Energy Efficiency Compliant Products 2 - EEPLIANT2

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Good Practices for Coordinated and Effective Ecodesign and Energy Labelling Market Surveillance

PROSAFE Joint Actions Best Practice

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Introduction to the Guidelines

These Guidelines are a further development of *Best practices for ecodesign market surveillance* produced by the participants of the predecessor project, ECOPLIANT. The guidelines have been modified subsequently as follows:

- Version 3 published in November 2017 to include content relevant to energy labelling;
- Version 4 published in December 2019 to include content relevant to market surveillance of online shops, contents on impact assessment and to take account of recent legislative developments including the launch of the EPREL database. Moreover, the guideline has been expanded with more examples of good practices from Member States.

The target group of these Guidelines are Ecodesign and Energy Labelling Market Surveillance Authorities (MSAs). It is intended that these will give a valuable input and inspiration on how to monitor, verify and enforce Ecodesign and Energy Labelling requirements for Energy-related Products. In addition, the recommendations are in many cases to be seen as *good practices*, and not always *best practices*, since it is not possible to define best practices that suit all Member States and all MSAs.

This document has been structured into two parts:

- Part 1 that provides an outline of the key elements of each section in Part 2. The titles of the (sub)clauses have hyperlinks that enable the reader to quickly access the corresponding full text in Part 2 of the Guidelines.
- Part 2 is the main area of the Guidelines.

The authors of this document wish to thank the creators of the ECOPLIANT best practice guidelines for the huge amount of work they undertook to produce them. Those well-researched guidelines have been used almost in their entirety to provide a basis for this publication.

Copies of this publication can be downloaded from www.eepliant.eu.

The master file of this publication is held by PROSAFE.

The Project is funded by the European Union

Contents

List of Abbreviations and Acronyms

ADCO	ADministrative COoperation
CIRCA BC	The Communication and Information Resource Centre
ECOPLIANT	The European ECO-design comPLIANce project
EEA	European Economic Area
EEPLIANT	The Energy Efficiency comPLIANT products project
EPREL	European PRoduct database for Energy Labelling
ICSMS	Information and Communication System for Market Surveillance
MSA	Market Surveillance Authority

Part 1: Outline and recommendations

1.1 Scope of the EEPLIANT Guidelines, Introduction

These Guidelines have primarily been formulated based the experiences and analyses gained within ECOPLIANT[1]. They are a balanced and agreed summary of findings and recommendations included in seven different subtask reports[2] from ECOPLIANT. Since ECOPLIANT was focussed on Ecodesign, EEPLIANT updated the content to take into account Energy Labelling.

1.2 Existing literature for monitoring, verification and enforcement of EU product legislation

This Section of the Guidelines identifies other publications and useful sources (mainly online sources) of information that provide guidance for Market Surveillance Authorities.

1.3 Primary goal of the EEPLIANT Guidelines

The scope of these Guidelines has been limited to preparing reliable material on the specific issues related to Ecodesign and Energy Labelling market surveillance.

1.4 The legal base

The role of MSAs is to ensure that products placed on the EU market are compliant with the applicable product-related legislation. For Energy-related Products this includes the following:

- Regulation EU/765/2008 on accreditation and market surveillance (Chapter III on the market Surveillance framework and controls of products entering the community market only until 16 July 2021);
- Regulation EU/2019/1020 on market surveillance and compliance of products (from 16 July 2021);
- Directive 2009/125/EC on Ecodesign for Energy-related Products;
- Regulation EU/2017/1369 on Energy Labelling of Energy-related Products;
- Implementing measures such as product regulations and Ecodesign voluntary agreements (including amendments);
- Commission communications referencing harmonised standards.

The Ecodesign Directive and the Energy Labelling Regulation provide a framework for setting product specific requirements. These are provided in the implementing regulations. Currently, there are 31 Ecodesign regulations, 3 Ecodesign Voluntary Agreements and 17 product-specific Energy Labelling regulations. All Member States are required to appoint MSAs to implement all these regulations.

Fout! Verwijzingsbron niet gevonden. Fout! Verwijzingsbron niet gevonden.

Part 2 is the main area of the Guidelines. Its contents are based on the feedback, experiences and work practices of the MSAs that worked together on the projects ECOPLIANT, EEPLIANT, and on this project, EEPLIANT2. As such, readers should treat the content and recommendations as good

[1] ECOPLIANT was granted financial support by the IEE-programme in early 2012. The project consortium consists of eleven partners; most of them market surveillance authorities (MSAs) for Ecodesign and some of them agencies and policy makers. The partners come from Denmark, Finland, Germany, Hungary, Ireland, Italy, The Netherlands, Spain, Sweden and the UK. Project coordination was led by UK DECC.

[2] Available at http://eepliant.eu/index.php/knowledge-base/category/wp2 (accessible for market surveillance authorities only, requires login).

practices, and not always best practices since these may need to vary to take account of national requirements.

The outlines of each section of Part 2 that follow below, contain just the recommendations given at the end of each of those sections. Readers are advised to consult the full content of each section in Part 2 to understand the background and contexts for the recommendations.

1.5 Organisation and strategy in national market surveillance

- Each Member State should consider how to organise its market surveillance to make it most appropriate for the specific national conditions;
- MSAs should consider whether in-house personnel should be used for all market surveillance activities or if external expertise should be used;
- MSAs should consider whether proactive and preventative activities should be carried out to inform manufacturers, their representatives and importers about the regulations that are in force or will come into force;
- MSAs should consider if the results of market surveillance activities should be published or made publicly available in other forms;
- MSAs should consider how to cooperate with national Customs authorities in market surveillance;
- MSAs should consider being involved in national (and EU or even international) standardisation committees for the development of EN test standards required to support energy regulations;
- MSAs should consider taking part in the formulation of a national position on proposed new legislation, especially regarding enforceability;
- MSAs shall cooperate and provide each other and the Commission with information to assist the application of Ecodesign and Energy Labelling legislation e.g. through the ADCOs[3] and by electronic means of communication.

1.6 How to establish inspection programmes

- National inspection programmes should be designed and developed to effectively detect non-compliant products that have been or are being placed on the market;
- When developing a national inspection programme:
    - Ensure that there is a clearly defined desired outcome (what would you like to achieve).
    - Ensure that there is a clearly defined desired content (which product categories and specific products to select);
    - Ensure that there is methodology to develop content (what methods should be used: shop visits, internet searches, visual inspections, document inspections, testing);
    - Ensure that there is a suitable strategy in place for the disposal of ex-test and non-compliant products.

[3] Ecodesign Market Surveillance Administrative Cooperation (Ecodesign ADCO) and its equivalent body for energy labelling are EU forums for cooperation between those national MSAs responsible for the market surveillance of products covered by Directive 2009/125/EC and its implementing measures, and Regulation EU/2017/1369 and its implementing measures. The two ADCOs meet separately (but normally on the same day in the same location as they have so many members common to both) twice a year to discuss experiences in market surveillance practices and review those issues for products covered by ecodesign and energy labelling regulations. All those responsible national market surveillance authorities of the EEA countries are asked to participate in the ADCO Groups and to share the outcomes of the meetings.

1.7 How to select products for detailed inspection

- Effective product targeting is especially important since the legislation covers so many product categories;
- Well-thought-out targeting techniques should be applied when selecting product categories as well as brands and models for compliance inspection;
- Specific criteria ('risk factors') to select product categories, brands and specific models for compliance inspection can be applied. Important selection criteria for MSAs are:
    - Remarkably high or low energy consumption;
    - New legislation covering a product;
    - High market share and history of non-compliance for brands
    - Other Member State or international complaints;
    - Complaints from consumers or economic operators;
    - New products or new brands on the market;
    - Products with a remarkably low market share;
    - Low-price products;
    - Products coming from certain geographical regions with a track record of producing non-compliant products;
    - Products sold through certain sales channels;
    - Ambiguities in the supplied technical documentation.
- In case of reactive market surveillance, the MSA will normally select the product based on complaints or reports from consumers, economic operators or others;
- Product targeting must be justifiable. To avoid criticism or bias, “guidelines” detailing the criteria used for targeting products should be published by the MSAs;
- If resources permit, random and targeted product selection can be successfully combined with a market share approach;
- Technical documentation inspection can be used as a product targeting technique prior to laboratory test. See Section 2.6;
- Complaints or reports or other forms of intelligence from external parties about possible non-compliant products can be an important targeting method. (Regulation EU/2019/1020 requires MSAs to have a procedure to deal with this type of information as from 16 July 2021 at the latest);
- Screening tests can be a targeting tool for the selection of products with a higher probability of being non-compliant. Screening tests should however not be used to start any formal action against economic operators;
- The specific samples selected for testing need to be randomly chosen and picked-up by MSAs. They should be representative of what is being supplied to the market. If samples are obtained directly from the producer, MSAs must ensure that the samples chosen are not specially prepared “golden” samples.

1.8 How to identify EEA-wide product model numbers

- MSAs should request information on equivalent models from the manufacturer or importer;
- MSAs should request information of products whose technical documentation is derived from the same “basic model” from the manufacturer or importer (when relevant);
- MSAs should check the EPREL database for information on equivalent models. The producers should upload information about models with the same technical specification but with different brand names, model names, etc.;

- To identify the equivalent models and models whose technical documentation is derived from the same "basic model", the following documents can be requested:
    - Identity declaration. To establish the appliances covered by the same technical file (equivalent models) and/or those derived by calculation from the same "basic model";
    - Test reports. To identify the basic model;
    - Calculations. To justify the changes, if any, in the nominal values of some models with respect to the test report of the basic model.

1.9 How to conduct an inspection of the content of the label and the product information sheet

- Label inspection is an important part of market surveillance and should be considered when establishing national inspection programmes;
- Label inspection can be a stand-alone activity. If the content of the label and product information sheet of a product do not meet the requirements of its corresponding regulation, then there is a non-conformance with the relevant implementing measure under the Energy Labelling Regulation;
- It can also be used as a method to select products for further compliance verification through document inspection and laboratory testing.

1.10 How to conduct an inspection of the energy labelling at an online shop

- Online sales accounts for a bigger and bigger share of the total trade, also within the market for Energy-related Products. Still, there is no difference in the information that should be presented to the consumer upon choosing and purchasing a product. The online trader should also display information required by Energy Labelling Regulations;
- The inspection programmes of an MSA should include inspections of energy labels and product information sheets in online shops;
- Label inspections in online shops can be very effective requiring only few resources per inspected label as the inspectors can undertake the inspections in front of their PCs without having to leave the office and drive from one shop to the other;
- Results from inspections carried out in online shops can also be used to select products for further investigation;
- Webpages can change very frequently so it is recommended to make screenshots during the inspections as evidence of the observations;
- MSAs can read more about the interpretation of the regulation in the list of "Frequently asked questions on the energy labelling measures" that is published on the European Commission's website[4].

1.11 How to verify the information on the energy label and the product information sheet through document inspection

- Inspection of the technical documentation file is an important part of market surveillance and should be considered when establishing national inspection programmes;
- Inspection of the technical documentation file is a stand-alone activity: if the technical documentation file of a product does not meet the requirements of the Ecodesign framework Directive or the applicable regulation, the product does not comply;
- It can also be used as a method to select products for further compliance verification through laboratory testing;

[4] See: https://ec.europa.eu/info/sites/info/files/energy_climate_change_environment/ec_faq_el_2019-1.pdf

- It is essential to define harmonised rules for inspections, including inspection of technical documentation files, for all the Member States. Otherwise, with different rules and procedures, the same manufacturer/importer could send the same technical documentation file to different national MSAs in the same or different Member States and find it was only accepted in some of them;
- Before starting, the minimum content of the technical documentation file and the information and parameters (declared values) to be provided according to the relevant implementing regulation(s) need to be established;
- The technical documentation file should include a list of all equivalent models of the manufacturer and/or models with the same technical characteristics relevant for the technical information to be provided produced by a different manufacturer (identity declaration) and/or details of calculations where compliance is derived by calculation or interpolation;
- The MSA should consider if it will do a complete verification of the technical documentation file, checking every requirement in the applicable regulation or if it will concentrate on the most important parameters.

