

Market surveillance: A new arena for civil society

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Keywords

Energy Labelling Directive, Ecodesign Directive (EuP/ErP), enforcement, monitoring, market surveillance, civil society

Abstract

Highlighting mislabelling, misrepresentation, or even outright breaches of regulations of products and services on the market is not a new concept for civil society. However the single market offers new challenges for regulatory officials and Civil Society Organisations (CSOs) alike. The monitoring, testing, verification, and enforcement of a non-compliant product are lengthy, resource intensive, require significant expertise, and rely on the availability of laboratories to produce the technical evidence for action.

With existing measures of Ecodesign and Energy Labels, how will the EU ensure that the hundreds of millions of products entering the market each year are compliant, thus ensuring the full energy saving potential is reached? And what is the role of civil society in this ambition?

MarketWatch offers the first EU-wide CSO network that is dedicated to market surveillance. Its focus is the implementing measures and regulatory requirements for the EU's Ecodesign and Energy Labelling Directives. Its goal is to encourage further action at both national and EU level, to ensure that these Directives do not fall into a state where they are unwilling or unable to be enforced. Its aim is to provide insight and intelligence on suspected cases of non-compliance of both retailers and manufacturers.

In early 2014, MarketWatch compiled and summarised the findings of numerous studies, reports and observations on the accuracy of the energy label into one simple message: 1 in 5 products are incorrectly labelled. This simple yet clear mes-

sage to consumers has led to over 100 news articles and radio debates on the work of MarketWatch.

300 in-store, and further 300 on-line inspections across 10 countries will inspect over 150,000 products. The first round of inspections has revealed that despite efforts from authorities there is still a significant absence of the Energy Label in some stores. With innovative and cost-effective check-testing methods being developed alongside fully standardised testing for 20 products, will MarketWatch be able to integrate civil society in to the new and complex field, and what will be the benefits to the Ecodesign and Energy Labelling Directives?

Introduction

Insufficient market surveillance is one of the main obstacles to the full realisation of the energy saving potential of the EU Ecodesign and Energy Labelling Directives. It is estimated that 10 % to 20 % of the expected savings can be wasted due to non-compliant products on the market.^{1,2,3} This translates into more than 100 TWh of annual final energy savings that could

1. The Intelligent Energy Europe funded "ATLETE" project (2009-2011) found a 20 % non-compliance rate following the testing of the Energy.

2. The final report from the Evaluation of the Ecodesign Directive was published in 2012 and concluded that Growing evidence indicates that the level of non-compliance is in the range of 10–20 %.

3. In CLASP's Compliance Counts: a Practitioner's Guidebook (2010) the UK Department for Environment, Food and Rural Affairs noted that: "At present the rate of non-compliance in the UK is estimated to be around 10 to 15 % at manufacturing level (failure to meet the claim on the label) and 20 % at retail level (absent or incorrect labelling)".

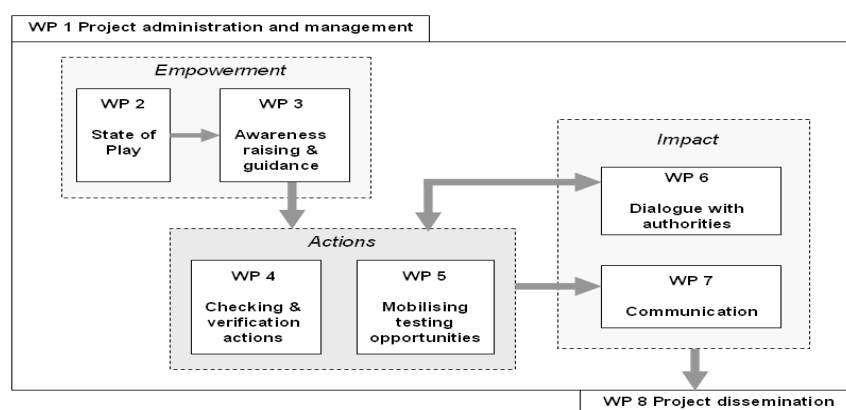


Figure 1. Flow diagram of project outline.

be missed in the EU (as much as the current residential electricity consumption of Eastern Europe)⁴.

National authorities in Member States have their role to play in verifying compliance and sanctioning free riders. However, these activities are not the only condition and opportunity for creating a much more compelling climate of compliance and removing free riders' sense of impunity. Civil society stakeholders can play a substantial role, provided they build more capacity, ramp up their expertise in this field and collaborate more at EU level.

