customs involvement should be taken into account when elaborating national market surveillance programs in accordance with Article 18(5) of Regulation (EC) No 765/2008.

6. RECOMMENDED ELEMENTS TO BE INCLUDED IN THE NATIONAL AGREEMENTS BETWEEN CUSTOMS AND MSAS ON PRODUCT SAFETY AND COMPLIANCE CONTROLS

As a result of exchanges of experiences and best practices it is recommended to include the following elements into national cooperation agreements:

- contact list of the responsible officers of both authorities - Customs and Market surveillance, including a revision clause to ensure regular updates;
- setting out the agreed roles and responsibilities on controls to be undertaken by Customs and/or MSAs, taking account of the national structures and local situations;
- the exchange of information and intelligence between Customs and MSAs related to the control process necessary for decision-making and for future risk-based targeting and control activities taking into account existing IT tools;
- proper exchange of information between Customs and MSAs concerning the granting of simplified customs procedure authorisation at the national level and between Member States;
- the establishment of regular meetings between Customs and Market surveillance officers at appropriate strategic, management and operational level with agreed terms of reference;
- when establishing their national market surveillance programmes, MSAs should properly take the needs of Customs into account. This programme should take into consideration the balance between proactive and reactive control activities and any other factors which may influence enforcement priorities. Resource capabilities must be ensured at the border for this purpose;
- terms for an efficient and effective long-term cooperation;
- processes for dealing with new and unplanned suspected unsafe and/or non compliant products or high risk economic operators;
- planning of future meetings;
- training of responsible officers;
- common training sessions;
- methods, processes, procedures and elements of cooperation during specific projects;
- early communication between Customs and MSAs concerning upcoming legislative proposals with impact on both authorities;

- elaboration of clear rules for seized goods including the handling of costs arising from storage.
