

Market surveillance – the prerequisite for realising the large expected savings from the Ecodesign Directive

Karolina Petersson
Swedish Energy Agency
Box 310
SE-631 04 Eskilstuna
karolina.petersson@energimyndigheten.se

Peter Nielsen
Danish Energy Agency
Amaliegade 44
DK-1256 Copenhagen

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Abstract

The Ecodesign directive for energy related products is estimated to provide a 5 % reduction in energy consumption in Europe by 2020. A condition for this result to be achieved is, of course, that all products put on the market comply with the requirements of the related implementing measures (product specific regulations).

The national market surveillance authorities (MSAs) for Ecodesign shall monitor and verify that the products on the market are compliant. Well-functioning market surveillance will guarantee fair competition and protect consumers from defective products.

Alarming, the review of the Ecodesign directive in 2011 concluded that market surveillance was insufficient and ineffective. It was estimated that 10–20 % of products covered by implementing measures are non-compliant.

Market surveillance of the Ecodesign directive is a challenge. Experience and resources are limited. Product testing is expensive. Effective methods for monitoring, verification and enforcement are needed, as well as increased cooperation between MSAs. In this context, 10 national MSAs, coordinated by UK Department for Environment, Food and Rural Affairs (Defra), initiated the Ecoplant project.

Ecoplant will help deliver the intended economic and environmental benefits of the Ecodesign directive by strengthen-

ing market surveillance and so increasing compliance. Outputs from Ecoplant will be:

- Guidelines on best practice.
- Pilot action on coordinated market surveillance.
- Creation of electronic tools for MSAs to share results.
- Training tools for MSA personnel.

The Ecoplant project has been granted economic support from IEE during 2012–2015.

The project is now examining how the MSAs are working to ensure compliance with the directive. National acts and enforcement systems, existing strategies and practices in different Member States (MS) are studied. A comprehensive survey and a set of interviews are designed to establish the situation in the European MSAs. The paper will give an overview of existing European best practice for Ecodesign market surveillance.

Introduction

MARKET SURVEILLANCE – WHAT AND WHY?

The general objective of market surveillance is to ensure that products placed on the market 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 a number of different areas, by different agencies and with backgrounds in different legislation.

Market surveillance authorities (MSAs) are public authorities responsible for verifying that products on the market com-

ply with current legislation and that they are labelled and verified in the prescribed manner. In practice, market surveillance includes any necessary action (e.g. bans, withdrawals, fines) to stop the circulation of products that do not comply with all the requirements set out in the relevant EU harmonised legislation, to bring the products into compliance and to apply sanctions (1).

Market surveillance is essential for the functioning of the Single Market, in order 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.

Market surveillance is often done in the form of planned inspections of products (so-called proactive market surveillance) or reactions upon reported accidents, public complaints or warnings from authorities in other countries (reactive market surveillance). Market surveillance typically does not include prior examination or inspection of products in use.

Given the rapid product development and the large amount of regulated products available on the market, it is impossible to check all products. Therefore, market surveillance is often carried out in the form of samples, which have been chosen based upon some kind of risk assessment.

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 (2), in sectorial legislation (such as the Ecodesign directive (3) and its implementing measures), and in the national legislations transposing the directives.

Market surveillance is carried out at member state (MS) level

EU legislation lays down specific requirements for market surveillance. However, in accordance with the subsidiarity principle as defined in Article 5 of the EU Treaty (e.g. in (4)), market surveillance is organised and carried out at national level. Member States are responsible for surveillance activities on their own territory.

THE ECODESIGN DIRECTIVE AND ITS MARKET SURVEILLANCE

The Ecodesign directive for energy related products is estimated to provide a 5 % reduction in energy consumption in Europe by 2020. A condition for this result to be achieved is, of course, that all products put on the market comply with the requirements of the related implementing measures. So far, 16 products groups have been regulated under the Ecodesign directive as implementing measures. These regulations will result in yearly energy savings around 415 TWh in EU27 by year 2020, compared to baseline without regulations (however, this figure also includes the savings expected from energy labelling regulations where applicable).

The Ecodesign directive and its implementing measures are harmonised EU legislation and should be supervised by appointed national market surveillance authorities (MSAs). The Ecodesign directive (3) states in Article 3.

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 appro-

priate 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.

Present state of market surveillance of the Ecodesign directive

In 2011, the Commission launched the study “Evaluation of the Ecodesign Directive (2009/125/EC)” (5). The study aimed at reviewing the effectiveness of the Ecodesign directive and its implementing measures, including a review of the current market surveillance. Alarming, the review concluded that market surveillance was insufficient and ineffective. It was estimated that 10–20 % of products covered by implementing measures are non-compliant. This was later pointed out by the Commission as an important challenge faced at EU and Member States levels in the application of the Ecodesign Directive and its implementing measures (6).

The need for improved market surveillance within the Ecodesign area and improved cooperation between member states had however been recognised long before the Commission study was presented. The ADCO group on Ecodesign, i.e. an administrative cooperation between market surveillance authorities, started to discuss the need for improved coordination of market surveillance already in 2009–2010. Members of the Ecodesign ADCO-group had recognised that experience and resources for enforcement of the Ecodesign directive were very limited in many Member States and that sharing experiences and identify best practices for market surveillance and enforcement were crucial to realise the energy efficiency potentials that were predicted under the Ecodesign directive. In April 2011, a project consortium of 10 national MSAs together with UK Department for Environment, Food and Rural Affairs (Defra) responded to the Intelligent Energy Europe (IEE) (7) call concerning ‘SAVE – Energy-efficient products’ by proposing an action for market surveillance of the Ecodesign requirements. The proposed project was named Ecopliant – the European Eco-design Compliance Project.

