

Hans-Georg Niedermeyer Director of the Central Authority of the German Federal States for Safety (ZLS), Munich



Could you begin by briefly explaining to our readers what function ZLS performs in Germany?

The range of tasks that ZLS performs can essentially be divided into two areas. Firstly, I should mention ZLS's function as a delegating authority:

Bodies intending to perform particular inspection and certification activities governed by the Product Safety Act (Produktsicherheitsgesetz – ProdSG) require a special permit to do so. ZLS is responsible for issuing this permit and for carrying out the relevant assessment procedure. This applies to

- Appointed bodies (including those acting in accordance with the First Ordinance to the Explosives Act and the Ordinance on Transportable Pressure Equipment),
- Inspection bodies that are allowed to award the GS symbol to ready-to-use products,
- Approved inspection bodies that perform regular tests on equipment requiring inspection.

ZLS also monitors the activities of these bodies. ZLS is also the notifying authority for appointed bodies under ProdSG, i.e. it notifies the European Commission and the other Member States with regard to these bodies which are thereby the right to operate in any EU Member State.

With the change in the State Treaty in 2013, ZLS also took on new coordinating and supporting roles assisting the market surveillance authorities of the German states under ProdSG. It is also planned for certain executive responsibilities of the German state authorities to be transferred or devolve completely to ZLS.

What coordinating tasks does this involve and what influence does ZLS exert on the market surveillance authorities in this regard?

Coordination primarily applies to those activities of the market surveillance authorities that were newly introduced with the entry into force of EC Regulation No. 765/2008 on accreditation and market surveillance.

This includes activities involving communication and reporting to the Commission as well as the creation and forwarding of the market surveillance programme or regular reports on the results of market surveillance activities. ZLS also coordinates the participation of market surveillance authorities in EU-wide, cross-border market surveillance operations as well as coordinating training and exchange programmes. ZLS acts as the single point of contact in Germany for market surveillance authorities from other EU Member States. It represents Germany at EU level in matters relating to the use and further development of ICSMS and is the central contact for the customs administration on market surveillance matters.

By 2017, ZLS will also gradually take over the tasks of the representatives of the German states on the relevant bodies at EU level. These bodies are primarily the committees and the ADCO groups on the internal market directives transposed in ProdSG.

All these tasks aim to improve the flow of information between individual market surveillance authorities as well as between market surveillance authorities and the European Commission. This ultimately serves to harmonize the way in which the locally competent market surveillance authorities operate. ZLS, however, has no direct influence or even any authority over the individual local authorities in this regard.

How comprehensive is this coordination remit? Does it also include consumer goods law or the law on chemicals?

No. ZLS's coordination remit is expressly restricted to the scope of the Product Safety Act. The authorities responsible for the execution of other legislation – such as the Consumer Goods Ordinance or REACH – have developed their own coordination mechanisms. As far as the placing of products on the market is concerned, however, many products are subject to more than one piece of legislation. In these cases, several administrations with differing structures and cultures are responsible for market surveillance. Mechanisms for comprehensive “horizontal” coordination currently do not exist. Baden-Württemberg's initiative for a working committee on the “cross-sector coordination of market surveillance” represents an interesting foray in this direction.

What is the function of the ICSMS system here? Is it regularly used by market surveillance authorities, economic operators or even consumers?

The ICSMS (Information and Communication System for Market Surveillance) is of decisive importance in coordinating the work of the market surveillance authorities. In this Europe-wide database, the authorities are able to enter structured information on the products

they investigate. This information is then directly available to all participating authorities (including the customs authorities) for their work. The system enables the authorities to exchange specific information on product issues and resolve these by cooperating through a cross-border network. All those with database access have recourse to the same centrally stored information.

Relevant ICSMS data is also made accessible to the public where this is in line with the market surveillance authorities' obligation to maintain confidentiality.

On the basis of Article 23 of Regulation (EC) No. 765/2008, ICSMS is now the general information management system to be used by the market surveillance authorities of all EU Member States.

What potential influence does ZLS have at European level? Is there sufficient coordination between the market surveillance authorities?