1.12 How to conduct compliance verification laboratory tests

- The compliance of a product with minimum performance and efficiency requirements should be determined through measurements done in test laboratories following harmonized standards or transitional method(s) published by the European Commission;
- When selecting laboratories, consider accreditation, competence and reliability of test results;
- When selecting laboratories, the following practical considerations should also be made:
    - Clear objectives, including the applicable verification procedure/harmonised standard to be used;
    - Legal considerations, e.g. handling of evidence in line with national processes;
    - Financial planning;
    - Contingency planning, e.g. in the event of unforeseen circumstances;
    - Commercial incentives, e.g. when some laboratories require guarantees of work to ensure that acquiring accreditation is commercially viable;
    - Mutual recognition of the test results by other MSAs in other Member States;
    - Labs should not have contracts with manufacturers, importers or dealers of the products to be inspected.
- When planning the test program, the MSA should carefully consider the extent of the testing – a complete test of all parameters specified in the applicable standard(s) or a focussed test concentrating on the most important parameters for the particular product category;

1.13 Sharing of inspection results amongst MSAs

- Share your own data with other MSAs in EEA countries;
- If possible, make sure your inspection data can be made available in a commonly shared language (such as English) for easier transfer to other EEA countries;
- Record inspection results in EU-wide databases e.g. ICSMS, to maximise the spread of available data;
- Always register the bar code of a product when it is introduced in ICSMS;
- Respect legislative (European and national) obligations relating to the exchange of information when carrying out market surveillance. (As an example, MSAs must use ICSMS from 16 July 2021 at the latest for sharing case data, of both compliant and non-compliant products);

- Consider security and confidentiality issues which may restrict the sharing of information. (ICSMS is a secure database only accessible to MSAs);
- A register of MSA contacts should be created and maintained to achieve successful communication. The list will be accessible in ICSMS;
- Scale up the level of enforcement activities by using the EU-wide available inspection resources in the most efficient manner, e.g. by optimal use of information and available data, including external data;
- Assess the quality of external data and make a risk-assessment to evaluate if the results can be acted upon. Use it wherever you can;
- Arrange good support and communication between MSA supplying and receiving data;
- Consider participation in exchange of EU experience and data (e.g. ADCO), and participation in EU projects, to strengthen the enforcement level;
- For improved cross-border cooperation in market surveillance, the MSAs can ask in which countries the product and its equivalent models are sold and in which country the manufacturer or importer is situated.

1.14 How to enforce the provisions of the Ecodesign and Energy Labelling Legislation

- National legislation and national practices will determine the enforcement system of each country, but it is useful for MSAs to study enforcement systems of other EU-countries to compare how (suspected) non-compliance cases are handled;
- A guiding principle, set in the EU legislation, is that enforcement actions should always be appropriate, proportionate and dissuasive;
- Consider if public publishing of market surveillance results is in line with your national legislation and strategies;
- Handling of non-compliant cases where the manufacturer or importer is situated in another EU-country may differ depending on national legislations. If no specific procedure is stipulated in the national legislation, the MSA could:
    - Try to address the manufacturer or importer in the country where they are situated (even if no legal jurisdiction in this foreign country);
    - Transfer the case to the MSA in the country where the manufacturer or importer is situated
    - Prohibit the product from being placed on their national market.

  After 16 July 2021 when Regulation EU/2019/1020 enters into force, such cases will be governed by Articles 22 and 24 of that Regulation.

1.15 Assessing the impact of the activities

- MSAs are recommended to document their impact assessments and to make them as transparent as possible clearly listing all assumptions to increase their credibility as much as possible.

Part 2: Good Practice Guidelines

1 Scope of the EEPLIANT Guidelines

1.1 Introduction

These guidelines have primarily been formulated based the experiences and analyses gained within ECOPLIANT5. This project collected and analysed existing practices used by major international and national MSAs for Ecodesign market surveillance. At that time, project partners shared their own experiences and the project used an extensive survey to collect additional input from other EU/EEA MSAs. The project carried out a pilot action for coordinated market surveillance, including joint laboratory testing and document inspection actions, to practically assess the feasibility of the selected good practices.

Based on those experiences, the original Best Practice Guidelines for Coordinated and Effective Ecodesign Market Surveillance were developed in ECOPLIANT.

The Guidelines in the original document are a balanced and agreed summary of findings and recommendations included in seven different subtask reports[6] from ECOPLIANT. For a detailed description of the specific best practices, interested readers are referred to the subtask reports that can be accessed from the hyperlinks included in the relevant sections of this document.

References to Energy Labelling in this document have not been derived from ECOPLIANT but are part-based based on the collective experience of the MSAs participating in EEPLIANT[7].

Users are invited to provide feedback and advice for how these sections can be further developed.

The recommendations in these Guidelines are to be understood as input and inspiration for the MSAs. In addition, the recommendations are in many cases *good practices*, and not always *best practices*, since it is not possible to define best practices that suit all Member States and all MSAs.

1.2 Existing literature for monitoring, verification and enforcement of EU product legislation

Monitoring, verification and enforcement activities (MV&E activities) for market surveillance is a complex and multi-faceted matter. To describe *all* aspects of market surveillance, and develop an overall guidance for best practice for MSAs, is not within the remits of these Guidelines. They focus only on the most relevant aspects of Ecodesign and Energy Labelling market surveillance.

[5] ECOPLIANT was granted financial support by the IEE-programme in early 2012. The project consortium consists of eleven partners; most of them market surveillance authorities (MSAs) for Ecodesign and some of them agencies and policy makers. The partners come from Denmark, Finland, Germany, Hungary, Ireland, Italy, The Netherlands, Spain, Sweden and the UK. Project coordination was led by UK DECC.

[6] Available at http://eepliant.eu/index.php/knowledge-base/category/wp2 (accessible for market surveillance authorities only, requires login).

[7] EEPLIANT partners come from: Austria, Belgium, Bulgaria, Denmark, Germany, Lithuania, Malta, The Netherlands, Poland, Slovenia, Sweden, UK. Project coordination was led by PROSAFE.

Much work in monitoring, verification and enforcement has already been done for other EU product-related directives, for example in the consumer product safety area. Market surveillance procedures for product safety and for product performance are not fully comparable or interchangeable, but there are many similarities.

PROSAFE (a non-profit professional organisation for market surveillance authorities and officers from throughout the EEA) has published a book on Best Practice Techniques in Market Surveillance[8], known amongst PROSAFE members and market surveillance officers as "the Book". Although related to consumer products and product safety market surveillance, some of the best practices described in the PROSAFE book are relevant for Ecodesign and Energy Labelling market surveillance, especially in terms of the general overview on procedures.

The GOOD PRACTICE FOR MARKET SURVEILLANCE and ANNEX 5 Toolbox (Useful Guidance and Templates) developed by members or chairpersons of various Administrative Cooperation (ADCO) groups has recently been published (2017) on CIRCA BC.

Another publication that deals with international best practices for market surveillance is *Compliance Counts: A Practitioner's Guidebook on Best Practice Monitoring, Verification, and Enforcement for Appliance Standards & Labelling*[9].

A fourth publication that provides more of an overview is the ISO Committee on Conformity Assessment (CASCO) guide *Principles and practices in product regulation and market surveillance.*[10]

Other resources exist besides the above literature including:

- The EEPLIANT website[11] with reports, guidelines and tools developed by the participants in the EEPLIANT 2014 and EEPLIANT2 concerted actions;
- More information (e.g. templates, procedures and flowcharts for processes used by MSAs) can be accessed in the EEPLIANT knowledge base[12]. The access to the complete contents in the knowledge base is restricted to the (MSA) participants in EEPLIANT2;
- PROSAFE has coordinated Joint Actions (mostly on safety of consumer products) since 2006. Final reports and technical reports from these Actions are available from PROSAFE's website[13].
- The European Commission's website on Ecodesign and Energy Labelling[14];
- The European Commission's website on harmonised standards[15];
- The European Commission's website with an overview of legislation for Ecodesign and Energy Labelling[16].

[8] See: http://prosafe.org/index.php/library/publications
[9] Available at https://clasp.ngo/publications/compliance-counts-a-practitioners-guidebook-on-best-practice-monitoring-verification-and-enforcement-for-appliance-standards-labeling-1
[10] See: http://www.iso.org/iso/casco_guide.pdf
[11] See: http://eepliant.eu/
[12] See: http://eepliant.eu/index.php/knowledge-base
[13] See: http://prosafe.org/
[14] See: https://ec.europa.eu/info/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/energy-label-and-ecodesign_en
[15] See: https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards_en
[16] See: https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/ecodesign_en

1.3 Primary goal of the EEPLIANT Guidelines

EEPLIANT has limited its scope to develop and describe the best practice procedures that are specific for ecodesign and energy labelling market surveillance. By adopting this approach, EEPLIANT has tried to avoid duplication of existing and already documented experiences that have been developed by other projects/studies.

The focus of the EEPLIANT guidelines for coordinated and effective ecodesign and energy labelling market surveillance is:

- Organisation and strategy in national market surveillance
- How to establish inspection programmes
- How to select products for inspection
- How to identify EEA-wide product model numbers
- How to conduct label and document inspections
- How to conduct compliance verification laboratory tests
- Sharing of results amongst MSAs
- How to enforce the provisions of the ecodesign and energy labelling regulations

The EEPLIANT team believes that these guidelines will give valuable input to the MSAs on how to carry out national, but also EU-coordinated, effective ecodesign and energy labelling market surveillance activities.

1.4 The legal base

The general objective of market surveillance is to ensure that products placed on the Single market, put into service or made available, comply with applicable product-related legislation and that the products do not endanger health, safety or any other aspect of protection of public interests, e.g. energy efficiency. Market surveillance is carried out in many different areas, by different authorities and with backgrounds in different legislation.

Market surveillance is essential for the functioning of the Single Market to protect European consumers against risks presented by non-compliant products. In addition, market surveillance helps to protect responsible businesses from unfair competition by unscrupulous economic operators who ignore the rules.

There are several Directives and Regulations that form the legal base for market surveillance relevant to the guidelines in this document:

1.4.1 Regulation (EC) No 765/2008 and Regulation EU/2019/1020

General requirements for market surveillance on products available on the EU market are stated in the EU Regulation 765/2008 on accreditation and market surveillance[17].

As from 16 July 2021 Regulation EU/2019/1020 on market surveillance and compliance of products repeals the entire Chapter III of EC/765/2008 on the Market Surveillance framework and controls of products entering the community market. Only requirements on accreditation and CE marking remain in EC/765/2008.

[17] See: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R0765

New provisions on the Market Surveillance framework and controls of products entering the community market are given in EU/2019/1020.[18] This includes provisions on:

- Member States' obligations to organise market surveillance;
- Powers for the MSAs;
- Market surveillance measures;
- RAPEX and ICSMS;
- Concerted actions;
- Working with third countries;
- Working with customs (i.e. the legal framework for the "release for free circulation" procedure).

Moreover, the new Regulation includes a number of new provisions, including in particular new and stronger provisions on distance-selling (including online sales).

1.4.2 The Ecodesign Directive for Energy-Related Products 2009/125/EC, the implementing measures and the national legislations on market surveillance

The legal base for ecodesign market surveillance is found the Ecodesign Framework Directive 2009/125/EC[19], the product-specific implementing measures and in the national legislation of Member States on market surveillance.[20].

The Ecodesign Directive identifies that market surveillance is the responsibility of all Member States. Member States are requested to appoint national market surveillance authorities, as stated in Article 3(2):

> 2. Member States shall designate the authorities responsible for market surveillance. They shall arrange for such authorities to have and use the necessary powers to take the appropriate measures incumbent upon them under this Directive. Member States shall define the tasks, powers and organisational arrangements of the competent authorities which shall be entitled to:
>
> (a) organise appropriate checks on product compliance, on an adequate scale, and oblige the manufacturer or its authorised representative to recall non-compliant products from the market in accordance with Article 7;
>
> (b) require the parties concerned to provide all necessary information, as specified in the implementing measures;
>
> (c) take samples of products and subject them to compliance checks.
>
> 3. Member States shall keep the Commission informed about the results of the market surveillance, and where appropriate, the Commission shall pass on such information to the other Member States.
>
> 4. Member States shall ensure that consumers and other interested parties are given an opportunity to submit observations on product compliance to the competent authorities.

[18] See: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32019R1020
[19] See: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0125
[20] See: http://ec.europa.eu/growth/industry/sustainability/ecodesign/index_en.htm

1.4.3 The Energy Labelling Regulation for Energy-related Products (EU) 2017/1369, the implementing measures and the national legislations on market surveillance

The legal base for market surveillance of the Energy Labelling requirements is to be found the Energy Labelling Framework Regulation (EU) 2017/1369[21], in the product-specific implementing measures and in the national legislation of Member States on market surveillance[22].

The Regulation states in Article 8, the Member States are required to organise and carry out market surveillance to "ensure that products covered by (the Regulation) … which do not conform to applicable requirements set out in (the Regulation) are withdrawn or their being made available on the market is prohibited or restricted and that the public, the Commission and the other Member States are informed accordingly."

Furthermore, the Regulation places a number of requirements on manufacturers and importers including:

- Obligation to supply energy labels and product information sheets with each unit of a product that is placed on the market.
- Obligation to produce a technical documentation file that enables an MSA to assess the information on the label and in the product information sheet.
- A ban on placing products on the market that automatically alter their behaviour during testing to achieve a better performance level ("circumvention testing").
- Obligation to enter information on products placed on the market in the EPREL database.

1.4.4 Commission Regulation (EU) 2016/2282 - use of tolerances in verification procedures

This regulation on use of tolerances in verification procedures[23] was introduced to ensure that manufacturers and importers do not use the verification tolerances laid down in the implementing measures to obtain an energy class or an energy efficiency index more favourable than provided for in the technical documentation or to interpret those values with a view to achieving compliance or to communicate better performance of their products.