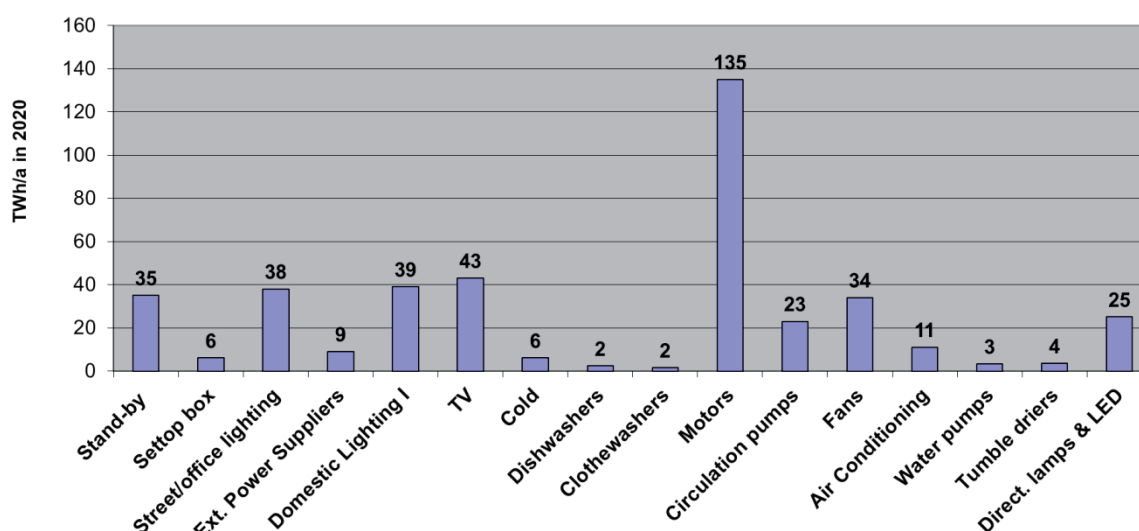


Figure 1. 16 regulated products under the Ecodesign directive, with expected yearly savings at 2020 (including savings from Energy labeling directive where applicable).

Ecopliant – the European Ecodesign Compliance Project

INTRODUCTION TO THE PROJECT

The Ecopliant project was granted financial support by the IEE-programme in early 2012. The project consortium consists of 10 market surveillance authorities (MSAs) for Ecodesign, namely Denmark, Finland, Germany, Hungary, Ireland, Italy, The Netherlands, Spain, Sweden and the UK. Project coordination is led by UK Defra (8).

The main objective of Ecopliant is to help deliver the intended economic and environmental benefits of the Ecodesign directive by strengthening market surveillance and so increasing compliance with the directive and the relevant implementing measures (8). Ecopliant will achieve this by:

- establishing systems to coordinate, in the most cost-effective manner, the monitoring, verification and enforcement (MV&E) of eco-design requirements across the European Single Market; and
- by increasing knowledge and experience of best practice amongst Ecodesign MSAs.

Ecopliant is aiming to enhance the functioning of the European Single Market by ensuring that Ecodesign requirements are applied consistently and effectively across Member States. This will help protect compliant businesses by eliminating unfair competition from non-compliant goods. It will similarly help to ensure that consumers, who purchase energy efficient products, can be confident that these products live up to the energy efficiency claims of the manufacturer.

The Ecopliant Consortium members believe that significant improvements in product compliance rates can be achieved if MSAs actively coordinate market surveillance activities, using a range of best practices to help them do so in the most resource efficient way. There are, however significant challenges to estab-

lishing such coordinated action. These include the “alignment” of the differences in national market surveillance strategies and priorities, national legislation, and the structure and responsibilities of MSAs, together with the lack of common formats, procedures and mechanisms (such as shared databases) to share information.

The objectives which are expected to be achieved by the project are listed below.

1. Collection of existing best practice already developed by the MSAs in the participating countries when ensuring compliance with the Ecodesign directive requirements. Development of additional best practice and adoption at MSA level.
2. Coordination of market surveillance activities by the participating MSAs to aid the development of future surveillance plans and activities, and to prevent duplicating testing of products that have already been tested by other MSAs, thus making a better use of public money.
3. Development and use by the MSAs in the participating countries of (electronic) tools and systems to record and share the plans for and results of market surveillance activities.
4. Development and implementation of a knowledge and skilled based training programme for MSAs.
5. Dissemination of the project results, including outputs of the project and the benefits of coordinating market surveillance activities to MSAs in the EEA and to the wider international community.

THE ECOPLIANT WORK PROGRAMME

The Ecopliant project is divided in seven different work packages (WP) as outlined below:

- WP2 “Overcoming Barriers and Establishing Best Practices” is centred on collecting and analysing existing practices and strategies used by national MSAs for market surveillance. The WP2 collection and analysis of the existing practices and tools of MSAs across the EU/EEA will eventually result in specific guidelines for effective coordinated market surveillance.
- In WP3, a pilot coordinated market surveillance programme, including e.g. joint testing, will be carried out in several phases to practically assess the feasibility of the selected best practice and guidelines.
- WP4 concerns data sharing between member states, including the development of a database
- In WP5, an array of developed training tools (such as the guidelines for best practice, manuals, etc.) will be used for training seminars across Europe to help national MSAs to tackle Ecodesign market surveillance and enforcement more effectively.

The flowchart in Figure 2 represents the logic of the work programme. The four core work packages located in the middle run in parallel (at the same time or otherwise) and are inter-dependent. The outer structure represents the framework for the project as management, communication, and EACI dissemination activities work packages, which are all key to the functionality of the project.

ESTABLISHING BEST PRACTICES

In WP2, current best practices in the area of market surveillance of the Ecodesign directive and its implementing measures will be established. Existing practices and strategies used by national MSAs all over EU/EEA will be collected and analysed.

In principle, these eleven areas will be covered by the investigation:

1. Organisation of market surveillance in different countries.
2. Technical documentation inspection.
3. Identifying EU wide product model numbers.
4. Targeting products for testing.
5. ‘Screening techniques’.
6. National testing programmes.
7. Coordination of market surveillance activities.
8. Compliance testing activities – identifying accredited laboratories.
9. Funding of market surveillance and testing.
10. Enforcement actions.
11. Sharing test results – recording of data.

Practices and strategies in each of these eleven areas will be investigated and analysed by different subtask leaders, i.e. partners in the Ecopliant project. In the first phase, the subtask leaders will use their own experiences as well as desktop studies in order to draft possible practices and strategies in each area. These findings will be complemented with an extensive survey to all EU/EEA MSAs for Ecodesign, as well as in-depth interviews with those countries that have the most interesting practices, tools, strategies and experiences. By this collection, together with the practical experiences of WP3, best practice guidance can be formulated.

Coordination of this work package is handled by WP leader Swedish Energy Agency and partner Danish Energy Agency.