In order to effectively work at national and European level, it is vital that CSOs were knowledgeable and aware of not only how Monitoring, Verification, and Enforcement (MV & E) is conducted, but to have hands-on and practical experience of such activities. Thus, the MarketWatch project set out a series of coordinated activities to observe activities at the national level of retailers, manufacturers, and Market Surveillance Authorities (MSAs). These activities will take place in 11 European member states by all 16 partners, and enabled the project partners to study the implementation of the Energy Labelling and Ecodesign Directives. An assessment of these individual observations and experiences will then be used to improve collaboration and communication between CSOs, industry, and national authorities, with the recognition of patterns and trends in suspicions of non-compliance. The MarketWatch project will take place over a period of 3 years from April 2013 to March 2016, and is comprised of predefined tasks and deliverables planned in advance of the project. The project's main aims are therefore summarised as:

- To increase the knowledge and capacity of civil society at a national level in the areas of Energy Labelling & Ecodesign, and how they are subsequently enforced within their region.
- To increase the capacity for knowledge and intelligence sharing by building a sustainable network across the EU and a platform for CSOs to continue to contribute to M,V & E activities.
- Build tools, guidelines and verified procedures for future CSO activity.

- To enable civil society to campaign for greater resources and action for MSAs on both the national/regional and EU level through engagement with nation authorities and the appropriate units within the European institutions.
- To observe cases of suspected non-compliance and pass information and intelligence to the appropriate MSA.
- Promote M,V & E activities to the general public and media, and use the negative media attention i.e. 'naming and shaming' of manufacturers and retailers who refuse to comply with the Ecodesign and Energy Labelling directives.
- Promote further legislation, tools, and projects that enable better collaboration between member states and that allows for better, more efficient M,V & E across the EU as a whole.

To this end, the project can broadly be split into 3 parts, as highlighted in Figure 1.

Defining 'non-compliance'

Neither the project itself, nor its partners claim to have the authority to declare any product officially non-compliant in regards to the Ecodesign and Energy labelling regulations. Neither do they claim to have the authority to impose official sanctions to retailers of manufacturers.

It was not the intention of the project to supersede the national market surveillance authorities in this respect. Rather, MarketWatch aims at empowering civil society across Europe to engage, promote, investigate, and report cases where they believe non-compliance is taking place.

In this paper, and in others released by the MarketWatch project, the term 'non-compliance' is often used, as well as references to 'correct' and 'incorrect' label display. This has been used to both describe cases where authorities have made this statement and where we believe infringements of the law have taken place. The MarketWatch project believes that the regulations are, for the most part, clear and easily understood and it is therefore possible to identify beyond reasonable doubt where these infractions have taken place.

Empowerment

By increasing expertise, building capacity, and providing hands-on experience, the MarketWatch project aims to empower civil society to take action to ensure the enforcement

4. JRC (2012), Energy Efficiency Status Report 2012, page 20. Accessible at: <http://iet.jrc.ec.europa.eu/energyefficiency/sites/energyefficiency/files/energy-efficiency-status-report-2012.pdf>

of the Energy Labelling and Ecodesign Directives continues, reaping the expected benefits to consumers, the environment and businesses, from these invaluable policy instruments. In order to achieve this, a number of methods were developed.

STATE OF THE ART

Identifying the current and past involvement of civil society in M, V & E activities in both the EU and around the world proved to be a challenging experience. Very little, if any activity was identified in terms of observations and testing for the purpose of verification of compliance to Minimum Energy Performance Standards (MEPS) or Energy Labelling, despite virtually all of the world's leading economies utilizing one or both of these policy tools. These activities provided an interesting context and justification for the MarketWatch project, highlighting the clear absence of balanced representation in this arena.

The reports authored for this part of the project also enabled the participating partners to summarise their own testing and product policy experience, though this was often closer related to consumer behaviour testing and the overall value of the product. Additionally, these reports offered a first step to identifying key regional and national differences with both the CSOs and the approach of MSAs.

The full reports can be found on the MarketWatch website:

- Civil society involvement in market surveillance-related activities in the EU.⁵
- Report on civil society involvement in market surveillance of energy-using products regions outside Europe.⁶
- Approaches and priority parameters tested by consumer associations and independent organisations performing tests on energy-using products.⁷

DEVELOPMENT OF TOOLS, PROCEDURES AND AGREED TECHNIQUES

From the outset of the project it was realised that with a large number of partners, all with varying levels of experience of Ecodesign and Energy Labelling in general as well as a limited knowledge of market surveillance, it would be vital to develop tools and procedures in order to effectively undertake the work Marketwatch set out to do. In the planning and development of the project a number of key deliverables were planned that aimed at empowering civil society to be active in monitoring, verification, and enforcement activities. These were divided by work package and are grouped in the following way:

Education and technical information

These tools allow for all members to be given detailed technical information and become up to date with relevant issues and provide reference documents and contacts.