The regulation identifies the tolerances applicable for each implementing measure and states that that these may only be used by the Member State authorities, for verifying compliance.

EU/2016/2282 is a so-called omnibus amendment of the Verification Annexes of all existing Ecodesign and Energy Labelling Regulations at that time to harmonise the verification procedure. Later Ecodesign and Energy Labelling Regulations have the same basic text and contain the tolerance values in the product-specific Regulations themselves.

[21] See: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2017.198.01.0001.01.ENG
[22] See: http://ec.europa.eu/growth/industry/sustainability/ecodesign/index_en.htm
[23] See: https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32016R2282

1.4.5 Commission Regulation (EU) 2014/518 – labelling of energy-related products on the internet

The regulation on labelling of energy-related products on the internet[24] was introduced to ensure that potential end-users are provided with the information specified on the label and in the product information sheet in case of distance selling, including mail order, by catalogue, telemarketing or through the internet.

The regulation defines detailed requirements for the display of energy labels and product information sheet for online selling.

EU/2014/518 is a so-called omnibus amendment of all existing Energy Labelling Regulations at that time to introduce an electronic label and product information sheet. Later Energy Labelling Regulations have the same basic text in the product-specific Regulations themselves.

1.5 Organisation and strategy in national market surveillance

Member States are responsible for surveillance activities on their own territory. It is up to each MS to determine how to organise its market surveillance within the framework of the legislation (EU/2019/1020 or EC/765/2008). In this respect the adopted solutions vary among Member States:

- Some MS have delegated market surveillance responsibilities for a number of product related Directives and Regulations to one or more national market surveillance authorities. In such cases, it is possible that one authority is responsible for ecodesign, whilst another is responsible for energy labelling;
- In some MS, the same MSA is in charge of both ecodesign and energy labelling market surveillance and energy (product) policy development;
- Others have organised the ecodesign and energy labelling market surveillance at regional level within one country – sometimes with a common national coordinator;
- And in others, the responsibility for ecodesign market surveillance is divided between two different MSAs, typically one for consumer products and one for industrial products.

MSAs can use in-house personnel for all market surveillance activities. Some MSAs do however also use the expertise of other public bodies, such as energy agencies and/or private sector subcontractors, for example when it comes to communication, technical expertise, document inspections and, of course, external laboratories for the testing of products. Examples also include cases where the entire activity including planning, coordinating, handling of cases, evaluation of documentation and consulting the economic operators is outsourced to a subcontractor and only the core enforcement activities are handled by the MSA.

In addition to inspection and control activities, many MSAs, as illustrated below, proactively inform manufacturers and their representatives or importers about the regulatory requirements that are in force or coming into force. This can be an effective way to improve compliance, especially when it comes to newly adopted regulations.

[24] See: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014R0518

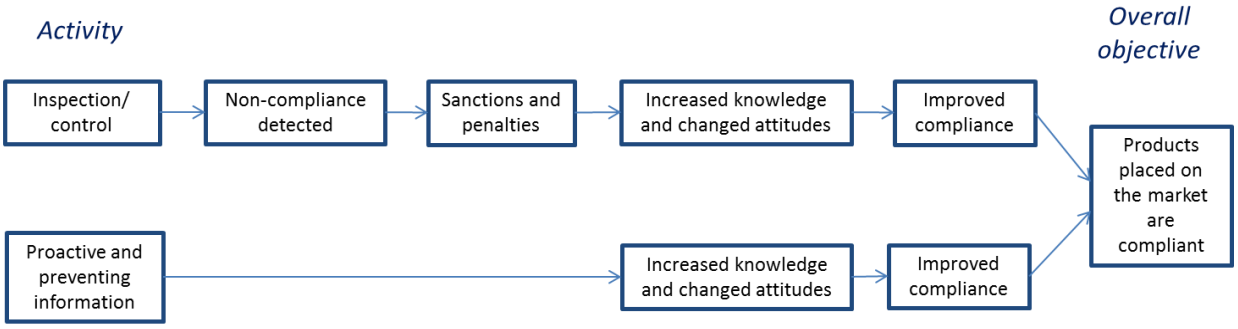


Figure 1: The role of proactive and preventative information activities in market surveillance

Examples of proactive information activities:

- Most commonly, MSAs hold information meetings, send out newsletters and publish guidelines on how to comply with the specific legislative provisions.
- Some MSAs issue brochures, guides and leaflets.
- Some MSAs work in cooperation with other public bodies such as Chambers of Commerce and national Agencies to disseminate information about the regulatory requirements for products.
- MSAs can make public announcements beforehand to inform manufacturers and their representatives or importers about planned market surveillance action(s), by e.g. publishing their yearly market surveillance programme on their website. Several MSA also inform business associations directly about planned activities and how the businesses can conform to the regulatory requirements. This approach has pros and cons: On the one hand, it saves resources for the MSA for later legal enforcement actions. On the other hand, it enables less serious economic operators to do a number of "quick-fixes" to mend the situation in time for a visit without caring for a lasting improvement of the situation.
- It is an advantage for an MSA to have an up-to-date website explaining the regulation and the requirements. It means that economic operators can be referred to this site which in turn will help save the authority resources for answering questions.

Example of current practice: Spanish MSA and industry cooperate to achieve higher level of compliance

The Spanish Ministry of Industry, in collaboration with the Foundation for the Promotion of Industrial Innovation (FFII), develops and updates a public access information point about industrial legislation:

http://www.f2i2.net/legislacionseguridadindustrial/default.aspx

Additionally, the FFII teaches courses about the application of EU and national legislation to manufacturers and other stakeholders. These courses are co-financed by the Spanish Ministry of Industry. The courses include the information and figures of the most recent market surveillance activities in the Directive concerned and the general inspection plans of the year. This information includes only generic reference to the products inspected but not any specific data about the products inspected (brands, model numbers, importers, etc.).

Some manufacturer associations collaborate with the Spanish Ministry by the signature of an agreement where the association pays for the samples, tests in an independent and accredited laboratory and then transfers the test results as a report to the Ministry that follows the administrative procedure regarding complaints.

Some MSAs publish the results of market surveillance activities on their website or in other public forums. This can be a way of discouraging possible improper behaviour by economic operators and be

an extra sanction in case of non-compliance. Publication can be in the form of case-by-case-publications, sectorial reports or annual reports, all depending on national legislation and strategies.

Example of current practice: Publishing results of market surveillance activities in the UK

The National Measurement and Regulation Office (NMRO – now the Regulatory Directorate) takes a considered view when deciding whether or not to publish results from market surveillance projects. When used correctly, the publication of results from market surveillance projects can be a meaningful sanction and so the decision to publish or not, must be based on a case by case basis and be proportionate to the offence, or level of non-compliance.

Results can be published via many formats e.g. news stories, press releases, reports etc. Where appropriate, press releases are developed with the economic operator in question. Regardless of the format, the NMRO has found that the most effective platform to use when publishing is the NMRO website. This allows greater control of content and of distribution.

Content can be passive (published online with no announcement) or it can be active (an e-alert sent to those which subscribe to the NMRO's Ecodesign pages). There are currently ≈3300 subscribers which comprise of consumer organisations, trade associations, manufacturers and media organisations. When used actively, subscribers can use content as they wish on their own 'third party' media platforms, which in turn enhances the impact of publishing results from market surveillance projects.

Since manufacturing is in many cases based outside of Europe, cooperation with Customs authorities can be an effective way to prevent non-compliant products from entering the EU-market. However, Customs often have other priorities and activities, which prevents them from questioning the compliance of imported products under the ecodesign and energy labelling legislation. It might however be useful to actively provide national Customs authorities with simple guidance material about the regulations and relevant product requirements in force.

Harmonised standards play a very important role in market surveillance[25]. Some MSAs take part in the national/EU or even international standardisation committees where these test standards are developed. The presence of MSAs can be useful to ensure that the testing conditions and measurement methods set out in the agreed standards can be cost effectively applied by MSAs.

Some MSAs take part in the national processes when new Ecodesign and Energy Labelling regulations are implemented and national positions are established. Representatives of other MSAs participate in the meetings of the Ecodesign Regulatory Committee, Energy Labelling Expert Group or Consultation Forum where ecodesign requirements are discussed and agreed. MSAs can provide important input to the regulatory process e.g. to ensure new regulations are clear, consistent and enforceable. MSAs can also provide guidance regarding mandates for standardisation.

1.5.1 Recommendations for MSAs

- *Each Member State should consider how to organise its market surveillance to make it most appropriate for the specific national conditions;*
- *MSAs should consider whether in-house personnel should be used for all market surveillance activities or if external expertise should be used;*

[25] The European Commission provides a broad range of guidance relevant to the use of test standards by authorities: http://ec.europa.eu/growth/single-market/european-standards/vademecum/index_en.htm

- *MSAs should consider whether proactive and preventative activities should be carried out to inform manufacturers, their representatives and importers about the regulations that are in force or will come into force;*
- *MSAs should consider if the results of market surveillance activities should be published or made publicly available in other forms;*
- *MSAs should consider how to cooperate with national Customs authorities in market surveillance;*
- *MSAs should consider being involved in national (and EU or even international) standardisation committees for the development of EN test standards for harmonisation;*
- *MSAs should consider taking part in the formulation of a national position on proposed new legislation, especially regarding enforceability;*
- *MSAs shall cooperate and provide each other and the Commission with information to improve market surveillance on Ecodesign and Energy Labelling.*

1.6 How to establish inspection programmes

Within these Guidelines, the expression "inspection programme" is used to indicate a number of actions that go beyond product testing. An inspection programme can be done at different levels including quick technical inspection, document inspection, visual product checks, visual label checks, product laboratory testing, and also other surveillance activities.

There are a number of different aspects for MSAs to consider when establishing national inspection programmes e.g. resources available, national priorities, but also aspects like coordination of inspection programmes within and outside their own country, use of test laboratories, sharing of inspection results and the possibilities for third party funding.

More detail on the recommendations can be found in the ECOPLIANT document "Testing Programmes and Full Compliance Testing Activities" that can be downloaded from http://eepliant.eu/index.php/knowledge-base/item/testing-programmes (accessible for market surveillance authorities only, requires login).

1.6.1 Development of national inspection programmes

National inspection programmes should be designed and developed to detect non-compliant products that are in the market. Factors such as national legislation, priorities and available resources then lead to the specific approach and procedures defined in each country by the national MSA(s).

Article 3 (2) of the Ecodesign Directive states that:

> Member States shall designate the authorities responsible for market surveillance. They shall arrange for such authorities to have and use the necessary powers to take the appropriate measures incumbent upon them under this Directive. Member States shall define the tasks, powers and organisational arrangements of the competent authorities which shall be entitled to:
>
> (a) Organise appropriate checks on product compliance, on an adequate scale, and oblige the manufacturer or its authorised representative to recall non-compliant products from the market in accordance with Article 7;
>
> (c) Take samples of products and subject them to compliance checks.

Article 8 in the Energy Labelling Regulation requires the Member States to undertake market surveillance also on products covered by the Regulation and by relevant delegated acts. This includes the obligation to draw up national market surveillance programmes or sector specific programmes that include "actions to ensure the effective enforcement of the (Energy Labelling) Regulation".

When developing national inspection programmes, MSAs should focus attention both on the desired *outcome* (result) of the programme and *content* of the programme.

There are several outcomes that can be considered and expected from a national inspection programme:

1. To detect non-compliant products;
2. To ensure that detected non-compliance is dealt with by appropriate enforcement actions;
3. To establish levels of compliance to get an overview of the market or for any other kind of data collection;
4. To use non-compliance (suspected or confirmed) as a means to start a dialogue to engage industry or business.