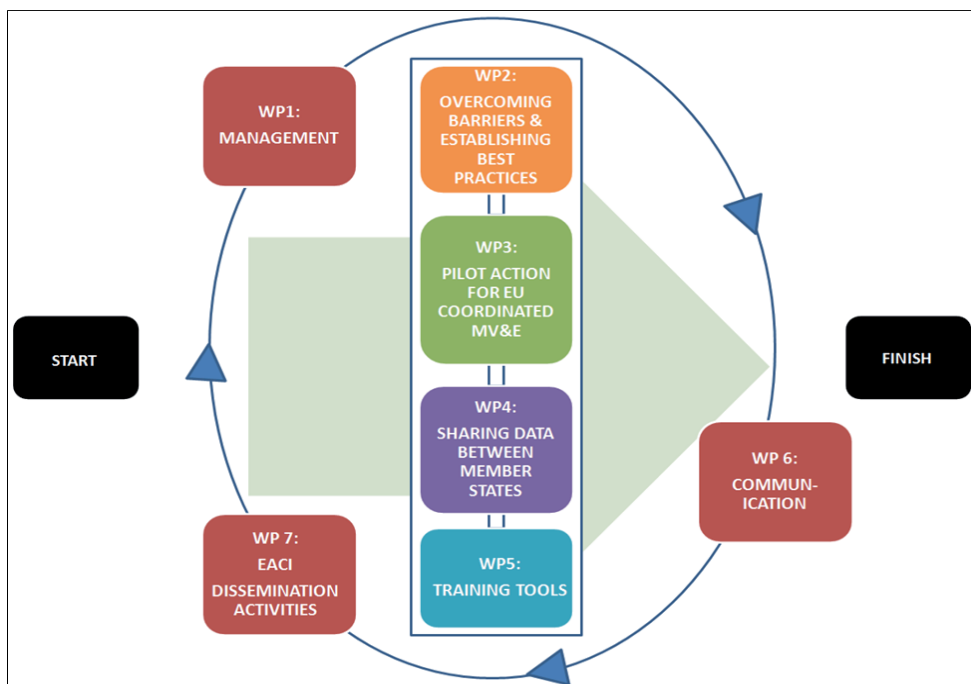


Figure 2. The flow chart of the Ecopliant work programme.

SURVEY TO PROJECT CONSORTIUM AND OTHER EU/EEA MARKET SURVEILLANCE AUTHORITIES

In order to complement and validate the desk studies gathered throughout the subtask studies of WP2, a comprehensive survey has been designed to establish the present situation among the EU/EEA market surveillance authorities. The survey was prepared and carried out in September–December 2012. The project consortium formulated an extensive set of questions, which was sent out in the form of a web-based survey to all MSAs for Ecodesign across EU/EEA.

The main purpose of the survey has been to identify *best practices* applied by MSAs across Europe. At the same time, the survey has given a very good overview of how Ecodesign MSAs are actually working with market surveillance: what experiences they have in different areas, which practices and strategies they use, how they cooperate nationally and EU-wide, and what tools they are using. By this activity, the project consortium has gathered a lot of information about the practices that MSAs, with both limited and extensive experience and resources, are currently using when carrying out national market surveillance.

The findings from this survey constitute the main source for this paper. During 2013, the Ecopliant partners will make in-depth analyses of the data material from the survey, and in some cases complement these findings with interviews. *Therefore, it is important to bear in mind that the findings presented in this paper do not constitute the project's final analyses and conclusions regarding the market surveillance practices across EU/EEA.*

Ecodesign Market Surveillance across Europe – current practices

THE SURVEY TO THE ECODESIGN MSAs – METHODOLOGY

So far, a number of areas related to market surveillance and monitoring, verification and enforcement (MV&E) have been reviewed in Ecopliant. The survey to all MSAs for Ecodesign in Europe constitutes the source for most of the findings in this paper. (The findings might however, as discussed above, be modified and reviewed after in-depth analyses.)

A comprehensive, web-based survey was compiled by the Ecopliant partners in early September 2012. Different national practices within the eleven different areas were identified as interesting for the survey (see “Establishing Best Practices” above).

First, the project contacted all national contact point for Ecodesign market surveillance, mostly by using the ADCO contact lists. A description of the project and the purpose of the survey were given to each contact point by e-mail. It was stated that Ecopliant was aiming for collecting existing practices for Ecodesign market surveillance and therefore the project wished to send the survey to the person most appropriate to answer these types of questions. In the e-mail, the project also asked for the number of MSAs for Ecodesign in each country, since some countries have more than one (e.g. were one MSA takes care of consumer related products and another is responsible for industrial products). It turned out that four of the countries that answered the initial e-mail had more than one MSA for Ecodesign: Three countries had each two different

MSAs for Ecodesign (depending on the type of product) and one country had several regional MSAs, but in this later case, one answer was to be organised for the whole country. According to the project's knowledge, one EU country does not have a contact point for Ecodesign yet. Therefore, including three EEA countries, there were 32 possible respondents for the survey.

The survey was sent out in early November and closed in early December.

Given the length and complexity of the Ecopliant survey, the response rate for was above expectations. By the closing of the survey, 20 MSAs had answered all or at least parts of the survey. Out of these respondents, 10 are partners of the Ecopliant project. Additional three respondents had begun to answer the survey, but their responses were so limited that they could not be used in the analysis.

A large proportion of the 20 countries had given detailed information on how they are carrying out market surveillance, showing experiences in many of the eleven different areas listed in the survey. A smaller number of countries had on the other hand given minimum information and often stated the standardised response “No information available”. This is, on the other hand, a response in itself. If a MSA states that it has no information available within a certain area (for example product document inspection), or choose not to give any answer at all to the questions in section, a possible conclusion is that this country has no or very limited experience in this specific area.

ORGANISATION OF MARKET SURVEILLANCE IN DIFFERENT COUNTRIES

As described above, the EU legislation lays down specific requirements for market surveillance. However, Member States are responsible for surveillance activities on their own territory. Some member states have gathered market surveillance responsibilities for a number of product related directives and regulations at one or a few national market surveillance authorities. This is the case for example in Finland, where the Finnish Safety and Chemicals Agency (Tukes) supervises all the technical safety and conformity, together with the consumer and chemicals safety in Finland, and enforce the relevant legislation. Some member states, on the other hand, have chosen to organise the Ecodesign market surveillance together with Ecodesign and energy policy development. This is the case for example in Sweden, where the Swedish Energy Agency is acting as both a representative in the Ecodesign Committee and the appointed national market surveillance authority for Ecodesign. At least one country has in addition organised the Ecodesign market surveillance at regional level, with one common national coordinator who participates in the ADCO-group et cetera. In at least three EU-countries, the responsibility for Ecodesign market surveillance is divided between two different MSAs, typically one for consumer products and one for industrial products. There are of course both advantages and disadvantages with these different types of national organisation.