- Guidelines on the most simple Ecodesign and energy labelling requirements and main test standards and condi-

tions for complex Ecodesign and energy labelling requirements.⁸

- Report on useful observations related to the pertinence of Ecodesign/Energy Labelling requirements and official measurement standards – expected in spring 2016.
- Database of results from official surveillance activities (tests, non-compliance cases) – public version expected in spring 2016.
- List of market surveillance authority contacts in the partner countries.⁹

Overcoming obstacles, problems and issues with retail observations and testing

These tools were designed to be practical guides on how market inspections and testing procedures take place. Many were based on the experiences of MarketWatch member's involvement in other projects, and on the recommendations and guidelines of MSAs and other expert actors.

- Initial overview of potentially the most problematic shop and product situations in terms of proper energy label display and selected Ecodesign declaration requirements.¹⁰
- Guidance document for the shop visits, with relevant procedures for accessing to and compiling data – public version expected in spring 2016.
- Guidelines and procedures on how to perform simplified 'check testing' operations.

Agreed procedures and general guidelines for action

These tools were considered vital for a project with such a large and diverse number of participants. In particular, the 'Escalation procedure' is perhaps one of the most important tools of the project. It allows for the systematic collection of data, a verification of the status of what has been observed, and an outline of the procedure for publicizing results. With the European single market and international nature of the Marketwatch project, ensuring a harmonised approach, where information is shared and distributed to the relevant actors was considered vital. It also allowed to control for potentially misleading or incorrect information being publicized and outlined the legal framework of the project and its findings.

- Strategy for future collaboration to perform sustainable market surveillance activities – public version expected in spring 2016.
- Agreed procedures and tools for systematising the contribution of civil society to market surveillance of Ecodesign and Energy Labelling – public version expected in spring 2015.

5. <http://www.market-watch.eu/resources/civil-soc-market-sur/>

6. http://www.market-watch.eu/resources/beyond_europe/

7. <http://www.market-watch.eu/resources/approaches/>

8. <http://www.market-watch.eu/resources/guidelines-on-the-most-simple-ecodesign-and-energy-labelling-requirements-and-main-test-standards-and-conditions-for-complex-ecodesign-and-energy-labelling-requirements/>

9. <http://www.market-watch.eu/resources/msa-contacts-europe/>

10. http://www.market-watch.eu/resources/most_problematic/

- ‘Escalation procedure’ for communication agreed and applied by partners during the project – public version expected in spring 2016.

Other tools

- Database of precise suspicious model/retailer references.
- Publicly-available tools facilitating the verification activities involving a calculation step – expected in spring 2015.

Further, unplanned tools are also being developed as the project progresses:

- Grade methodology for shop inspections¹¹ – a tool designed to allow for the same categorisation of the retailers observed across all participating countries.
- Various articles and blogs – designed to increase non-technical, political awareness.

Whilst some of these tools are currently for the use of the MarketWatch partners only, all reports and documents will eventually be made public.

Methodology of Actions – Retail observations and product testing

ENERGY LABELLING AND RETAILER OBSERVATIONS

The MarketWatch project was designed to carry out a series of 3 rounds of shops visits totalling more than 300 visits to physical shops and 300 in-depth on-line consultations between 2013 and 2015. Each national project partner would be instructed to check the label presence in 10 physical and 10 internet shops, with some exceptions for when a member state was represented by 2 national organisations. The project assumed an average of 10 models for each product category, with at least 3 categories being viewed in-store and 5 on-line. The total number of products to be inspected was therefore estimated to be in the region of 25,000 for each round of observations.

Selection of retailers

Project partners were asked to select the location and type of store that would likely present with the highest level of non-compliance. Several factors were taken into consideration for the selection of specific shops. These included, but were not necessarily limited to; intelligence and experience from other projects, for example ComeOnLabels¹², from personal and professional experience of the individual or organisation in a specific region, and any other intelligence that could be gathered either formally or informally at a European or national level, such as directly from communications and reports of national market surveillance authorities.

For the subsequent rounds, partners were instructed to revisit, where appropriate, the shops that were visited in previous rounds. Partners were to revisit the same shops with significant

share of noncompliance (>20 %), to revisit the same shops with no feedback from the escalation procedure, and to visit new shops from the worst performing market segments as dictated by previous rounds.

Selection of products

Project partners were not limited in their scope, and all products with an energy label were theoretically eligible to be checked. Similarly with the selection of the type of retailer to be chosen in each region, partners were given intelligence based on previous projects and experience on the products least likely to be properly labelled.