There are different compliance verification methodologies that can be applied to achieve the expected outcome. Those that should be considered for the national inspection programme are:

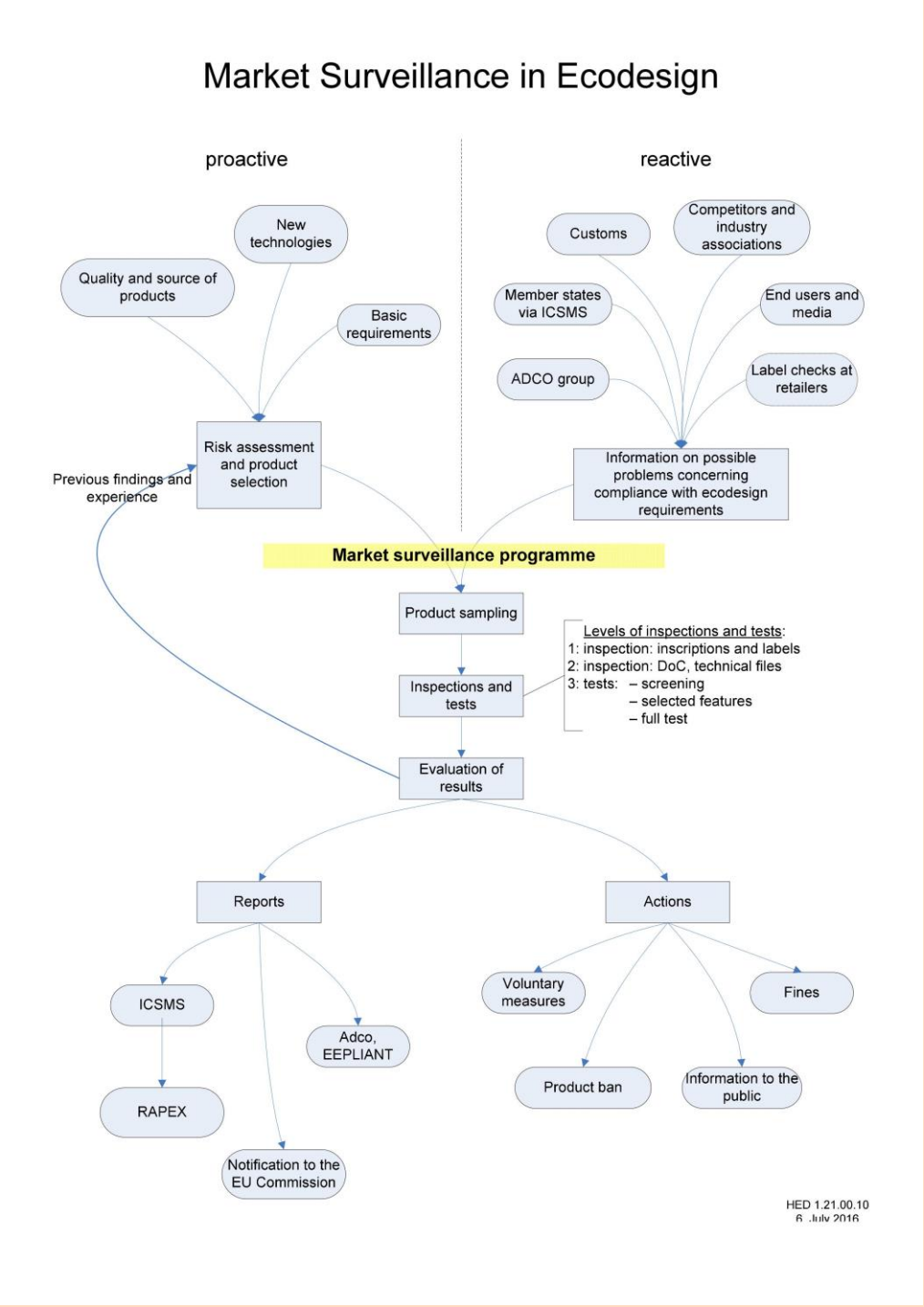
- Checks on presence and on contents of the energy labels (e.g. in stores or on websites);
- Checks on other information provided, e.g. in catalogues or on internet pages;
- Visual product checks (in situ/in laboratory);
- Laboratory testing, to verify the correctness of the information provided;
- Checks of other requirements e.g. document inspection or verification of information requirements (Ecodesign);
- Screen testing[26];
- Compliance testing according to the relevant verification procedure (e.g. abuse of tolerances, availability of spare parts); or
- Checks on the correct registration in EPREL.

Once the intended outcome and associated methodology have been established, there are several factors that may help to determine the content of the inspection programme i.e. what should actually be inspected, when, by whom and on what grounds. For example, product category(s) with a history of non-compliance can be targeted, or products covered by new legislation, or products with high energy consumption. Additional information on this issue can be found in Section 1.7.

Any inspection programme should include a strategy for disposal of products taken from the market after their verification checks/testing has been conducted, taking into account national legislation, enforcement actions and the European waste legislation, where applicable.

[26] The definition of screen testing is given in Section 1.7.

Example of current practice: Organisation framework used in Hessische Eichdirektion (DE)



1.6.1.1 Recommendations for MSAs

- *National inspection programmes should be designed and developed to effectively detect non-compliant products that have been or are being placed on the market;*
- *When developing a national inspection programme:*

- *Ensure that there is a clearly defined desired outcome (what would you like to achieve);*
- *Ensure that there is a clearly defined desired content (which product categories and specific products to select);*
- *Ensure that there is methodology to develop content (what methods should be used: shop visits, internet searches, visual inspections, document inspections, testing);*
- *Ensure that there is a suitable disposal strategy in place.*

- *Establish a 4-year plan to ensure that the market surveillance activities over time will cover all product regulations in force.*

Example of current practice: Providing guidance for Ecodesign and Energy Labelling inspection staff from the State Agency for Metrological and Technical Surveillance in Bulgaria

Staff are provided with 3 specific tools to enable them to conduct a check of compliance of household washing machines with Ecodesign and Energy Labelling requirements:

Tool 1 is a product specific guidance sheet that explains how to conduct the inspection. This sets out the specific requirements in the Regulations and additionally identifies where to collect the data required for calculating the EEI and water consumption.

Tool 2 is an Excel spreadsheet into which all inspection results and manufacturers declared data can be entered. Once this is done, the spreadsheet automatically calculates the EEI and so enables it to be checked against the requirements in the Regulations.

Tool 3 is a form for the inspector to complete on site where they have been making the inspection. It identifies some possible non-compliances that may be encountered:

1. Lack of CE mark;
2. Energy efficiency calculated is lower than declared;
3. Lack of required information in the instruction for use;
4. Water consumption does not meet the requirements.

1.6.2 Coordination of inspection programmes

Coordination of inspection programmes between MSAs can use the available resources much more efficiently. This can be done between national MSAs, e.g. MSAs responsible for different product legislation and/or among regional MSA, or EU-wide, e.g. between Ecodesign/Energy Labelling MSAs (such as in EEPLIANT). Sharing details of planned inspection programmes is not a legislative provision of the Ecodesign Directive and Energy Labelling Regulation, although sharing results on non-compliant products is mandatory according to the Verification Annex of implementing Regulations (and also Regulations EC/765/200 and EU/2019/1020 on market surveillance). Many MSAs however currently share additional information to meet mutual objectives. Coordination opportunities might for example occur via the ADCOs or on a regional level through the types of programme coordinated by PROSAFE.

Sharing information, programme coordination and further collaboration amongst MSAs provide numerous benefits, e.g. increased capacity and skills building, cost savings and better access to laboratory facilities. There are some practical opportunities and tools for sharing of information between MSAs. A number of support systems are in place for MSAs at EU level, such as the Ecodesign and Energy Labelling ADCOs, CIRCA BC and ICSMS. More information regarding platforms where ecodesign and energy labelling data can be shared is given in Section 1.13.

There can be barriers to an effective coordination of inspection programmes. These can be typically explained by the following factors, which should be addressed if coordination of inspection programmes is to be achieved:

- Defined objectives: the purpose of sharing information about planned inspection programmes should be set and agreed among participants. The task is to arrive at coordination (or at a coordinated planning) of the inspection programmes;
- Detail: the level of detail (e.g. product category or model specific) to be shared, as this may impact on resources requested from each participant of a coordinated inspection programme;
- Confidentiality: ownership and access to data should be established and agreed in advance;
- Communication: contact points should be appointed to ensure proper communication and data flow and that any changes to inspection programmes are rapidly shared;
- Time constraint: careful time consideration and appropriate process planning is needed for establishing national inspection programmes;
- Flexibility: the capability of each partner to positively manage changes in the initial process planning should be considered, since it varies between countries.

Example of current practice: Sharing inspection programmes and data among the Nordic countries

The Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) have had a close cooperation in Ecodesign and Energy Labelling market surveillance since 2011. As the Nordic markets for products often have the same manufacturers, importers and products, the conditions for market surveillance cooperation are good. Market surveillance officers in all five countries have some involvement in the cooperation. As a part of this, the countries exchange their yearly market surveillance plans. So far, the plans have been shared by e-mails, but recently a web service has been set up for sharing information.

By sharing market surveillance programmes, common inspection areas are identified at an early stage. If two or more countries have decided to test the same product category, reconciliations are made to avoid selecting the same product models. The results of inspections are also shared. Because the Nordic market is fairly homogenous, there have been cases where non-compliant products have been withdrawn in several Nordic countries based on test results from just one country.

Example of current practice: Cooperation between the federal states within Germany

Due to its federal structure, market surveillance in Germany is spread to 16 market surveillance authorities of the federal states. With an average of about 5 Mio inhabitants per state, authorities are not bigger than the ones of many other EU member countries. This applies both to their budget and number of employees. It is difficult, like in other EU member countries, to handle the many ERP regulations. Legal problems caused by different venues of the authorities add on and regularly lead to discussions. Different views between the authorities, and the risk of different decisions urge for regular meetings and cooperation

To solve this, representatives of all 16 ministries, which are the superiors of the authorities, meet twice a year in Berlin together with representatives of the federal ministry to discuss common problems and to do at least some basic coordination. In addition, the BAM, a senior scientific and technical federal institute, can be contacted by the market surveillance authorities for technical and legal questions. The BAM also represents Germany in the ADCO meetings.

As a result of the meetings, a common market surveillance programme has been set up and published on the BAM's homepage. Several of the states have set up specialized labs which are used by the other states, too. Duplication of labs has been avoided and competence as well as e.g. check lists are being shared.

A yearly common market surveillance conference invites the market surveillance officers, but also industry and the public, to engage in the discussion of common topics. Meetings of the states' labs and educational training complete the cooperation.

1.6.2.1 Recommendations for MSAs

- *When coordinating inspection programmes, ensure that existing opportunities – EU-wide and regional - are identified and taken advantage of;*
- *When inspection programmes are written in national languages, ensure that there is a comprehensive summary in a widely shared language, for example English;*
- *Ensure also that barriers are identified and properly managed before coordinated inspection programmes are planned and developed.*

1.7 How to select products for detailed inspection

Ecodesign and Energy Labelling MSAs have to deal with a wide range of product categories and brands and models. Therefore, it is necessary for the MSAs to carefully select products to be inspected. There are different techniques to use when selecting products. These have different benefits and effectiveness, depending on the specific objective of the inspections.

Product selection criteria can be divided into two main groups. Both give a different outcome:

- "random or statistical based approach";
- "targeted approach" (mostly risk-based sampling).

The product selection should be justifiable on a number of grounds. To avoid criticism or bias, "guidelines" detailing the criteria used for targeting products should be developed and published by the MSAs.

Risk-based sampling is a selection approach for products, brands and/or models based on a set of factors related to a perceived increased risk of failing the compliance requirements. In general, it is more common to select products according to a set of criteria rather than choose a random sample for testing – especially where resources e.g. budgets for testing, are constrained. However, examples do exist of the combination of the random and the targeted approach for products selection.

Random selection is typically made when there is no data available or the MSA has no previous experience of that product sector or regulation. Sometimes it includes previously "good" manufacturers, who have not had any products tested for some time.

The following selection criteria have been found to be frequently used by Ecodesign MSAs (and are expected to be equally applicable to energy labelling):

- New legislation has come into force;
- Product sectors with high energy consumption;
- Product category with a history of relatively high levels of non-compliance;
- Product category subject to international complaints;
- Product category with new technology being used.

For brand selection, MSAs can use the following criteria:

- Brand with a history of non-compliance;
- Brand involved in international complaints;
- Brand with a high market share;

- Brand in low price segment of the market.

When it comes to model selection, MSAs have considered the following criteria to be of most importance:

- Model highlighted by other Member State complaints;
- Model highlighted by intelligence or complaints from consumer groups and/or individuals;
- Model for which the technical documentation indicates possible risks for technical non-compliance;
- Model highlighted from findings of other organisations i.e. environmental NGOs, EU projects, etc.;
- Model with high market share, new technology, smaller size, unusual design features;
- Model with significantly lower price;
- Model with declared values close to thresholds;
- Model where the physical characteristics indicate that it should be difficult to live up to the requirements.

The EPREL database can also provide input to the selection process.

In addition, some MSAs also have sampling strategies for the selection of the individual samples of the models that are to be inspected. Preferably, these should be randomly chosen and picked-up by the MSAs to make sure that they are not "special" or "premium" units.

Example of current practice: Risk-based approach to sampling of LED lamps

As a participating member in a joint action project with other MSAs, NVWA, the Netherlands MA responsible for energy labelling, sampled LED lamps. The project focused on non-compliant products, so a risk-based approach was chosen. Before the samples were selected the criteria were discussed in the joint action preparatory group, which decided that it is most likely that the following characteristics: cheap, high wattage, high lumen, constructed in a small housing, sold in discounts actions, sold on the internet, sold in large quantities, sold by unknown sellers, sold under unknown brands and with a high energy class on the label are indications of those that are most likely to fail. Especially when one or more characteristics occur on the same product.