In the survey, the MSAs were asked for which directives their organisation is the national MSA. All 20 responding MSAs answered that they are responsible for the Ecodesign directive – and 15 of them also had responsibility for the Energy labelling directive. Among the 10 MSAs that are Ecopliant partners, two countries are not responsible for market surveillance of the Energy labelling directive (which is also the reason why Ecopliant

Your organisation is the national market surveillance authority (MSA) for which directives?

(Number of respondents : 20)

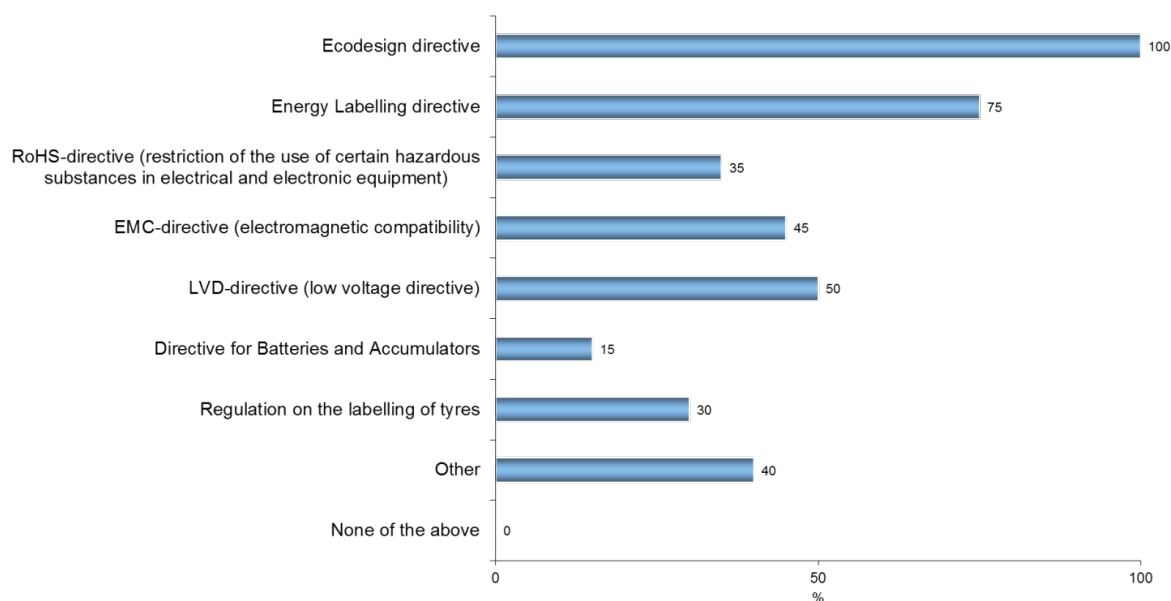


Figure 3. Responsibilities of the responding MSAs (summarized).

is focused on the Ecodesign directive). Six of the responding MSAs are only responsible for the energy related directives (Ecodesign, Energy labelling and/or Labelling of tyres). Nine of the responding MSAs are covering the EMC directive and these nine plus another are covering the LVD-directive. There are also a number of other directives mentioned.

All in all, the market surveillance work of each MSA varied significantly in scope. Having responsibility for M, V & E of a lot of directives, that in some cases have been in place much longer than the Ecodesign directive, has probably led to good market surveillance practices within these authorities. The national energy agencies that are responsible for a broad spectrum of energy policies and instruments, including market surveillance of energy related directives, might on the other hand hold great knowledge about general energy issues.

In the survey, it was also asked if the MSAs use in-house personnel for all market surveillance activities or if external resources or expertise are used for some activities. All responding MSAs indicated that the market surveillance responsibility was handled by their own organisations. Some MSAs do however also use the expertise of other public bodies, such as energy agencies, and/or subcontractors for example when it comes to communication, technical expertise, document inspections and, of course, laboratory testing.

TECHNICAL DOCUMENTATION INSPECTION

All products that are regulated under the Ecodesign directive 2009/125/EC need to have a file of technical documentation. Depending on the product in question, the technical documentation may consist of different types of documents. It might be test reports relating to the conformity assessment that has been carried out by the manufacturer, calculations, or technical information for the user. An EU-declaration of conformity is always necessary.

The market surveillance verification of a product can be carried out by inspecting the physical product itself, or on the basis of its technical documentation. The survey asked whether the MSAs have been working with technical documentation inspection as a method for market surveillance of the Ecodesign directive. 13 out of 20 MSAs responded as follows in Figure 4.

All 13 MSAs normally request the EU-declaration of conformity when performing this type of inspections. It is also common to demand the test report, as seen in Figure 5.

The handling of the results of a technical document inspection varies between MSAs. If it is concluded that the technical documentation cannot demonstrate the product conformity with the relevant requirements of the Ecodesign directive, eight of the MSAs then consider that the product does not comply with the Ecodesign directive, while four MSAs use this conclusion as a primary reason to select the product for testing.

The last question in this section was: "If the technical documentation of a product does not comply with the provisions of the Ecodesign directive (or applicable regulation), but when this product is tested, it then complies with this directive; does your organisation consider then that the product still does not comply with the applicable regulation?" This question gave a variety of answers. Two MSAs responded yes, they would still consider the product non-compliant. Two MSAs answered no, they would not consider the product non-compliant anymore. Eight respondents indicated that it would depend on the situation. These results are a bit problematic, since non-compliance should be handled in a similar way regardless of where on the EU-market the product is sold. The variation in the MSAs approach to this question may however in some cases be attributed to limited practical experience of market surveillance or only a limited number of practical cases to refer to.

Document inspection: For which products?

(Number of respondents: 13)