The selection of products from on-line stores was more detailed and the progression of the project enabled better targeting of models. Instruction for the second round of shop visits were to not monitor all models displayed but select 20 products per category: 10 cheapest and 10 highest energy class declarations.

The timing of the project coincided with entry in to force of (EU) No 518/2014, relating to the labelling of energy-related products on the internet. In essence, this regulation requires all on-line retailers to display the full and complete energy label for all products covered by the existing labelling regulations entering the market after January 1st 2015. The timeframe for the online inspections was therefore adapted to take advantage of this.

Training and preparation

Project partners were instructed to observe the placement of the energy label on products in stores and quantify the compliance in the follow manner:

- Label placement: energy labels typically have to be shown on the top or front of the appliance (except e.g. TVs, and light sources).
- Label format: especially old energy labels have proven to be a matter of incorrect formatting as they often come in two pieces that have to be put together, labels can't be printed in-house by the retailer, edited or hand written by the shop assistant, etc.
- Model mismatch, when a different label would be applied to a specific model unit.
- Energy label missing entirely.
- For the electronic shops, the information was monitored by following the prescribed list of information, which is defined in product-related energy label legislation and which has to be displayed in a predefined order (as per the pre-2015 regulations).

Partners were also asked to request to see a copy of the product fiche, a document containing additional information about the product's performance characteristics, for at least 2 separate units within each store visited.

Additionally, project partners were instructed to take note of what is often described as 'super declarations'. Such declarations claim to use significantly less energy than other products and thus manufacturers or retailers feel they are outside of the scope of the current classification classes. Such examples may include a label stating A+++++ or A++++-X %, albeit in a simi-

11. <http://www.market-watch.eu/resources/grade-methodology-for-shops/>

12. <http://www.come-on-labels.eu/displaying-energy-labels/status-of-appliance-labelling>



Figure 2. Examples of instructions and guidelines for observations by MarketWatch partners.

lar style or format than the official energy label. The legality of these claims is still a grey area in many of the regulations, as the official label itself is not modified, but rather accompanied by this 'super declaration'.

A number of ecodesign requirements in several product categories were identified as being able to be checked for compliance whilst in-store. Project partners were instructed to observe these if the particular product was available in the visited store. It was noted and communicated to partners that ecodesign requirements were subject to an entry into force date and the absence of some requirements may pre-date their necessity. The list of 'generic' requirements researched and disseminated to the partners were:

- Lamps: Incandescent lamps available (since 9/2012 only class D and better non-directional lights on the market) (with the caveat that partners should look for "special use" text or markings on the box).
- Refrigerators: Compressor type energy class A and below (cannot enter market since 1/7/2012).
- Washing machines: Energy class B and below (cannot enter market since 1/12/2011).
- Washing machines: 'standard' programme clearly identifiable on the panel (text or symbol).
- Dishwashers: Energy class B and below (60 cm wide models only) (cannot enter market since 1/12/2011).
- Dishwashers: Default standard cleaning cycle on the panel (text or "Eco").
- Tumble driers: Energy class D and below.

An internal document was created and distributed to members that outlines the regulatory requirements, as well as common mistakes and issues to which the user should pay special attention. This document will be translated into 8 European languages and made freely available at the end of the project. It currently undergoes additions and further edits as lessons from the project are learnt.

Examples of the guide created for CSOs relating to the identification of the correct label can be found in Figure 2.

TESTING

A questionnaire and tender was designed for the selection of laboratories under the MarketWatch programme for both check testing and full compliance testing. The questionnaire was designed to understand the competencies and experience and accreditations of the various laboratories across Europe and to highlight the options, in terms of availability and resources, for when the project selected products for testing. The call for tender and questionnaire were based on the experiences and success of the ATLETE2¹³ and ECOPLIANT¹⁴ projects.

Check-testing

Check testing is a simplified and cost effective way to determine the likelihood of a product's performance during a full, accredited, laboratory test. Check testing is effectively the same as screening tests. The MarketWatch project had an objective to conduct verification testing activities on a range of up to 15 different energy using product categories. These actions were to

13. <http://www.atlete.eu/2/doc/LaboratoryrecognitionQuestionnaire.pdf>

14. <http://www.ecopliant.eu/wp-content/uploads/2013/10/D1.4-Testing-Programmes-and-Full-Compliance-Testing-Activities.pdf>

include laboratory check tests of 100 products sold throughout Europe to provide intelligence and enhance suspicion on some key cases of conformity.