At this time, NVWA had a particular focus on sampling via the internet so websites were searched for LED lamps with the models selected being those that showed the most or most severe risk-based characteristics.

Those that were considered most likely to fail the test were selected for sampling; these included known and unknown brands. Samples and their corresponding technical documentation (including the EU declaration of conformity) was obtained. Where there was evidence that the product could not be delivered, another sample as close as possible to the original choice was taken at the same supplier.

Screening techniques are one of a number of tools to aid the selection of products with a higher probability of being non-compliant. A working definition for screening tests based on that used previously in ECOPLIANT is: *"preliminary low-cost test, used to assess the likelihood that a model will fail full compliance testing, before deciding whether to proceed with the full compliance testing in appropriately skilled/accredited laboratories. Screening tests can be carried out in the field or by MSA personnel, rather than in a sub-contracted laboratory where all relevant parameters could be controlled".*

Examples of screening techniques that have been applied by some MSAs are:

- In situ/in shop measurements of "standby" power consumption of specific electrical household and office equipment to select products for further compliance verification.
- Using simple test equipment for the measurement of the power consumption of electric power supplies, standby regulation products, simple set-top boxes and TVs.
- Use of simplified versions of the harmonised EN standards.

It should be emphasised that a screening test is not the same as Step 1 of the EU verification procedure[27]. Assuming no non-compliances have been detected in the technical documentation provided by the supplier following a request from an MSA, then formal MSA actions against economic operators can only begin following the results of the two Step procedure described in the EU Ecodesign and energy labelling legislation. The results of screening tests can, however, be used to initiate an informal dialogue with the manufacturer. Screening test results can initiate a closer inspection of the individual model's official documents. Likewise, the documental inspection can lead to a screening test that in turn may highlight a higher risk of non-compliance and suggest a compliance verification procedure be taken forward.

Example of current practice: Document inspection used to select products for lab testing

Laboratory testing of products according to Ecodesign legislation can be a costly affair for MSAs. So, it can be a good idea to target the laboratory tests to reserve laboratory tests just for those models with a well-founded suspicion of non-compliance. The Danish Market Surveillance Authority usually begins inspection of a product series by conducting document inspections of several models. In cases where the documentation is clearly non-compliant, the product does not comply with the applicable regulation and actions can be taken directly. In many cases the technical documentation file shows no formal non-compliance cannot be established, but the MSA has a well-founded suspicion upon which to base the further enforcement activities.

On the basis of the information obtained from the document inspection, a subset of the inspected models is chosen for lab tests. When selecting models for lab tests on this basis, the following factors are inter alia taken into account:

- Models, which according to the results from the document inspections are clearly non-compliant, are excluded from laboratory tests.
- The brand's performance in previous inspections.
- The overall impression of the presented documents (credibility, transparency, issuer of documents).

[27] The Ecodesign and Energy Labelling implementing regulations establish the procedure to be followed by MSA when verifying (e.g. measuring the energy efficiency performance) the compliance of products placed on the market or put into service. For the vast majority of products, a two Step procedure is foreseen: in Step 1, one unit of the model under investigation is purchased from the market and is tested in a laboratory according to the relevant (harmonised) standard. If the value(s) of the measured parameters are within the permitted tolerance with the declared value(s), the model passes the test and is consider compliant with the pertinent legislation. Otherwise, 3 additional units are again selected from the market and tested and the average of the measured parameters is again considered against the permitted tolerance. Exceptions exist for light sources, some large industrial products (e.g. motors) or some models made in low numbers (e.g. fans), where a one-step only approach is defined.

1.7.1 Recommendations for MSAs

- *Effective product targeting is especially important when legislation covers such a large number of product categories;*
- *Well-thought-out targeting techniques should be applied when selecting product categories as well as brands and models for compliance inspection;*
- *Specific criteria ('risk factors') to select product categories, brands and specific models for compliance inspection can be applied. Important selection criteria for MSAs are:*
    - *Remarkably high or low energy consumption;*
    - *New legislation covering a product;*
    - *High market share and history of non-compliance for brands;*
    - *Other Member State or international complaints;*
    - *Complaints from consumers or economic operators;*
    - *New products or new brands on the market;*
    - *Products with a remarkably low market share;*
    - *Low-price products;*
    - *Products coming from certain geographical regions with a track record of producing non-compliant products;*
    - *Products sold through certain sales channels;*
    - *Ambiguities in the supplied technical documentation.*
- *In case of reactive market surveillance, the MSA will normally select the product based on complaints or reports from consumers, economic operators or others;*
- *Product targeting must be justifiable. To avoid criticism or bias, "guidelines" detailing the criteria used for targeting products should be published by the MSAs;*
- *If resources permit, random and targeted product selection can be combined with a market share approach;*
- *Product documentation inspection can be used as a product targeting technique prior to laboratory test. See Section 1.11;*
- *Complaints or reports or other forms of intelligence from external parties about possible non-compliant products can be an important targeting method;*
- *Screening tests can be a targeting tool for the selection of products with a higher probability of being non-compliant. Screening tests should however not be used to start any formal action against economic operators;*
- *The samples selected for testing need to be randomly chosen and picked-up by MSAs. They should be representative of what is being supplied to the market. If samples are obtained directly from the producer, MSAs must ensure that the samples chosen are not specially prepared "premium" units (so-called "Golden samples").*

1.8 How to identify EEA-wide product model numbers

Under current EU market conditions, a specific product model (appliance) is sometimes sold under different model numbers and different trademarks, even if they are technically the same product.

Products have to be stated as "equivalent" by the manufacturer/importer if they have only aesthetic differences or different model references or commercial code numbers, but are equal regarding the technical characteristics and the applicable requirements of the relevant implementing Regulation (e.g. volume, size, load, energy & water consumption, efficiency, functional performance, etc.). In this case, this equivalence has to be stated in the technical documentation issued by the manufacturer/importer.

The documentation supplied by the manufacturer can also refer to a "basic model" of the product. The "basic model" in this respect means the model that has actually been tested and from which test reports, calculations and information of other models derive.

Manufacturers' use of different trademarks and different model identification for equivalent products is a barrier to extending the results from compliance verification across the EU.

Annex VI of Ecodesign Directive 2009/125/EC requires the following product information to be available to the MSAs:

- The name and address of the manufacturer or of its authorised representative;
- A description of the model sufficient for its unambiguous identification.

Ecodesign and Energy Labelling Regulations include requirement for manufacturers to declare equivalent models and details on calculation on the basis of design or extrapolation from other models.

Annex I, item 3a of the Energy Labelling Regulation (EU) 2017/1369 explicitly defines that the supplier is obliged to enter "the model identifier of all equivalent models already placed on the market" in the Product Database (EPREL).

MSAs can request the relevant information of equivalent models and basic models. This information needs to be provided by the manufacturer or importer to comply with the requirement of an unambiguous identification. The information should be included in the technical file as an "identity declaration" that shall identify:

1. all equivalent models under the same or different trademarks placed on the Community market that are covered by the same technical file;
2. different models that are derived from the same "basic model" (when applicable): the way the specific information for a model is derived (e.g. via engineering calculations) from the test report of another model of the same product (the basic model) shall be described by the manufacturer/importer and be included in the documentation.

The identity declaration can be a part of the technical file or a separate document.

Example of current practice: Identity declarations

The regulations do not specify any formal requirements for identity declarations. Therefore, an MSA should generally accept a formal, signed or stamped declaration from the manufacturer that clearly shows how the differing product references relate.

The Irish MSA, SEAI, has the experience that such declarations are normally provided by the original manufacturer for the supplier, which is generally acceptable unless the specifications of the products don't match.

In some instances, the supplier has produced a document with a table showing how different product references relate to the different models. Generally, the MSA will check the characteristics of the manufacturer model numbers in the test reports against the supplier's technical documents. If this reveals any deviations, the MSA will get back to the supplier and ask for clarification.

1.8.1 Recommendations for MSAs

- *MSAs should request information of equivalent models from the manufacturer or importer;*
- *MSAs should request information of products whose technical documentation is derived from the same "basic model" from the manufacturer or importer (when relevant);*
- *MSAs should check the EPREL database for information on equivalent models. The producers should upload information about models with the same technical specification but with different brand names, model names, etc.;*
- *To identify the equivalent models and models whose technical documentation is derived from the same "basic model", the following documents can be requested:*
    - *Identity declaration. To establish the appliances covered by the same technical file (equivalent models) and/or those derived by calculation from the same "basic model";*
    - *Test reports. To identify the basic model;*
    - *Calculations. To justify the changes, if any, in the nominal values of some models with respect to the test report of the basic model.*

More detail on the recommendations can be found in the ECOPLIANT document "Identifying EU wide product model numbers" that can be downloaded from http://eepliant.eu/index.php/knowledge-base/item/identifying (accessible for market surveillance authorities only, requires login).

1.9 How to conduct an inspection of the content of the label and the product information sheet

Products regulated under the Energy Labelling Regulation (EU) 2017/1369 need to have a label and a product information sheet in accordance with the Regulation. Additionally, those products need to have a technical documentation file, consisting of documents relating to the conformity assessment that has been carried out by the manufacturer, making it possible for an assessment of the conformity of the product with the requirements of the Regulation and the relevant product specific regulation. See Section 1.11 for more details on technical documentation.

Regulated products shall have information relating to the consumption of electric energy, other forms of energy and, where relevant, other essential resources during use. This and supplementary information is, in accordance with the relevant regulation, brought to the attention of end-users by

means of a product information sheet and a label related to products offered for sale, hire, hire-purchase or displayed to end-users directly or indirectly by any means of distance selling, including the Internet.

The label and product information sheet need to fulfil the applicable requirements; otherwise the product does not meet the requirements of its corresponding regulation. Most of these requirements can be checked by a visual examination of the information displayed on products at the point of sale or in catalogues, internet web pages and advertising materials. MSA staff will need to travel to inspect products at the point of sale. However, as there can often be a range of products available for inspection at a single location, this form of market surveillance can be a cost-effective activity.

Two parties share responsibility for ensuring that the label and product information sheet are available for examination by the end user - the supplier for making the necessary information available and the sales organisation (if different) for ensuring the information is correctly displayed. Experience has shown that the failure to display the correct information is more often traced to the actions (or lack of actions) by the sales organisation. This is a factor to consider when planning a label inspection programme where extra attention may be given to sales organisations with:

- A history of non-compliance.
- Selling product categories with a history of relative high levels of non-compliance.
- Selling products where new legislation has come into force.

Example of current practice: Providing guidelines for market inspectors in Bulgaria

The Commission for Consumer Protection is responsible for market surveillance of energy labelling in Bulgaria. Its market inspectors are provided with a detailed 7-page guidance document to assist them in their role of enforcing the ORLPSIERPCEOR[28] regulations. The guidance identifies:

- Each of the applicable EU regulations
- Conditions for conducting the inspections
- The types of establishments selling energy-related products to be visited for inspections
- The detailed requirements for the contents of the energy label

Additionally, it provides guidance on document examination - both in respect of when to request documentation and in respect of the information that needs to be available within the documentation.

Example of current practice: Criteria applied by the Hessische Eichdirektion in label inspections

The German market surveillance authority in Hessen, Hessische Eichdirektion provides the inspectors with checklist that they should use when they do label inspections. The checklist includes an example of a correct energy label and a number of parameters that the inspector must check including:

- Is the energy label present?
- Is it found in the correct place?
- Is it immediately possible to link the energy label to the product?
- Is the content correct?
- Are the colours correct?
- Is the size correct?

[28] ORLPSIERPCEOR means “Ordinance on the Requirements for Labelling and Provision of Standard Information on Energy-Related Products with regard to Energy Consumption and Other Resources”. It is a national Bulgarian legal act in the field of energy labelling.

This inspection of the content of the energy label and the product information sheet only covers a check that the required data are present, not a verification of the information. Verification requires a thorough inspection of the technical file (see chapter 1.11) or a test of the product (see chapter 1.12).

1.9.1 Recommendations for MSAs

- *Label inspection is an important part of market surveillance and should be considered when establishing national inspection programmes.*
- *Label inspection can be a stand-alone activity: if the content of the label and product information sheet of a product do not meet the requirements of its corresponding regulation, then there is a non-conformance with the relevant implementing measure under the Energy Labelling regulation.*
- *It can also aid the selection of models for further compliance verification through document inspection and laboratory testing.*
- *Before starting a label inspection, the required content of the label and product information sheet need to be clarified according to the relevant implementing regulation(s).*

1.10 How to conduct an inspection of the energy labelling at an online shop

If products regulated under the Energy Labelling Regulation (EU) 2017/1369 are sold via the internet then the e-trader has to provide the same information to the potential customer as when the product is sold in a "brick-and-mortar" shop, i.e. the energy label and the product information sheet, and the MSA has to verify that the requirements are respected. The legal requirements are laid down in Commission Delegated Regulation (EU) 2014/518.