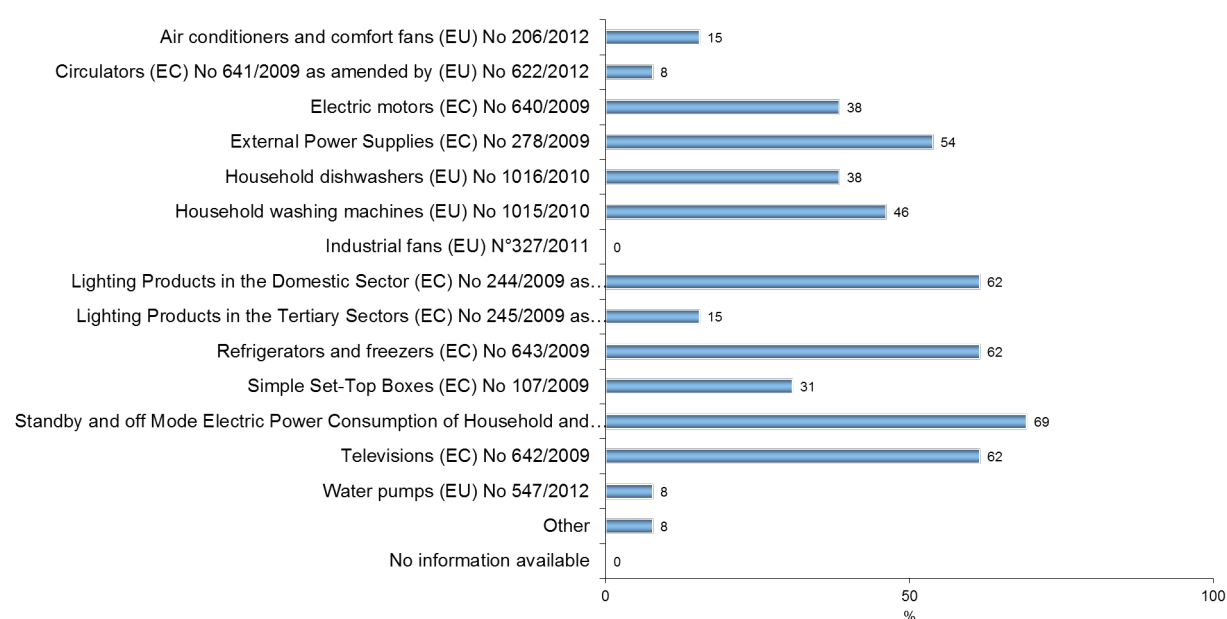


Figure 4. Out of the 13 MSAs that have conducted technical document inspection, the table shows which products that have been targeted. Only the regulations that were in force by the time of the survey are listed.

Please mark the type of documentation requested by your organisation in market surveillance:

(Number of respondents: 13)

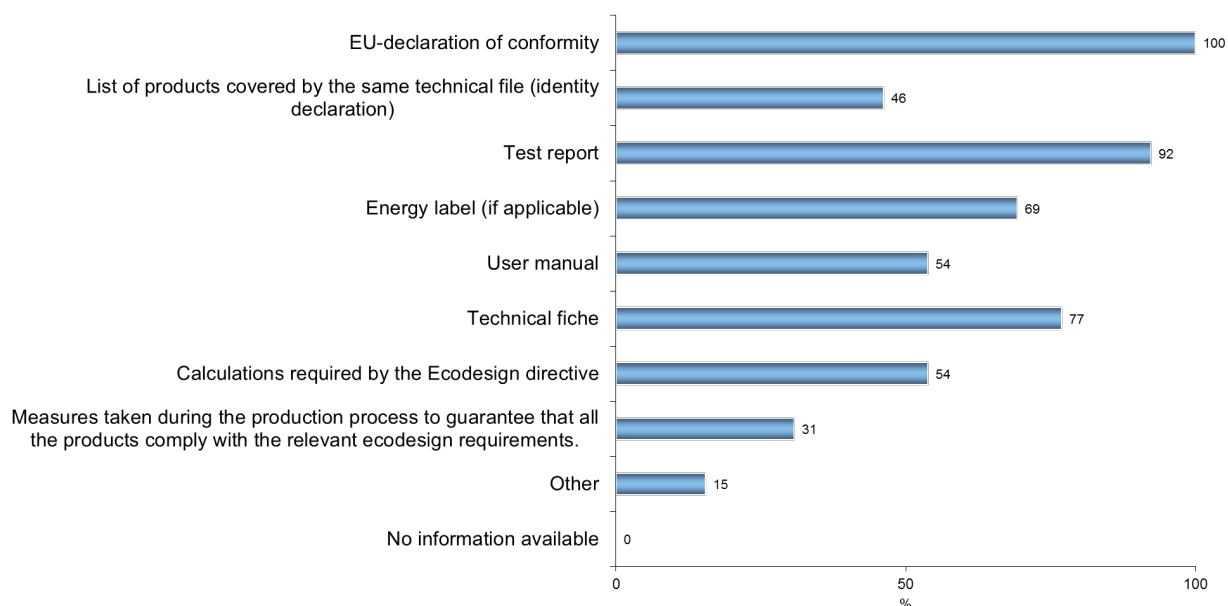


Figure 5. The type of documentation requested by the MSAs in technical document inspection.

IDENTIFYING EU WIDE PRODUCT MODEL NUMBERS

A specific product model might be sold under different product model numbers in different EU-states, or even within a single country, even if it is more or less exactly the same product. Two or more products can be “equivalent” regarding the requirements of the Ecodesign directive, if they for instance have only aesthetic differences, different trade marks, or different model references. The use of a different product model number on technically equivalent products can create problems for the MSA. For instance, if a product has been tested non-compliant, and some kind of measures have been taken for this product (e.g. correction, withdrawal from the market, or other), these measures could possibly apply to a technically equivalent product using a different product model number. If the MSA doesn't have access to information clearly identifying equivalent model(s), it can not enforce non-compliance measures on the other model(s). Difficulties in clearly identifying technically equivalent product models is potentially a major barrier to the increased coordination of market surveillance activities between countries.

The manufacturer/authorised representative/importer should be able to state if two or more products are equivalent regarding the requirements of the Ecodesign directive. If this is the case, this should be stated somewhere in the technical documentation issued by the manufacturer/ authorised representative/importer. It is possible for the MSAs to ask for this information. When asked in the survey if they do so, only three MSAs responded positively with two of the three qualifying the answer to “yes sometimes”.

When these three MSAs ask for this information, they normally ask for an “identity declaration”, e.g. a document in which the manufacturer/importer states all the equivalent products covered by the same technical file.

When a product is found non-compliant, and it is decided that it should be withdrawn from the market, this withdrawal could affect all the equivalent products (those who share the same technical file or are included in the same identity declaration). However, only one of the three MSAs that request this information claims that a withdrawal would actually affect all the equivalent products.

TARGETING PRODUCTS FOR TESTING

Different targeting methods can be used when selecting products for testing and/or technical document inspection. Targeting may relate to certain product categories, brands or specific models for testing. Targeting can also be based on product documentation, on risk-based approaches, on competitor/customer complaints. Another possibility is to make the sampling randomly.

In the survey, it was asked which criteria (‘risk factor’) are considered when selecting the *product categories* (product types) to be verified. 17 MSAs responded to this question. The criteria that were considered most relevant are:

- Product category with a history of relative high levels of non-compliance.
- Product category involved in international complaints.
- New legislation has come into force.
- Product category with a high energy consumption.