The project consortium used a number of sources identified in the empowerment tasks of the project to establish the most probable product categories that would be found non-compliant to initiate check-testing. The following categories were identified:

- Standby Off-mode (Horizontal)
- Dishwashers
- Televisions
- Domestic Lighting – Directional & Non-directional
- Electric Ovens
- Tumble Driers
- Washing Machines
- Vacuum Cleaners
- Set Top Boxes
- Refrigerators

Full testing

Full testing will be undertaken during the project when all available intelligence and information has been collected, and is expected to be concluded by the end of 2015. The pri-

mary sources of this evidence will come from the following sources:

- Intelligence from the results of check-testing.
- Intelligence from project partners experiences.
- Intelligence from other European Commission projects (ATLETE2 for example).
- Information gathered from MSAs.
- Intelligence gathered from reports and tools produced under the MarketWatch project.
- Observations on retailers.
- Knowledge of the market for particular products.

Results – Experiences from first round observations

LABELLING AND OBSERVATIONS OF RETAILERS

Overall results

In its first round, MarketWatch partner organisations checked 67,638 single products in 225 (114 physical and 111 online) shops in 11 EU countries. It should be noted that the results on labelling below do not include the category of lamps and therefore the overall numbers given therein are lower. Total products included in calculations: 41,344; total number of lamps inspected: 26,294.

Table 1. Observations from all retail stores from the first round of observations.

Category:	Labelled correctly	Wrong format	Wrong placement	Label does not match model/ mismatch	Not labelled	Total error
N. of units:	22,030	14,864	663	39	3,746	19,312
Share:	53 %	36 %	2 %	0.09 %	9 %	47 %

Table 2. Observations from physical retail stores from the first round of observations.

Category:	Labelled correctly	Wrong format	Wrong placement	Label does not match model/ mismatch	Not labelled	Total error
N. of units:	12,300	1,261	440	22	1,930	3,653
Share:	77 %	8 %	3 %	0.14 %	12 %	23 %

Table 3. Observations from on-line retail stores from the first round.

Category:	Labelled correctly	Wrong format	Wrong placement	Label does not match model/ mismatch	Not labelled	Total error
N. of units:	9,730	13,603	223	17	1,816	15,659
Share:	38 %	54 %	1 %	0,07 %	7 %	62 %

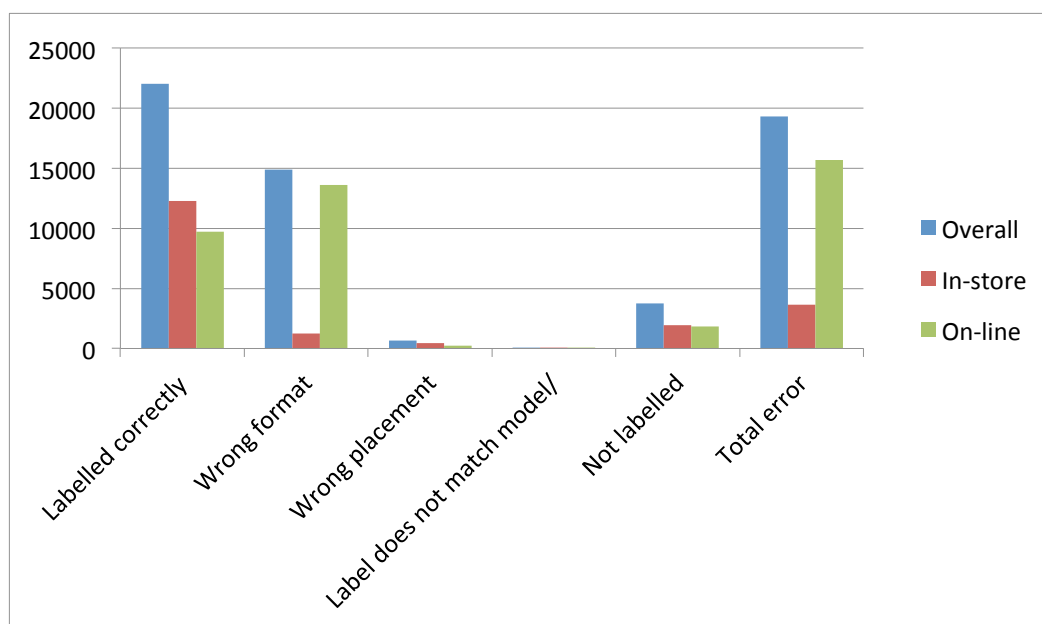


Figure 3. Overview of on-line, physical, and combined observations of the first round.

Table 4. Overview of shops visited by type in the first round.