As I mentioned earlier, responsibility for representing the German states in EU bodies on matters relating to ProdSG will devolve fully to ZLS from 2017 onwards. The market surveillance authorities of the German states will then have a single voice, as it were, in the relevant coordinating bodies at EU level. But even at EU level, coordination is virtually only within the individual sectors and thus policy-related. This is why we have high hopes for the proposal within the Commission's Product Safety and Market Surveillance Package of February 2013 to set up a European Market Surveillance Forum. Through this body, the horizontal aspects of executive activities could also be "harmonized".

What do you think of the European Commission's current practice on the RAPEX website of publishing risks other than those deemed to be serious?

The RAPEX system should, in my opinion, not be overloaded so as not to undermine its alerting effect. If reports about low-risk products are also published, this would lead to a flood of information that could no longer be used effectively. Also, there is often insufficient data for the consumer to clearly

identify the reported product, thus resulting in general suspicion being thrown on an entire group of similar products. A further problem is that reports are not deleted once the actual issue has been resolved.

The Product Safety and Market Surveillance Package proposed by the European Commission appears to be floundering, not least because of dispute over the indication of country of origin ("Made in..."). Do you have more detailed information on this, particularly as regards the entry into force of the proposed regulations?

The demand for an indication of country of origin contained in the draft for a new Product Safety Regulation has, indeed, up to now prevented an agreement from being reached. The new draft Market Surveillance Regulation submitted at the same time should meet with sufficient support, however. I believe the only way to make progress in the foreseeable future is to unbundle the Product Safety and Market Surveillance Package.

Finally: do you have the impression that the level of actually delivered product safety has risen or fallen in recent years?

I would need statistically validated data to gain a correct and reliable impression. Here, as with other statistics on the results of official market surveillance activities, the RAPEX statistics are not a suitable source of information. Market surveillance tries to target its resources to those places where it is very likely to be able to remove unsafe products from the market. It is neither its objective nor its job to use comprehensive representative samples to obtain an accurate picture of the market situation with regard to product safety. A high "hit rate" thus tends to be more an indication that the authorities are focusing on the right areas rather than an indication of a large number of unsafe products on the market as a whole.

Not even test results from consumer protection institutions are an objective yardstick. Such tests often use self-defined criteria that are higher than the legal standards. From time to time, additional quality standards are reviewed but these have no relevance for safety and so cannot be enforced by the mar-

ket surveillance authorities. If products that fail to meet these standards are then termed unsafe, this gives a distorted picture.

Our legislation on product safety which is based on European standards has helped us to achieve a high degree of safety. At the same time, however, this is not a European market sealed off from the rest of the world but a global market where products from all parts of the world are offered, including products whose manufacturers are not aware of the European regulations, or products not originally intended for the European market. In the age of internet shopping, market surveillance authorities are faced with new challenges where efficiently sniffing out unsafe products and permanently removing them from the market is concerned.

Many thanks, Mr Niedermeyer, for your honest responses.

Hans-Georg Niedermeyer

Rosenkavalierplatz 2

81925 Munich

Tel.: +49 89-9214-2406

e-mail:

hans-georg.niedermeyer@stmuv.bayern.de

Hans-Georg Niedermeyer has been head of the Central Office of the German Federal States for Safety Technology (ZLS) since 1 July 2013.

After studying mechanical engineering in Munich at Technische Universität München, Mr Niedermeyer began his professional career in the area of quality assurance at John Deere in Mannheim in 1991. Five years later, he moved to the trade supervisory authority of the Free State of Bavaria where he was primarily responsible for occupational health and safety. Finally, after several years at the Bavarian State Chancellery, he was appointed as deputy chairman of the local government department "Technical Consumer Protection, Market Surveillance" (initially within the Bavarian State Ministry for Environment, Health and Consumer Protection, later within the Bavarian State Ministry for Employment and Social Order, Family and Women's Affairs). During this time, he was also a German federal state representative on the committee for the Directive on General Product Safety, in the SOGS working group on market surveillance (now: Internal Market for Products – Market Surveillance Group) and deputy chairman of PROSAFE.