In the same way, it was asked which criteria (‘risk factor’) is used to select the specific *brands* to be tested. The criteria that were considered most relevant are:

- Brand with a history of non-compliance.
- Brand not frequently involved in surveillance.
- Brand involved in international complaints.

Criteria that are also often considered when targeting, but still not weighted very high by the MSAs, are:

- Brand with a high market share.
- New brand (less than 5 years) on the market.

In the same way, it was asked which criteria (‘risk factor’) are used to select the specific *models* to be tested. The criteria that were considered most relevant are:

- Model highlighted by other member state complaints.
- Model not supported by technical documentation or supported by documentation insufficient to demonstrate compliance.

For selection of specific models, intelligence from outside parties is considered very important as well. According to the MSAs, the following criteria are considered very relevant:

- Model highlighted by competitor complaint.
- Model highlighted by intelligence from consumer groups and/or individuals.
- Model highlighted from complaints or findings of other organisations (i.e. Environmental NGOs, EU projects, etc.).
- Model involved in international complaints.
- Model with a high market share in their product category.

13 of 17 MSAs are also using random selection, when identifying which models to test.

In addition to the criteria listed in the survey, two MSAs note that they have also used other targeting techniques for the selection of products to test.

‘SCREENING TECHNIQUES’

‘Screening techniques’ are preliminary and possibly lower cost tests to assess the likelihood that a model will fail compliance testing, before deciding whether to proceed with full compliance testing.

Only five of 20 responding MSAs claim to have experience of screening techniques. According to the respondents, it is the physical product that is being screened in most cases, normally by using some kind of simplification of the harmonised standard. Four of these MSAs have been using screening techniques for stand-by verification according to the regulation for standby and off mode, where primarily energy consumption is measured in a simplified way. Screening methods are also used for preliminary tests on external power supplies (mostly by using a simple power meter) and also on lightning products (lumen/W and warm-up time are screened) and on televisions (energy consumption screened). Dish washers and washing machines are also screened by one MSA. The screening technique mentioned here is “reduced number of test cycles”.

The screening typically takes place in the MSA's own premises or in the retailers or distributors premises. Some MSAs buy the products that they are screening, some don't. If the product is selected for further verification, it can sometimes be the same unit that is used for the further testing or through the full testing procedure.

NATIONAL TESTING PROGRAMMES

In order to plan market surveillance activities, some countries structure testing programmes spread over one or more years.

In the survey, the MSAs were asked if they have a national approach for developing national testing programmes. They were asked to answer this question even if they had not yet carried out any testing. It turned out that 11 MSAs claim to have an approach to developing national testing programmes, while six claim not to have. The remaining three MSA answer that they have no information available on the matter. When individual MSA's answers are examined in detail, it seems that most of the countries who claim not to have a national approach have, at the least, some kind of testing strategies. This might indicate that the respondents have misunderstood the question.

A test programme can be "reactive": that is if the MSA only carries out tests in response to complaints or other evidence it receives about possible problems. A test programme can also be "proactive": that is if the MSA actively seeks to identify products to test, preferably according to an established plan. According to the answers in the survey, 16 out of 20 MSAs consider their test programmes as both reactive and proactive, while two MSAs claim to have only proactive programmes and one MSA only reactive programmes

According to most MSAs, budgetary considerations are the most important factor influencing the structure of a particular test program. The enforcement date of new regulations is also an important factor when setting up the test programme. Most MSAs manage their own test programmes. In a few cases, the test programmes are procured and delivered by way of a national/regional enforcement agency.

Five MSAs claim that their test programmes are 5–11 months long, while nine MSAs have yearly test programmes. 14 MSAs' test programs are influenced by other areas of national enforcement activities/regulations. Energy Labelling and e.g. the RoHS-, LVD- and EMC-directives are of particular influence. By coordinating test programmes for several directives, it is often possible to deliver a full package of testing and to ensure best use of resources and budgets.

COORDINATION OF MARKET SURVEILLANCE ACTIVITIES

The Ecopliant project aims to improve the coordination of market surveillance activities, in the key areas of planning, monitoring, verification and enforcement.

In the survey, it was asked if the MSAs have any previous experience in planning, sharing and coordinating testing programmes and testing activities for Ecodesign MSAs in other member states. It turned out that eight MSAs had such experiences and six of them claimed this to be successful. The Nordic project on market surveillance (9), which has been going on since 2011, is mentioned as a useful coordination activity. Three of the eight MSAs say that they are actually developing their testing programme to match those of other member states or regional states.

Five of the eight MSAs claim to have received feedback from a MSA as a consequence of sharing data, which was also considered useful in developing further projects.

10 out of 20 MSAs have experience in planning, sharing and coordinating testing programmes and testing activities with national or EU-wide market surveillance authorities (MSAs). Half of the respondents have experience of planning, sharing and co-ordinating testing programmes and testing activities with national or EU-wide market surveillance authorities (MSAs) using *other product directives*. This relates primarily to the LVD directive and to some extent the Energy labelling directive, the RoHS directive and the EMC directive. Some emphasise that this shared activity has related also to products such as toys, fireworks and the labelling of tyres.

When it comes to planning, sharing and co-ordinating testing programmes and testing activities with other member state MSAs dealing with Ecodesign compliance, eight out of 20 MSAs state that their organisations have experience of this. The proportion that state that they have the relevant experience says that for the most part the experience of the shared activity has been positive.

Several MSAs have given their opinion on how *the sharing and coordinating of testing programmes and activities can be more effective*. Several MSAs state that sharing results of testing and coordination of testing programmes is the only one way for more effective compliance testing in conditions of limited funds and employees. A consistent approach to market surveillance practices among MSAs and a reliable communication channel should increase the level of trust among MSAs allowing for more effective co-operation. One MSA adds, if one country has tested a product, the same product should not be tested in other countries. The need for common MSA procedures and a European database where all controlled products are registered is mentioned several times. One MSA suggests that projects as a function of working groups such as the ADCO should be established, defining objectives, setting goals, empowering all participants, establishing clear lines of communication and deadlines. It should also be followed up what action (if any) was taken as a result of the sharing or coordinating of activities. One MSA suggests that there should be a Commission-led body to organize EU-wide testing programmes.

COMPLIANCE TESTING ACTIVITIES – IDENTIFYING ACCREDITED LABORATORIES

As mentioned before, there are several ways to carry out Ecodesign market surveillance. One way is to control the technical product documentation. Another way is to control the physical product itself, e.g. by taking samples of the product and verify its technical parameters in a laboratory.