Type of store	Electronic Superstore	Electric specialist	Kitchen studio/ Furniture stores/DIY	General super/hypermarkets/ Cash and Carry	Department stores	Mail order and internet stores
N. of units:	38	21	23	27	5	111

Distribution of observations by type of retailer

Participating partners of the MarketWatch project were asked to categorise, from a pre-defined list, the type of shop visited in order to further identify national and EU-level patterns of labelling. The below figure and table reflect the distribution of shop type in the first round of observations.

Results by product

The below figures and tables present the observed label presentations across all participating partners broken down by product type. The 'Error percentage of all products' column represents the percentage of incorrectly labelled products in a category as a total of all observed products.

ECODESIGN OBSERVATIONS

The following observations were made in on-line and physical stores throughout the 11 European member states represented in the MarketWatch project. The findings are based on Ecodesign requirements at the time of observations in the first half of 2014. It should be noted that while some requirements can be clearly identified as highly suspicious (E.g. Lamps have had packaging requirements for some time now), in terms of non-compliance, others were not able to be identified conclusively as research was not carried out on certain product categories to determine the date a particular product entered the market (e.g. Energy class B washing machines).

TESTING

The results of full and partial testing, including the results of screen tests were not available at the time of writing.

Impacts – Expected outcomes and discussion

The results from the first round of retail observation provide indicative results for the project as a whole. Whilst we do not to presume to be able to extrapolate a complete picture of Europe, or indeed even of a single member state, we believe this data will provide key evidence for action at both national and European level.

The MarketWatch platform has so far enabled CSOs to share and discuss information and trends from their own regions and reflect on where these trends appear in a wider EU context. The first round of retail observations of over 67,000 products has allowed for identification of non-compliance based on product type, retailer type, and specifically how the non-compliance is occurring (e.g. placement, format etc.). Whilst nation-level situations are not broken down in this paper, several issues can be highlighted that have been identified on a European-wide level which could be valuable for more targeted actions by national MSAs in their own regions. For example:

- In terms of non-compliance to 'basic' Ecodesign requirements, standard washing programs on both dishwashers

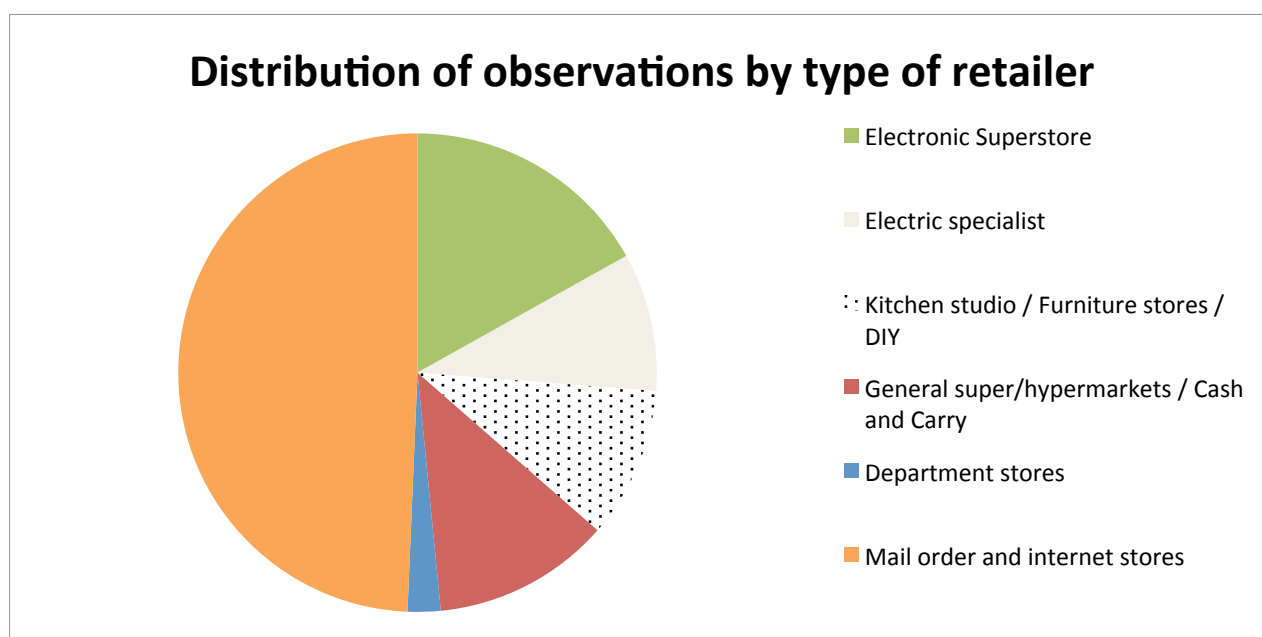


Figure 4. Overview of shops visited by type.