Inspection of energy labels in online shops will in practice mean that the inspector will sit in front of a PC, visit different websites where products may be on sale and check whether the energy label is presented where the product is presented and offered for sale. This implies that the inspector should check the overview pages (where many products with similar characteristics are presented) as well as the pages for a number of individual products. The inspector should check that the information is displayed (directly visible or as a nested images). Such inspections can be very cost-effective as they don't involve any transportation from shop to shop and the non-compliances can be recorded in a format that can immediately be transferred to a report from the inspection.

The findings (non-compliances) can most easily be documented by recording a "screen shot" of the webpage with the non-compliance and copying it into a document with the observations and results.

The results are reported to the economic operator, both for shops that "pass" the inspection and for shops that fail to pass. The report should present examples of observed non-compliances to explain why the website failed to pass the inspection. The MSA should follow up after a reasonable time to check that the economic operator has taken account of the observations and brought the website into compliance.

One tricky issue is that any economic operator who sells energy-related products on the EU market has to comply with these requirements. However, the enforcement may be difficult in practice when

the e-trader operates an online shop from a country outside the EU. The coming Goods Package is supposed to ease this part, because it requires an authorised representative be identified in the EU before a product can be sold on the EU market. (Article 4). This may be a 'fulfilment service provider'. The identified economic operators are obliged to collaborate (Article 6 & 7). One can also imagine that measures like the "Product Safety Pledge"[29] that has been introduced by DG JUST of the European Commission for product safety issues could help inspire a similar development in the energy sector. The idea behind the initiative is that a number of big providers of platforms for online sellers have signed up for removing unsafe products from their websites as soon as they are made aware of their presence.

Example of current practice: Using web crawlers for online surveillance in Sweden

Some authorities use a "web crawler" in their inspection activities. It is a piece of software that automatically "surfs" a large number of webpages that fulfil certain pre-defined criteria, for instance that words like "sales" and "household appliances" are found on the pages.

The web crawler will then check the pages to verify if products are indeed offered for sale on the website. This is done by looking for other characteristics like for instance the existence of a button where the user can select a product and certain specifications like volume in case of freezers or lumen in case of lighting.

If the characteristics of the webpage indicates that it is likely that e.g. household appliances are offered for sale, the internet address of the website is noted on a list that is downloaded by the inspector when the inspections start. The inspector will then go to each of the websites on the list and check if the legal requirements are met.

1.10.1 Recommendations for MSAs

- *Label inspection of online shops is an important part of market surveillance and should be considered when establishing national inspection programmes.*
- *Label inspection can be a stand-alone activity: if the content of the label and product information sheet of a product do not meet the requirements of its corresponding regulation, then there is a non-conformance with the relevant implementing measure under the Energy Labelling Directive.*
- *It can also aid the selection of models for further compliance verification through document inspection and laboratory testing.*
- *Before starting a label inspection, the required content of the label and product information sheet need to be clarified according to the relevant implementing regulation(s).*
- *MSAs can read more about the interpretation of the regulation in the list of "Frequently asked questions on the energy labelling measures" that is published on the European Commission's website*[30].

1.11 How to verify the information on the energy label and the product information sheet through document inspection

Products regulated under the Ecodesign Directive 2009/125/EC and the Energy Labelling Regulation (EU) 2017/1369 need to have a technical file, consisting of documents relating to the conformity

[29] See: https://ec.europa.eu/info/sites/info/files/voluntary_commitment_document_4signatures3-web.pdf
[30] See: https://ec.europa.eu/info/sites/info/files/energy_climate_change_environment/ec_faq_el_2019-1.pdf

assessment that has been undertaken by the manufacturer. This makes it possible to assess the conformity of the product with the legal requirements.

The technical documentation file consists of a number of documents, depending on the type of product. Requirements on the content of the technical documentation can be found in the Ecodesign framework Directive, the Energy Labelling Framework Regulation and in the product specific implementing regulations. Typically, the technical documentation should include: test reports, technical information, calculations, a list of equivalent models and of the appliances covered by the same test report (identity declaration). Additionally, for products covered by the Ecodesign Directive 2009/125/EC, the product should have an EU-declaration of conformity issued by the manufacturer or its authorised representative declaring that the product complies with all relevant provisions of the applicable regulation(s).

The technical documentation file needs to fulfil the applicable requirements. Not doing so would mean the model is to be considered non-compliant. Therefore, document inspection is an important methodology for market surveillance, often relatively inexpensive to perform, and should be considered when establishing national inspection programmes (see Section 1.6). Note that compliant documentation does not necessarily mean a technically compliant product.

Example of current practice: Checking of CE marking and Declaration of Conformity (DoC) in Finland

The Finnish Safety and Chemicals Agency (Tukes) has very limited funds for market surveillance, thus they often prefer document control instead of expensive tests, especially when dealing with bigger products. The easiest form of document inspection is to check the markings of the product (if there is access to the physical product) and to ask for the EU Declaration of Conformity (DoC). They think that if the product does not have CE marking and/or DoC, the economic operator is clearly not aware of the requirements of EU regulations and the products need to be banned without any other proof of non-conformity. However, if there is some kind of effort put on the matter, but things are not exactly right (e.g. the C and E are too close together, DoC doesn't have all the required information) then they notify the economic operator about the flaws and ask them to fix them.

One important part of their job is to educate the Finnish manufacturers, importers and retailers. As part of this they have made different type of guides and even examples of DoCs. These can be found from their web page: http://www.tukes.fi/en/Branches/Electricity-and-lifts/Electrical-equipment/EC---Declaration-of-Conformity/.

Example of current practice: Document inspections in Spain

The procedure for conducting document inspection by one of the regional authorities in Spain is the following:

- An inspector visits some shops and selects some appliances. In the shop, he takes some pictures of the appliance, the energy label and requests to the seller the available documentation for the consumer;
- Alternatively, when there is a specific complaint against a product that is sent to the MSA, the inspectors look for this product in the market and proceed as above. In some cases when the complaints come from other manufacturer, the inspector selects a similar product from the manufacturer that issued the complaint to be checked in the same way;
- Later, the authority sends a written communication to the manufacturer that specifies the minimum content of the documentation requested (test report, declaration of conformity, etc.) and the measured technical parameters values that must be found in that documentation.
- The documentation sent by the manufacturer is analysed by the MSA and particularly it is checked that the rated values are suitably justified by the measured values of the test reports. In parallel, the manufacturer is officially asked about all the models covered by the same documentation in the Spanish market to ask for solutions for all of them when necessary.

Example of current practice: Document inspections in Sweden

Often document verification is carried out by use of a template, for instance an Excel sheet that the market surveillance inspector fills in with information that is obtained from the manufacturer or importer.

A better way could be to send the Excel sheet to the economic operator and ask him to fill it in. The economic operator should then be instructed not only to fill in the information but also to produce certain evidence to back up the information, e.g. the declaration of conformity, test reports, user manuals, etc. The manufacturer or importer should also be instructed to explain where in the adjacent documents to find the information that is entered in the template.

Experience shows that such an approach makes it easier for the economic operator to send the correct information to the MSA. Often, the MSA will even receive more correct information faster than when requesting the information from the economic operator in a more traditional way.

1.11.1 Recommendations for MSAs

- *Document inspection is an important part of market surveillance and should be considered when establishing national inspection programmes.*
- *Document inspection is a stand-alone activity: if the documentation of a product does 'formally' not meet the requirements of its corresponding regulation, and if it doesn't confirm the data and information provided on the energy label, the product information sheet and public websites, the product does not comply with the relevant implementing measure under the regulation.*
- *It can also be used as a method to select products for further compliance verification through laboratory testing.*
- *It is essential to define harmonised rules for inspections, including document inspections, for all the Member States. Otherwise, with different rules and procedures, the same manufacturer/importer could send the same documentation to different national MSAs in the same or different countries and find it was only accepted in some of them.*
- *Before starting, the minimum content of the documentation and the rated and measured values to be provided according to the relevant implementing regulation(s) need to be established.* NOTE: it is hoped that these will eventually be provided in the product specific DRPIs in ICSMS – though this is not currently the case.
- *The technical documentation file should include a list of all equivalent models of all products covered by the same technical file and of the products where the same basic model is used to derive compliance by calculation or interpolation.*

More detail on the recommendations can be found in the ECOPLIANT document "Document Inspection Requirements" that can be downloaded from http://eepliant.eu/index.php/knowledge-base/item/document-inspection (accessible for market surveillance authorities only, requires login).

1.12 How to conduct compliance verification laboratory tests

The technical product compliance is determined through measurements done in test laboratories following harmonized EN standards or transitional method(s) published by the European Commission.

There are a number of different issues for MSAs to consider when conducting compliance tests e.g. the use of qualified test laboratories, sharing of test results and possibilities for third party funding.

1.12.1 Sampling of products for testing

The first activity is to sample the products that are to be tested. These products are selected in a careful process that normally will focus on identifying those products that are most likely to fail at the laboratory. Most often these will be a subset of the products that were selected for inspection of the technical documentation.

The purpose of the sampling is to identify a unit of the product for testing and organise its transports to the test laboratory in such a way that the properties of the product don't deteriorate on the way to the laboratory. This can be done in different ways, by the inspector visiting the economic operator and selecting the product himself or by the authority writing to the economic operator asking him to supply the sample.

Once the product has been identified, it is marked and sealed so the economic operator is unable to exchange the product without the authority noticing. This normally also means that the inspector will register all information from the marking plate, including in particular the serial number and other information that will be specific for that particular unit.

Example of current practice: Avoiding "golden samples"

"Golden samples" are samples of extraordinary and superior quality that have been made to pass a test.

Normally, this is prevented if the inspector turns up at the premises of the economic operator and selects the sample without the economic operator interfering. However, many authorities find it advantageous to do the sampling remote by sending an order to the economic operator to provide the sample. Such an approach clearly makes it easier for the economic operator to carefully select a "golden sample".

The Danish Energy Agency has developed a simple approach that allows remote sampling and still prevents "golden samples": The authority orders the economic operator to supply a list with serial numbers of 10 products of the model and type that is to be sampled. The list must be provided within 24 hours. The authority selects one of the items on the list and asks the manufacturer to send it to the selected laboratory within 7 working days.

The experience is that these short deadlines effectively prevent manufacturers from supplying new samples "designed to purpose".

The sampling process is subject to national legislation that establishes the basic principles including the sort of message and receipt that should be left with the economic operator as evidence for the sampling.

Moreover, the legislation also defines whether the authority has to purchase the sample or it can take samples for free. Some authorities formally "borrow" the samples from the economic operator. Other authorities pay for the sample, but are allowed to reclaim the costs if the product fails the test.

The authority also has to consider how to deal with the requirement for "triple-testing" in most regulations. It implies that an authority may have to test up to four items to establish the non-compliance of a product. Normally, an MSA will start by testing one item of a product. If the test shows that the product could be non-compliant, many regulations require the MSA to test another 3 units of the product and only if these tests confirm the results from the first test, the product is considered to be non-compliant.

Example of current practice: Managing "triple-testing" in practice

In Italy, the market surveillance authorities have adopted a simple way of handling the triple-testing in practice:

When sampling a product from the market, the authority selects 4 items of the product. The first item is taken for testing (and the authority pays the economic operator). The three other samples are secured but remains at the economic operator.

If testing gives no indication of non-conformities, the authority informs the economic operator that the 3 additional samples are released and can be sold.

If testing indicates that the product may be non-compliant, the authority collects the three additional samples and bring them for testing.

Example of current practice: Managing "triple-testing" in practice

Several MSAs have standard operating procedures that allow them to avoid the triple-testing if the manufacturer agrees.

If the authority tests one item of a product and finds that it may be non-compliant, it contacts the manufacturer and presents the test results. If the manufacturer agrees that there may be an issue with the compliance, he is allowed the possibility of taking voluntary action to bring the product into compliance. If the manufacturer disagrees, the authority samples 3 more items and test them.

This approach has proven particularly useful, when the authority has the power to reclaim test costs. In that case, the manufacturer will consider very carefully if he should challenge the authority, because the risk is that the manufacturer will be faced with a claim to pay for 1 + 3 tests if the three extra tests also fails

The authority however has to acknowledge that formally speaking, it has not been established that the product doesn't comply. The manufacturer has merely decided to react voluntarily upon an indication from the MSA.

These procedures don't work well in case of very big products that are made to order (e.g. distribution transformers, and large fans, motors and boilers). In some cases like electric motors and transformers it is possible to do testing at the manufacturer's site or to witness the manufacturer's testing. For other products (e.g. fans and process chillers) produced in quantities of 5 or less per year (including equivalent models), one test is sufficient.

1.12.1.1 Recommendations for MSAs

- *The MSA should consider its sampling procedures so they to the extent possible ensure that the products that are tested are the ones that the MSA wanted to have tested and for instance not replaced by "golden samples";*
- *The MSA should ensure that its procedures describe how to deal with triple-testing in case of indications of non-conformities;*
- *The MSA's legal provision should enable the authority to reclaim costs for testing of non-compliant products.*

1.12.2 Compliance verification through laboratory testing activities

The purpose of this section is to describe how laboratories in the EEA should be used by MSAs for testing to the verification procedure defined in the EU Ecodesign and Energy Labelling legislation.