In this section of the survey, the MSAs were asked if their organisation have any experience in laboratory selection for compliance testing activities for the Ecodesign directive or similar directives. 11 out of 20 MSAs state that they have experience of laboratory selection for this type of testing. Many MSAs mentioned that laboratories are chosen in a public procurement process. When selecting a laboratory, the most important criteria are the accreditation system, the reliability of results, and expertise. Four MSAs stated that they were able to select any third party laboratory, as long as it fulfilled all stated criteria, while four MSAs were able to select any *national* third

party laboratory. No one had to use only government owned laboratories. Five MSAs claimed to have used a laboratory outside its own country.

In the event of sharing data with a market surveillance authority (MSA) or using a laboratory outside the own country, 12 MSAs would have the potential to travel to the country in question.

FUNDING OF MARKET SURVEILLANCE AND TESTING

Economic funding of Ecodesign market surveillance is a national responsibility. As stated in before, budget limitations is a very common problem for market surveillance authorities.

In addition to governmental financing, funding by third parties e.g. trade associations or manufacturers, could be an option, which was investigated in the survey. It turned out that only one MSA had any experience of funding by third parties when it comes to testing products according to Ecodesign regulations. None of the MSAs fully consider that funding by third parties, in all situations, is acceptable for carrying out market surveillance. Half of the MSAs consider instead that funding by third parties is not at all acceptable when it comes to carrying out market surveillance, and the other half consider that funding by third parties could be a way to proceed, provided certain conditions are fulfilled. The need for independent testing was mentioned as a reason for the unwillingness towards third party funding. A majority of the MSAs consider that their organisation would not have the resources to conduct routine monitoring of those organisations that might provide testing through third party funded testing, which might be another reason for not accepting third party funding.

ENFORCEMENT ACTIONS

Enforcement is a very critical aspect of market surveillance. Enforcement actions can be described as the actions taken by the MSA to make sure that the legislations are being followed. In the Ecodesign directive (3), this is e.g. described in Article 3 (above) and Article 20 (Penalties). When finding a non-compliant product, the national MSAs are obliged to act. Enforcement actions might differ between countries. Examples are correction, prohibition and withdrawal from the market. Enforcement actions may be combined with administrative fines.

Market surveillance is carried out at national level, but the legal counterparty (manufacturer, manufacturer's representative, importer) might be situated anywhere within the Community. At the start of the question area relating to enforcement, the respondents were asked how, as the national MSA, they would act if they were to find a non-compliant product on their own domestic market, and it were to emerge that the responsible manufacturer/manufacturer's representative/importer is situated in another EU-country. There were six possible answers to this question, as seen in Figure 6. The respondents were able to choose more than one answer.

The answers to this question were very diverse, i.e. the respondents gave a very mixed variety of answers. 13 MSAs claimed Alt 2); that they would take enforcement action against the economic operator that is situated within their own country. Some of these thirteen, but not all, also choose Alt 3); that they would notify the responsible MSA in the EU-country where the manufacturer/manufacturer's representative/im-

porter is situated (in total 12 MSAs). 10 MSAs choose Alt 4); Notifying the Commission and/or ADCO.

When comparing the distribution of the responses to this question, it can be seen that there are six MSAs which state that they would act in accordance with Alt 2), Alt 3) and Alt 4) in this scenario. A further six MSAs state that they could act in accordance with two of the three alternatives, and finally there are four MSAs which state that they would only act in accordance with one of the above alternatives.

Only one MSA said Alt 1); that it would take enforcement action against this manufacturer/manufacturer's representative/importer, even if he is situated in another EU-country.

It was also asked whether the national legislations provide assistance or obstacles for action against a manufacturer/manufacturer's representative/importer which is situated in another EU-country. 11 MSAs responded "neither", while three MSAs responded that their national legislation provided obstacles, and three said that it provided aids. The variety of answers to this question is a bit alarming, since it might indicate that it is not clear how to handle this situation. The variation in the MSAs approach to this question may however, as above, be attributed to limited practical experience of market surveillance or only a limited number of practical cases to refer to.

However, if information is received by MSA in country 1 from the MSA in country 2 about a non-compliant product, for which the legal manufacturer/manufacturer's representative/importer is active in country 1, there are possibilities for MSA (1) to act. Nine MSAs state that, with the aid of the information, they can take enforcement action against this manufacturer/manufacturer's representative/importer in the own country. 16 MSAs, in some cases overlapping the former alternative, say that this information can be used to launch an own investigation.

Among the respondents, seven MSAs state that they have some previous experience of using data from other member states for enforcement actions.

To publically publish the results of market surveillance activities can be a way of discouraging manufacturers who are not dealing with compliance issues seriously. 13 MSAs claim to publish the results of market surveillance activities, e.g. on their website.

12 MSAs do, to some extent, cooperate with national customs authorities in market surveillance of the Ecodesign directive in order to prevent non-compliant products entering the EU-market.

SHARING TEST RESULTS – RECORDING OF DATA

As a part of the Ecoplant project, a prototype database for recording of market surveillance data will be developed. The last part of the survey therefore dealt with the experiences and procedures regarding recording of test data and other market surveillance data in each country. It also dealt with the issue of sharing test data between countries.

12 MSAs are recording the results of market surveillance activities within some kind of database, while three MSAs are using excel sheets or similar. Three MSAs claim to have no common system for recording of data.

Eight MSAs normally share the results of the market surveillance activities with other national stakeholders. Nine MSAs say that they share the results of market surveillance activi-