Table 5. Overview of compliance by product category for the first round.

	Total Products	Labelled correctly	Wrong Format	Wrong Placement	Model mismatch	Not labelled	Total error	Error percentage of all products
Refrigerating appliances	7,886	62 %	31 %	1 %	0 %	6 %	38 %	3.2 %
Wine storage appliances	582	44 %	37 %	1 %	0 %	18 %	56 %	1 %
TVs	8,097	62 %	21 %	0 %	0 %	16 %	38 %	9 %
Washing machines	5,144	53 %	40 %	2 %	0 %	4 %	47 %	3.1 %
Dishwashers	3,890	57 %	39 %	2 %	0 %	3 %	43 %	1.8 %
Air conditioners	211	18 %	61 %	2 %	0 %	20 %	82 %	0.4 %
Electric ovens	5,667	29 %	54 %	3 %	0 %	15 %	71 %	12 %
Tumble driers	1,175	43 %	42 %	2 %	0 %	13 %	57 %	1.4 %
Washer driers	672	30 %	58 %	1 %	3 %	8 %	70 %	1.38 %

and washing machines has been shown by the project to be the most common issue, with 47.7 % of all cases of suspected non-compliance from these 2 requirements alone. At the European level, the legislators can attempt a dialogue with trade and manufacturer associations to combat this issue or during the revision of relevant regulations, update, clarify, or redefine requirements.

- In terms of general labelling issues, the first observations have shown that online retailers make up the bulk of non-compliance. Of 26,203 products observed online, 62 % did not comply with the pre-2015 online labelling regulation. Since the introduction of the new regulations for internet selling and labelling (EU No 518/2014) has been introduced in 2015, not only does the first round of shop visits

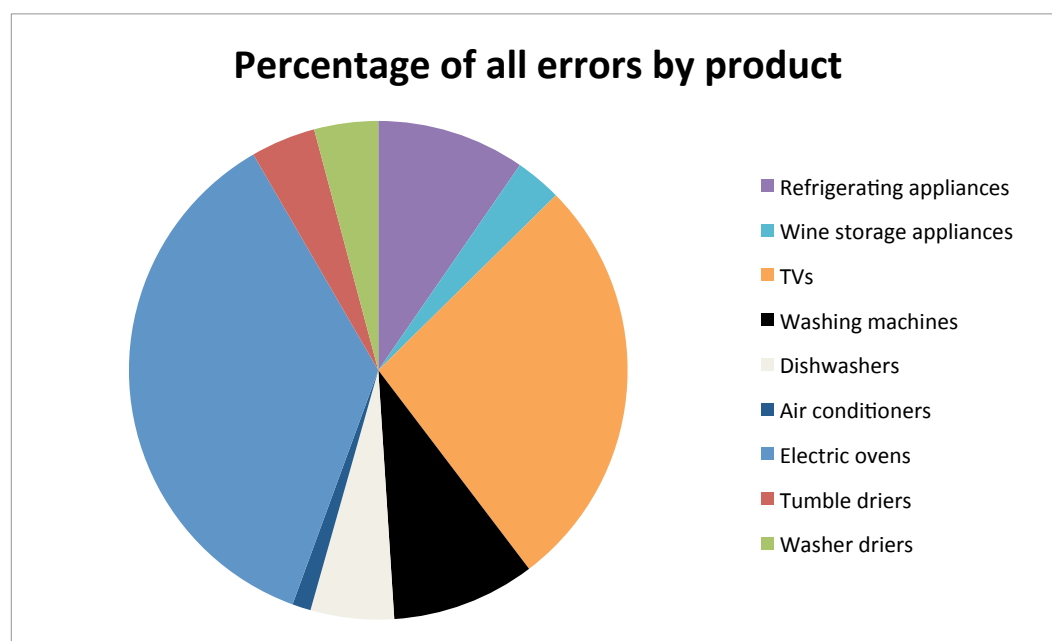


Figure 5. Overview of compliance by product category for the first round.

Table 6. Overview of Ecodesign observations in the first round.

	Total number of products observed	Number of noncompliant products observed	% of products observed not meeting criteria
Lamps: Incandescent lamps available	26,294	1,402	5.3 %
Refrigerators: Compressor type energy class A and below	10,941	323	3 %
Washing machines: Energy class B and below	7,613	128	1.7 %
Washing machines: 'standard' programme clearly identifiable on the panel (Text or Symbol)	7,613	1,973	25.9 %
Dishwashers: Energy class B and below. (60 cm wide models only)	5,799	11	0.2 %
Dishwashers: Default standard cleaning cycle on the panel (Text or «Eco»)	5,799	1,267	21.8 %
Tumble driers: Energy class D and below	1,635	8	0.5 %
All products	52,282	5,112	9.8 %

justify such measures, but future observations in the project will help identify how well these have been adopted both nationally and across the EU.