The importance of accurate measurements in relation to these Directives is stressed throughout the product specific implementing measures, which state that:

"Measurements of the relevant product parameters should be performed using reliable, accurate and reproducible measurement methods, which take into account the recognised state of the art measurement methods including, where available, harmonised standards adopted by the European standardisation bodies..."

The verification of product compliance through laboratory testing and the function that laboratories play in delivering reliable and accurate results is therefore central to the effective enforcement and success of Ecodesign and Energy Labelling legislation. When selecting laboratories for testing, many MSAs base their choice on criteria such as established expertise, reliability of results, accreditation, available budget and services offered.

Accreditation to EN 17025 for the specific test programme signifies that the laboratory has some level of experience for making the necessary tests. Although this is no complete guarantee of expertise, it is viewed by many MSAs as an essential requirement for laboratory selection.

1.12.2.1 Recommendations for MSAs

- *The technical product compliance should be determined through measurements done in test laboratories following harmonized standards or transitional method(s) published by the European Commission*
- *When selecting laboratories, consider accreditation, competence and reliability of test results.*
- *When selecting laboratories, the following practical considerations should also be made:*
    - *Clear objectives, including the applicable verification procedure/harmonised standard to be used;*
    - *Legal considerations, e.g. handling of evidence in line with national processes;*
    - *Financial planning;*
    - *Contingency planning, e.g. in the event of unforeseen circumstances;*
    - *Commercial incentives, e.g. when some laboratories require guarantees of work to ensure that acquiring accreditation is commercially viable;*
    - *Labs should not have contracts with manufacturers, importers or dealers of the products to be inspected.*

1.12.3 Third Party Funding

The monitoring, verification and enforcement of Ecodesign and Energy Labelling legislation requires substantial resources (human, financial, time). In some cases, MSAs may not have all such resources making market surveillance almost unachievable and as consequence putting at risk the intended economic and environmental benefits of Ecodesign and Energy Labelling legislation. Some MSAs consider funding by third parties as a way to enlarge the available economic resources for their work.

A third party can be described as any private or public subject not directly involved in market surveillance e.g. trade associations, industry or grants, and other funding initiatives including European Commission's co-funded projects, such as ECOPLIANT and EEPLIANT. There are several opportunities for third party funding which include but are not limited to the following:

- Regulatory: Some MSAs have powers that allow for the recovery of testing and other costs from suppliers of noncompliant products, and/or can issue administrative fines;
- Industry Cooperation: Some MSAs strive to build successful and proactive relationships with industry to develop and progress market surveillance projects that are mutually beneficial to both parties. Cooperation can come in many guises: direct funding (subsidies), indirect funding (access to human or laboratory resources) and shared work;
- EU Programmes: Third party funding can also come via programme initiatives such as the Horizon2020 programme (the research and innovation programme of the EU) that is funding EEPLIANT2.

1.12.3.1 Recommendations for MSAs

- *Different third-party funding models can exist and can be used by MSAs as part of a balanced approach to raise financial resources in the context of national market surveillance actions.*
- *However, regardless of the model or models used, it is essential that an MSA retain the following characteristics as these factors help to support the operational effectiveness and efficiency of market surveillance:*
    - *Independence*
    - *Transparency*
    - *Impartiality*
    - *Objectivity*
    - *Traceability*

The recommendations laid out in this section are described in detail in the ECOPLIANT document "Testing Programmes and Full Compliance Testing Activities" that can be downloaded from http://eepliant.eu/index.php/knowledge-base/item/testing-programmes (accessible for market surveillance authorities only, requires login).

1.13 Sharing of inspection results amongst MSAs

Market surveillance, both at national and cross border level, can only be truly successful when public authorities cooperate and share information. Ideally, results from national inspections should be shared between MSAs whenever possible. This relates to label and document inspections and compliance verification laboratory test results. Although preliminary screening test results can also be shared, the intrinsic unknown reproducibility and lower reliability of such results makes them less usable for some MSAs. The results of product targeting can also be shared since these help to coordinate the efforts of different MSAs towards more risky products.

The concept of exchanging information is one of the guiding principles of Regulation (EC) 765/2008 which sets out the mandatory requirements for accreditation and market surveillance relating to the marketing of products[31]. It is also a requirement under the Ecodesign Directive and Energy Labelling

[31] 16 July 2021, Regulation EU/2019/1020 on market surveillance and compliance of products repeals and replaces Chapter III of EC/765/2008 on the Market Surveillance framework and controls of products entering the community market.

Legislation that require that Member States keep the Commission and, where appropriate, other Member States informed of their market surveillance results and specifically that "in cases of withdrawal of the product from the market or prohibition on placing the product on the market, the Commission and the other Member States shall be immediately informed".

The desired outcome of the coordination and sharing of information regarding product inspection results is to create a collaborative approach to market surveillance. Such an approach ensures the most effective use of resources amongst MSAs, avoids duplication of work and demonstrates to economic operators that compliance is a pan-European requirement, albeit addressed at national level.

Among MSAs that are sharing test results, the information is normally shared as soon as the process has ended or the non-compliance has been confirmed.

There are some tools and possibilities for MSAs to share test results across the EU:

- ADCO: In Administrative Cooperation Working Groups MSAs meet to discuss verification and enforcement issues for specific legislation. The Ecodesign ADCO is currently (2019) chaired by Sweden and meets twice a year as a forum for MSAs to exchange information and best practices. The Energy Labelling ADCO meets in a similar manner. Subject to agreement, the two ADCOs are set to merge.
- CIRCA BC: The Communication and Information Resource Centre is an electronic workspace developed by the Commission to enable secure sharing of documents for the various ADCO and other working or interest groups.
- ICSMS: The Information and Communication System for Market Surveillance is a market surveillance database maintained by the European Commission. All MSAs are obliged to use it to record information on products that present a risk as specified in Regulation 765/2008. ICSMS has so far generally been used more for recording market surveillance associated with product safety but as from 16 July 2021 Regulation EU/2019/1020 on market surveillance and compliance of products will make it mandatory also to record data regarding Ecodesign and Energy Labelling.
- A further use of ICSMS is to use it to notify the intention of passing the responsibility for dealing with a non-compliance to another MSA. This feature "passing the baton" can apply where another MSA is better placed to deal with the non-compliance, perhaps because they have specialist experience or perhaps because the headquarters of the supplier or manufacturing plant of the product is based in their territory.
- RAPEX: The EU Rapid Alert System (RAPEX) is a system used to facilitate the rapid exchange of information and actions by MSAs to prevent or restrict products which present a serious risk to the health and safety of consumers. It is normally not relevant for Ecodesign and Energy Labelling aspects.

Example of current practice: Bar codes used as product identifiers in ICSMS

It is a common experience that it may be very difficult to find products in the ICSMS database due to different habits for reporting the identification of a product, typos, etc.

A simple way to avoid this is to report the EAN or GTIN code (the bar code). This code is given by an independent organisation and it uniquely identifies a product.

Bar codes can be verified on the website www.gepir.org.

1.13.1 Recommendations for MSAs

- *Share your own data with other MSAs in EEA countries;*
- *If possible, make sure your inspection data can be made available in a commonly shared language (such as English) for easier transfer to other EEA countries;*
- *Record inspection results in EU-wide databases e.g. ICSMS, to maximise the spread of available data;*
- *Always register the bar code of a product when it is introduced in ICSMS;*
- *Respect legislative (European and national) obligations relating to the exchange of information when carrying out market surveillance. (As an example, MSAs must use ICSMS from 16 July 2021 at the latest for sharing case data, of both compliant and non-compliant products.)*
- *Consider security and confidentiality issues which may restrict the sharing of information. (ICSMS is a secure database only accessible to MSAs.)*
- *A register of MSA contacts should be created and maintained to achieve successful communication. The list will be accessible in ICSMS;*
- *Scale up the level of enforcement activities by using the EU-wide available inspection resources in the most efficient manner, e.g. by optimal use of information and available data, including external data;*
- *Assess the quality of external data and make a risk-assessment to evaluate if the results can be acted upon. Use it wherever you can;*
- *Arrange good support and communication between MSA supplying and receiving data;*
- *Consider participation in exchange of EU experience and data (e.g. ADCO), and participation in EU projects, to strengthen the enforcement level;*
- *For improved cross-border cooperation in market surveillance, the MSAs can ask in which countries the product and its equivalent models are sold and in which country the manufacturer or importer is situated.*

The recommendations laid out in this section are described in detail in the ECOPLIANT document "Sharing Data between Member States" that can be downloaded from http://eepliant.eu/index.php/knowledge-base/item/sharing-data (accessible for market surveillance authorities only, requires login).

1.14 How to enforce the provisions of the Ecodesign and Energy Labelling Legislation

Enforcement is the action taken by the market surveillance authorities against manufacturers and importers of non-compliant products. Enforcement relies on transparent and rigorous product inspection. Investment in this effort is necessary to protect market and consumers against non-compliant products.

The legal enforcement systems for ecodesign vary between EU Member States. In the Ecodesign Directive, some general requirements are set out in Articles 3 and 7. The requirements, which are less specific in the Energy Labelling Regulation, are primarily set out in Article 8.

The Ecodesign Directive requires that:

"Member States should ensure that the necessary means are available for effective market surveillance. Member States shall take all appropriate measures to ensure that only products come on the market that comply. They shall designate the authorities responsible for market surveillance. They shall arrange for such authorities to have and use the necessary powers to take the appropriate measures incumbent upon them under the Ecodesign Directive. Member States shall define the tasks, powers, and organizational arrangements of the competent authorities which shall be entitled to e.g.

- organize appropriate checks;
- requires the parties concerned to provide all necessary information;
- take samples of products and subject them to compliance checks.

Where a Member State ascertains that a product is not compliant the manufacturer shall be obliged to make the product comply with the provisions of the applicable implementing measure. Where there is sufficient evidence that a product might be non-compliant, the Member State shall take the necessary measures which, depending on the gravity of the non-compliance, can go as far as the prohibition of the placing on the market of the product until compliance is established.

In case of prohibition or withdrawal from the market, the Commission and the other Member State shall be immediately informed. Any decision by a Member State pursuant to the Ecodesign Directive which restricts or prohibits the placing on the market and/or the putting into service of a product shall state the grounds on which it is based. Such decision shall be notified forthwith to the party concerned, who shall at the same time be informed of the legal remedies available under the laws in force in the Member State concerned and of the time limits to which such remedies are subject.

Member States should determine the penalties to be applied in cases of non-compliance; these penalties should be effective, proportionate and dissuasive, taking in account the extent of the non-compliance and the number of units of non-complying products placed on the Community market.

Member States shall ensure that appropriate measurements are taken to encourage the authorities responsible for the implementation of the Directive to cooperate with each other and provide each other and the Commission with information to assist the operation of the Ecodesign Directive."

In practice, when finding a suspected non-compliant product, many MSAs follow an approach that starts with confronting the manufacturer/importer with the results of the inspection. The response of the manufacturer can influence how the MSA will proceed. If the manufacturer proposes corrective actions, and these are acceptable and completed in a satisfactory manner, the MSA might close the case. In other scenarios, the MSA might decide to initiate a physical test of the product, or, if the product has failed Step 1 of the verification procedure, to test additional three unit of the product (Step 2 of the verification procedure). Depending on the circumstances, fines and sales bans could be imposed.

Example of current practice: Denmark; Enforcement is more than legal prosecution

When non-compliance has been established by the market inspection, the manufacturer is informed and given the opportunity to comment on the result of the inspection. The manufacturer is offered – on a voluntary basis – to correct or to withdraw the non-compliant product from the market; thus short-cutting the legal procedure, which can be both costly and cumbersome for the manufacturer.

In each case of non-compliance, the Danish MSA considers providing information and guidance instead of legal action, especially if:

- The regulation is new, or a new tier in the regulation has recently entered into force
- The violation is minor
- Similar infringements seem to be common in the market
- The manufacturer is not a recurrent deviator

Information and guidance activities are often faster and easier to carry out than legal action. Guides published on the MSA's website and/or distributed in a newsletter may lead to a higher compliance rate than legal prosecution against a limited number of proven non-compliant models.

Results of both compliant and non-compliant products are published on the Danish Energy Agency's website. The publication always includes a notice stating complaint products are not to be taken as an endorsement by Danish Energy Agency since not all testing parameters may have been validated.

Example of current practice: Enforcement in the UK

Within the UK, Statutory Instrument 2010 No. 2617 (The Ecodesign for Energy-Related Products Regulations 2010)[32], provides the National Measurement and Regulatory Office (NMRO – now the Regulatory Directorate – "RD") with powers to enforce the ecodesign regulations. A key component of this is via the use of civil sanctions and cost recovery. Civil sanctions allow for discretionary, proportionate and cost-effective courses of enforcement action to be taken.