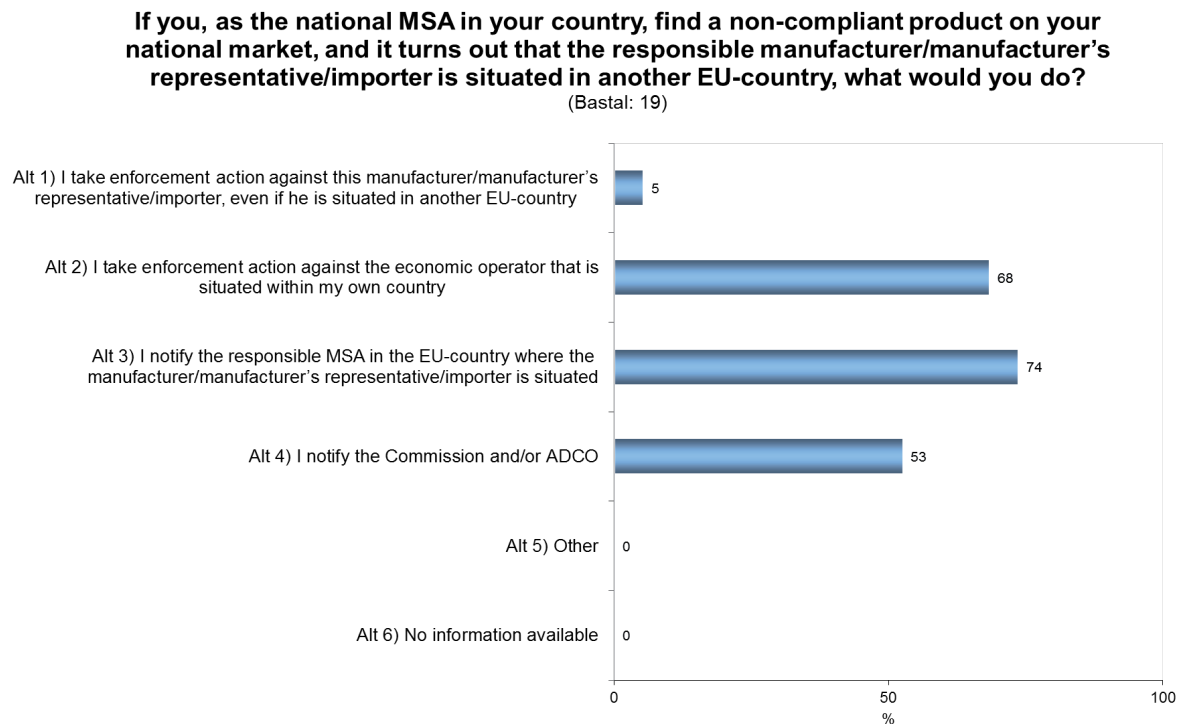


Figure 6. MSAs handling of the situation when the responsible manufacturer/manufacture's representative/importer is situated in another EU-country (multiple choices were accepted).

ties with other national MSAs/Member States for Ecodesign. Again, these two groups are not entirely overlapping.

ICSMS, the internet-supported information and communication system for the pan-European market surveillance, is a European database containing information about products that have been tested by MSAs according to a number of EU-directives. According to the ICSMS website (10), ICSMS aims to create the basis for an effective and efficient cooperation between the market surveillance bodies in Europe. Supported by the internet, it aims to enable a comprehensive exchange of information between all the market surveillance bodies. In the general regulation for market surveillance 765/2008 (2), Article 23, it is stated that the Commission shall develop and maintain a general archiving and exchange of information system, using electronic means, on issues relating to market surveillance activities, programmes and related information on non-compliance with Community harmonization legislation. Regarding other product directives, it seems to have been decided on Commission level that ICSMS is the system that is referred to in 765/2008. For Ecodesign market surveillance, it is not fully clear if this is the case.

In the survey, it was asked if the MSAs were using or planned to use ICSMS. Eight MSAs claimed that they are using or were going to use ICSMS, while another eight claimed that they might use it. One MSA stated that it will not use it.

Conclusions

Ecodesign market surveillance proposes a real challenge for the MSAs. More and more products are being subject to Ecodesign regulation, which means that the MSAs have to control a very large number of products. There is still a lack

of practical experiences when it comes to Ecodesign market surveillance in many countries. A relatively large number of the MSAs that have responded to the survey have very limited experience in selection of laboratories for testing, screening and some other areas. Partly, this can of course be explained by the fact that only a few Ecodesign conformance requirements have actually entered into force yet. Product testing is also expensive. Many MSAs in this study refer to budget constraints.

There is however also some very positive aspects of Ecodesign market surveillance to be seen in this study. The relatively high response rate on this very extensive survey is one clear indication that MSAs are eager to share experiences and develop coordinated market surveillance. In many individual responses, there is a clear willingness to develop better practices for market surveillance, and to extend cooperation between MSAs involved in Ecodesign M,V&E.

Technical documentation inspection is an area where a majority of the responding MSAs have started to work. This is very positive, since technical documentation inspection provides a less expensive way of performing market surveillance, and in addition, it can make the manufacturers and importers more aware of Ecodesign requirements and that the market is actually surveyed.

Practical handling of enforcement action when finding a non-compliant product seems to be a somewhat problematic area, at least when the manufacturers, manufacturers' representatives, or importers of products are situated in another EU-country. Individual MSAs have very different strategies for handling this situation. It is not an ideal solution if some MSAs transfer the enforcement responsibility to the MSA where the manufacturer or importers is situated, while others enforce the

economic operator within the country where the product is first monitored. Again, the variation in the MSAs approach to this question may however be attributed to limited practical experience or only a limited number of practical cases to refer to.

The legal obligations and rules for market surveillance are to be found in different legislations: the Ecodesign directive, its implementing regulations, the national transpositions of the directive and also in regulation EC 765/2008. Regarding the answers given to some parts of the survey, it is obvious that countries transpose, interpretate and/or use the legislations in different ways. Practical handling of market surveillance needs to be clearer, especially when it comes to enforcement. Some grey areas have been identified in this survey, but this investigation has to continue and be further analyzed. Ambiguities on how to use regulation 765/2008 in addition to Ecodesign legislation needs to be clarified. These clarifications and related solutions should be presented in the revision of the Ecodesign directive in 2014, together with the clarifications that hopefully will come with the new market surveillance package presented by the Commission in February 2013 (11).

It is clear from the survey that, in certain respects, there are considerable differences within the EU/EEA in respect of how work is carried out regarding the areas covered by the survey.

It can also be observed that there is a need for a greater exchange of data and information between Ecodesign MSAs. The need for a common database is crucial for future cooperation in monitoring, verification and enforcement as well as in planning of test programmes, use of accredited labs et ceteras.

This survey has given a quite good picture of how Ecodesign market surveillance is carried out across the EU/EEA today it identifies the strategies, practices, methods and tools that are used. It also points out several areas where more investigations need to be done, as well as improvement opportunities.

The Ecopliant project will now continue with in-depth analyses of the collected data. The project will also start elaborating guidelines on possible best practice, methodologies and tools, and also evaluate close cooperation in practice. This can not solve all problems, but it might hopefully result in a good start on the work to be done within Ecodesign market surveillance.

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Abbreviations

MSA	Market surveillance authority
MS	Member State
EEA	European Economic Area (EU27 plus Norway, Iceland, Lichtenstein)
ICSMS	The internet-supported information and communication system for the pan-European market surveillance
M,V&E	Monitoring, Verification and Enforcement
ADCO	Market Surveillance Administrative Cooperation