- The first round of observations have also helped to potential trends of non-compliance including further evidence of shop types not meeting requirements as well as which product categories are consistently incorrectly labelled.

COMMUNICATION AND DISSEMINATION ACTIVITIES

The combined interest of both environmental and consumer organisations, and in a significant number for the Market-Watch project, has highlighted that there is a serious concern by CSOs about absent and mislabelled products. This concern has clearly been echoed by the general population, as seen by the extensive media coverage the project has received. To date, MarketWatch has been mentioned over 170 times in

10 countries. MarketWatch members have been interviewed or given presentations on national television news and interest programmes, have presented and debated on local and nationally syndicated radio stations, and have garnered hundreds of column inches in Europe's largest newspapers. Furthermore, the MarketWatch consortium and its affiliates have published over 70 blogs, articles and press releases relating to the project.

The project has also gathered a number of professional followers from a range of expertise and backgrounds. Five workshops with 85 attendees have taken place. There are 250 subscribers to the MarketWatch newsletter, and a brochure, printed in 10 languages, has been distributed to at least 200 interested organisations.

An additional result of the empowerment and action phases was the dialogue established and maintained with the national MSAs. At the time of writing, there have been 27 meetings with MSAs and all national partners have established key persons at national level with whom to share information and intelligence. Only the UK and Danish partners had any prior contact. Additionally, MarketWatch partners have met with, or given presentations to a number of national and European retailers, trade associations, and national government and European agencies and departments.

Such media and professional interest provides evidence of a clear importance the public hold over the issue of market surveillance. Consumers do not want to be sold products under false pretences that will increase their energy bills; neither do environmental advocates want to see products that will in fact not reduce energy consumption and pollution to the degree that is expected. The very existence of the Energy label is compromised when public and professional confidence is eroded through incorrect labelling and the ability of retailers and manufacturers to mislabel, or not label at all, their products.

IDENTIFICATION OF OPPORTUNITIES FOR CIVIL SOCIETY

Whilst some member states are open to engagement with all stakeholders, including CSOs, others maintain strict boundaries and are extremely hesitant to accept intelligence or evidence of non-compliance. Some have argued that this is a legal issue, where even if they had wanted to, they are unable to use data from third parties. This would be in contradiction to Article 3, paragraph 4 of the Ecodesign Directive (2009/125/EC) which states "Member States shall ensure that consumers and other interested parties are given an opportunity to submit observations on product compliance to the competent authorities." The MarketWatch project hopes to eventually build trust and a strong professional relationship with the relevant national authorities by demonstrating expertise and relevant experience. Mutual support of CSOs in the MarketWatch network allows for advocacy at both national and EU-level, in-line with the nature of European legislation, to overcome barriers to allow other consumer and environmental organisations to actively contribute to M, V & E activities.

Member states have very different levels of monitoring activities. Whilst some can be said to be exemplary, conducting rigorous investigation and testing/inspections, others are largely inactive. Further analysis of the different methods and levels of monitoring activities is broken down in the Ecopliant

project¹⁵. These differences pose significant barriers to collective enforcement actions, and for the involvement of civil society organisations. It is the prerogative of each member state to undertake surveillance activities in the manner it sees fit, however when we view this in the context of the single market, with harmonised legislation, these differences become limitations to cooperation and collaboration. As has been the case in various other environmental and consumer issues, the role of CSOs could be crucial to stimulate better legislation or better application of existing legislation whether that be through alignment with the practices of other MSAs or simply increasing resources made available for the application.

Legal issues, in particular whether or not an MSA can publish its findings vary from country to country. Whilst there are justifiable reasons as to why all testing and inspection results (positive as well as negative) are not published, it does create a situation whereby a model maybe declared non-compliant in one member state and published, while its neighbouring state cannot or will not publicise the same or equivalent model being non-compliant in its own region. One of the main strengths of CSOs is their extensive networks and appeal to the public as independent and trust-worthy, and with this the naming and shaming of manufacturers and retailers can be an effective tool. It is the right of citizens to be aware of which models are non-compliant, and subsequently the brands and retailers that consistently mislead by mislabelling.

Coordinating efforts on multiple fronts has proved to be a challenge of the project, particularly in regards to the points above relating to varying methods and procedures of the member states. The nature of much of retail and popular white-goods is that the market moves very quickly, and the identification of suspected non-compliant models is resource intensive.

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