Where an offence has been committed and after considering all of the evidence available and all of the actions of the economic operator concerned, NMRO (RD)will consider issuing some form of sanction as well as any other preventative or remedial action as deemed appropriate. They may require manufacturers to pay for the costs of testing if it is proven that their product does not comply with the Regulations.

The NMRO/RD's sanctioning regime is based on six principles, which are included in the Regulators Compliance Code[33]:

1. Aim to change the behaviour of the offender
2. Aim to eliminate any financial gain or benefit from non-compliance
3. Be responsive and consider what is appropriate for the particular offender and the regulatory issue
4. Be proportionate to the nature of the offence and the harm caused
5. Aim to restore the harm caused by the regulatory non-compliance, where appropriate
6. Aim to deter future non-compliance.

The sanctions available under the Ecodesign for Energy-Related Products Regulations 2010 are:

- Compliance Notice - a written notice which requires an economic operator to take actions to bring products into compliance with the law and/or return to compliance within a specified period.
- Variable Monetary Penalty - a monetary penalty designed to eliminate financial gain or benefit which we may impose for moderate to serious offences. A variable monetary penalty can be issued in conjunction with a compliance notice or a stop notice.
- Stop Notice - a written notice which requires the economic operator to take immediate action in relation to an offence prohibiting an economic operator from carrying on an activity.
- Enforcement Undertaking - a voluntary agreement driven by an economic operator to undertake specific actions that would make amends for non-compliance and its effects within a specified timeframe.

The UK Government believes that regulators should have access to effective sanctions that are flexible and proportionate and that ensure the protection of workers, consumers and the environment when tackling non-compliance by economic operators. These sanctions should be flexible enough to reflect the regulatory needs of legitimate economic operators, as well as being able to ensure that where economic operators have saved costs through non-compliance, they do not gain an unfair advantage over those that have complied with their regulatory obligations.

[32] See: http://www.legislation.gov.uk/uksi/2010/2617/pdfs/uksi_20102617_en.pdf
[33] See: https://www.gov.uk/government/publications/regulators-code

Example of current practice: Suspected non-compliance often handled with voluntary remedy actions in Sweden

When finding suspected non-compliance, whether it is from a document inspection or from testing one single unit, the Swedish MSA always starts with approaching the manufacturer (or importer). The manufacturer will receive a letter explaining the case, including possible test report and other documentation that is showing suspected non-compliance. In this letter, if applicable in the specific case, the Swedish MSA also informs the manufacturer that if necessary, three additional units of the product might be tested, and in case of proven non-compliance, the manufacturer will be charged for the whole testing cost. Sweden is a relatively small market and lots of goods come from other EU-countries. The company is therefore asked to fill in a form where he can state if he is only a retailer and therefore not the responsible manufacturer or EU-importer. In that case, he has to state from whom he has bought the products and he is asked to provide an invoice. By receiving the information in this form, the Swedish MSA knows in which country the responsible manufacturer or importer is situated, and the MSA can plan its future actions based on this.

In most cases (~90 %), the manufacturer submits some kind of information or proposal that can solve the case already at this stage. Often the manufacturer proposes a voluntary remedy action that will stop the suspected non-compliance, e.g. changes of the technical characteristics of the products, changes in the technical information, or voluntary withdrawal from the market. If voluntary remedy actions are considered appropriate, the MSA will close the case. Follow-ups will be made, if necessary. It is also quite common that the manufacturer provides some information that shows that the product is out of scope of the applicable regulation, e.g. by providing information on when the product was placed on the market, or by claiming an exemption. Often, the MSA will close these cases.

If there is no acceptable response from the manufacturer, the Swedish MSA can go ahead and test three additional units of the product. If confirmed non-compliance, the Swedish MSA has the possibility to issue sanctions and fines and also to ban products.

The Swedish MSA has recently had a number of cases where the responsible manufacturer or importer has been situated in Germany. The complete case with suspected non-compliance has in these cases been sent to BAM, who is coordinating the Ecodesign market surveillance in Germany.
When finding suspected non-compliance that is deemed as “minor”, the Swedish MSA sometimes only sends out an administrative “warning” or “observation”, informing the manufacturer that minor non-compliance has been detected and that it should be corrected. “Minor” non-compliance can for example be small mistakes or problems in the technical documentation.

Example of current practice: Short picture of enforcement approach in Slovenia

In the case of suspected non-compliance of the product, the letter is sent to the economic operator in Slovenia (manufacturer, importer or first distributer).

The first economic operator is invited to comment the findings (included test report or description of administrative noncompliance) and propose voluntary actions to eliminate the non-compliance.

At almost all cases, the addressed economic operator is willing to take appropriate voluntary action. Inspectorate is supporting them with information and guidance at this stage. The official procedure stops with acknowledgment of elimination of non-conformities and request to the economic operator to pay for the costs of testing if it is proven that its product does not comply with the Regulations.

In the case of improper reaction, the legal procedure may continue with administrative decision to require the product be withdrawn from the market and to impose a fine.

Example of current practice: The role of remedial actions and technical documentation in Spanish enforcement system

Once the document inspection or the tests performed in the first sample detect that a product is in non-compliance with the relevant regulation, the manufacturer is warned about the non-compliance and required to solve or clarify the problem. In parallel, the retailer is informed about the problems found and invited to collaborate in the solution of the problem.

There is a specific period for the manufacturer to react. If no answer or the answer cannot be accepted by the MSA, an immediate solution is requested. The MSA also informs the Regional Governments that are responsible for imposing penalties.

If the manufacturer accepts to modify the information of the product voluntarily, the MSA asks for an official list of products and shops in which the problem could be present. A detailed plan about the modifications to be done by the manufacturer is requested. The plan needs to be approved by the MSA; otherwise the procedure followed is as stated in the above paragraph.

If the testing of one unit according to the verification procedure shows non-compliance of the unit, the manufacturer is also asked to provide the relevant technical information. If this information is missing, or if the technical information cannot provide evidence for compliance with the values required by the regulation, then the appliance is considered not to meet the requirement of the Regulation. In this situation, it is possible to force the removable of the product from the market, including the equivalent models, without proceeding with the testing of three new samples.

For that purpose, the MSAs are informed of the non-compliance to inform them of the need to check for the existence of the product in the market and to ask for removal in their corresponding areas in Spain. Normally, the manufacturer or the retailer voluntarily removes products in this situation.

If the technical information provided after the test of step 1 seems to be correct, then the three samples are acquired again in the market and proceed to be tested. If non-compliance is confirmed after step 2, the procedure followed is the same as above.

Taking enforcement action against a manufacturer or importer that is situated in another EU country can be challenging for MSAs. When these problems arise, some MSAs try to address the economic operator within their own country. Other MSAs forward the suspected non-compliance cases to the MSA in the country where the manufacturer or importer is situated.

The possibility of MSAs using externally sourced data as a basis for their enforcement actions is important for optimising use of existing resources. External data in this context is defined as data that has not been gathered under the supervision of the MSA in question itself, but comes from another source e.g. data gathered by a MSA in another EU country. It is also possible that foreign data can come from a project like ATLETE[34] or from an industry organisation. In principle, all these kinds of third party data could, under certain conditions, be used for enforcement actions. How much this is possible depends on the legal system in each country but also on other factors like accreditation of the laboratory responsible for the measurements, sampling procedure, handling of tested products and so on. The starting point for MSAs should be to assess the foreign data and to try to make the best possible use of it.

Example of current practice: Dealing with "conflicting test reports"

When a manufacturer challenges an MSA, he will normally present test reports that show how the product complies with the regulation contradictory to the MSA test report that indicates non-compliances. When dealing with this, an MSA should consider the following questions:

[34] Read more: www.atlete.eu for the ATLETE project on refrigerating appliances and ATLETE II project on washing machines.

- Did both tests follow the same test protocol or have the two tests been undertaken differently? Ask the manufacturer to have the laboratory provide the test protocol (for the tests where the MSA and the manufacturer disagree);
- Did both tests include the same parameters or did the manufacturer's test omit some of the requirements from the standard? Ask the manufacturer for the full test report and any supporting calculations;
- Did the test samples come from the same batch of products or could the manufacturing process have changed between the two tests? Ask the manufacturer to explain the differences between the batches and how it could have affected the performance of the product;
- Did the manufacturer partly base his conclusion on calculations or did his product undergo all tests? Ask the manufacturer for the full test report and all supporting calculations.

It may also be the case that the manufacturer replies that the tested item is the last of its kind and that subsequent modifications have taken place. In that case the MSA could ask the manufacturer for evidence of the modifications as well as test reports for the old as well as the new batches.

The MSA should remember that type tests are always carried out on samples where the manufacturer is absolutely conscious of the fact that they will be tested whereas market surveillance tests normally are carried out on samples picked randomly from the production line.

Example of current practice: Dealing with economic operators from other EU Member States

Quite often an MSA may find itself in the situation that it has to deal with an economic operator in another EU Member State. This could for instance be the case if the MSA samples a product from a local retailer to find out that all follow-up actions are directed towards the manufacturer or importer who is established abroad.

In such cases, both the French and the Dutch market surveillance authorities have adopted a procedure whereby they start by contacting the foreign economic operator. At the same time the copy the MSA of that Member State to keep it informed about the discussions.

If the authorities do not receive any reaction from the economic operator, they contact the local MSA directly and asks it to intervene in the case.

1.14.1 Recommendations for MSAs:

- *National legislation and national practices will determine the enforcement system of each country, but it is useful for MSAs to study enforcement systems of other EU-countries to compare how suspected non-compliance cases are handled;*
- *A guiding principle, set in the EU legislation, is that enforcement actions should always be appropriate, proportionate and dissuasive;*
- *Consider if public publishing of market surveillance results is in line with your national legislation and strategies;*
- *Handling of non-compliant cases where the manufacturer or importer is situated in another EU-country may differ depending on national legislations. If no specific procedure is stipulated in the national legislation, the MSA could:*
    - *try to address the manufacturer or importer in the country where they are situated (even if no legal jurisdiction in this foreign country);*
    - *transfer the case to the MSA in the country where the manufacturer or importer is situated;*
    - *prohibit the product from being placed on their national market.*

After 16 July 2021 when Regulation EU/2019/1020 enters into force, such cases will be governed by Articles 22 and 24 of that Regulation.

The recommendations laid out in this section are described in detail in the ECOPLIANT document "Enforcement Activity Follow Up" that can be downloaded from http://eepliant.eu/index.php/knowledge-base/item/enforcement-activity (accessible for market surveillance authorities only, requires login).

1.15 Assessing the impact of the activities

More than ever MSAs are faced with the demand to justify their activities and measure the impact of their results. This means that it is advisable to assess the socio-economic impact of the activities. Impact can arise in many ways. The ultimate end-goal is to save energy and decrease the CO_2 emission in Europe. There are two direct routes to achieving this:

- Market surveillance activities may result in products being taken of the market because they consume too much energy. Presumably this will mean that consumer will buy other products that consume less energy;
- Market surveillance activities can also result in products being relabelled to display the correct energy class and not a false (presumably better) energy class. This would all things equal mean that consumers would be more tempted to purchase other and less energy consuming products.

However, there are also a number of indirect ways to create energy savings:

- The economic operators who have one of their products examined will most likely check other products they are selling to ensure that they comply;
- The market surveillance activities will also create awareness among other actors in the business sector thereby encouraging economic operators whose products haven't been tested to "shape up" and ensure that the information that is displayed to the consumer is correct;
- Economic operators in other sectors may also learn about the activities and feel encouraged to check their own product stock to ensure that it complies;
- Market surveillance activities in general helps increase businesses' confidence in the market which in itself will increase all actors' interest in respect the regulatory requirements;

On top of these impacts there are a number of other ones that don't cause any immediate energy savings. These include:

- Capacity building in the MSA. The market surveillance inspectors will increase their skills and experience meaning that they will be able to provide better advice to industry about regulatory and technical issues for the concerned product sectors;
- The capacity is often captured in tools like guidelines, checklists, test programmes, etc. that can be shared with other MSAs to allow them to climb the learning curve quicker;
- Gaining experience with the feasibility of the requirements laid down in standards and legislation and gathering useful feedback for the policy makers and the standardisation committees that will enable them to produce better legislation and standards.

1.15.1 Recommendations for MSAs:

MSAs are recommended to document their impact assessments and to make them as transparent as possible clearly listing all assumptions to increase their credibility as much as possible.

2 Summing up

The purpose of these guidelines is to describe *best practices for Ecodesign and energy labelling market surveillance*. The guidelines have primarily been formulated based on collected information and experiences and analyses gained within ECOPLIANT and EEPLIANT.

As experiences and practices amongst Ecodesign and Energy Labelling MSAs continue to evolve over time, these best practice Guidelines will be developed further to reflect those changes.

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For more information about the project visit:

www.eepliant.eu