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European Ecodesign Compliance Project

Work Package 2: Overcoming Barriers and Establishing Best Practices

D2.2 Draft Best Practice Guidelines

Guidelines for Coordinated and Effective Ecodesign Market Surveillance

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Summary

These guidelines aim to describe *best practices for ecodesign market surveillance*. The main target group for these guidelines is Ecodesign Market Surveillance Authorities (MSAs). The guidelines have been formulated based on the experiences and analyses gained within the Ecopliant project. The project partners believe that this paper will give a valuable input on how to monitor, verify and enforce ecodesign requirements.

This is the first, draft version of the guidelines. As the project partners gain additional experience throughout the project, these guidelines will be refined, also taking into consideration possible comments received by the guidelines users.

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1 Introduction

1.1 Scope of the Ecopliant Guidelines

The purpose of these guidelines is to describe *best practices for ecodesign market surveillance*. The main target group for these guidelines is Ecodesign MSAs. The guidelines have been formulated based on the experiences and analyses gained within the Ecopliant project¹.

The project has collected and analysed existing practices used by major international and national MSAs for ecodesign market surveillance. Project partners have shared their own experiences and the project has also collected input from other EU MSAs by an extensive survey. The project has started a pilot action for coordinated market surveillance, including e.g. joint laboratory testing and document inspection actions, to practically assess the feasibility of the selected best practices. Based on these experiences, these best practice *Guidelines for Coordinated and Effective Ecodesign Market Surveillance* have been developed. This is the first version of the guidelines. As the project partners gain additional experience throughout the project, these guidelines will be refined, taking also into consideration the comments received by the guidelines users.

These guidelines constitute a summary of findings and recommendations included in seven different subtask Reports, released by the Ecopliant project in November 2013². For a detailed description of the covered areas, including the specific best practice recommendations, it is recommended to read the subtask reports.

1.2 Existing literature for MV&E of EU product legislation

Monitoring, verification and enforcement (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 possible within the Ecopliant project. The project is thus focusing only on the most relevant aspects of ecodesign market surveillance.

A lot of work in the area of MV&E 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 similarities.

PROSAFE³ has published a book on Best Practice Techniques in Market Surveillance⁴, known amongst PROSAFE members and market surveillance officers as "the Book". Although related to consumer products/product safety market surveillance, the best practices described in the PROSAFE reports are

¹ The Ecopliant project was granted financial support by the IEE-programme in early 2012. The project consortium consists of ten 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.

² Available at <http://www.ecopliant.eu/wp2-reports-establish-best-practice/>

³ PROSAFE (Product Safety) is a non-profit professional organisation for market surveillance authorities and officers from throughout the EEA.

⁴ See: http://www.prosafe.org/read_write/file/EMARS_Best_Practice_Book.pdf

to a great extent applicable also for ecodesign market surveillance, especially in terms of the general overview on procedures.

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” by Mark Ellis and Ass in partnership with CLASP⁵.

References to other national, EU and international publications related to market surveillance can be found in the Ecopliant subtask reports.

1.3 The main goal of the Ecopliant Guidelines

The Ecopliant project has limited its scope to develop and describe the best practice procedures that are specific for ecodesign market surveillance. By adopting this approach, Ecopliant will on one side avoid duplication of existing and already documented experiences that have been developed by other projects/studies and on the other side give its valuable contribution by preparing reliable material on the specific issues related to ecodesign market surveillance.

The main focus of the Ecopliant guidelines for coordinated and effective ecodesign market surveillance is:

- How to set up the 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 document inspection
- How to conduct compliance verification laboratory tests
- Sharing of inspection results
- How to enforce the provisions of the ecodesign regulations

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

1.4 The legal base

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

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

⁵ Available at http://www.clasponline.org/~media/Files/SLDocuments/2006-2011/2010-09_MVEGuidebookSingle.pdf

to protect responsible businesses from unfair competition by unscrupulous economic operators who ignore the rules.

There are a number of Directives and Regulations that form the legal base for market surveillance:

1.4.1 Regulation (EC) No 765/2008

General requirements for market surveillance on products available on the EU market are stated in the EU Regulation 765/2008 on accreditation and market surveillance⁶.

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

The legal base for ecodesign market surveillance is also to be found in the sectorial legislation, i.e. the framework Directive⁷ 2009/125/EC and in the national legislations transposing the Directive. In addition, specific criteria that are essential for market surveillance can also be found in the implementing measures.

Market surveillance according to the Ecodesign Directive 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.

1.4.3 Commission proposal COM (2013) 75 for a regulation on market surveillance of products

In February 2013, the European Commission proposed a new package of legislative and non-legislative measures to improve consumer product safety and to strengthen market surveillance of

⁶ [Regulation \(EC\) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products](#)

⁷ [Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products](#)

products in the EU⁸. The package includes for example a proposal for a “Regulation on market surveillance”. One reason for this proposal was that Union rules on market surveillance are fragmented and scattered over several different pieces of legislation, thus creating gaps and overlaps. The legislative proposals by the Commission aim to enable improved coordination of the way authorities check products and enforce product directives across the European Union. The package is now discussed in the European Parliament and in the Council. At the time of this writing (December 2013), it is expected that the new legislation will come into effect in 2015.

1.4.4 The Ecodesign ADCO

Ecodesign Market Surveillance Administrative Cooperation (Ecodesign ADCO) is cooperation between national MSAs responsible for the market surveillance of products covered by Directive 2009/125/EC and its implementing measures, gathering twice a year to discuss harmonisation of different market surveillance practices across the EEA for products covered by ecodesign regulations. All national market surveillance authorities for ecodesign are asked to participate in the ADCO Ecodesign Group and/or take part of the results from ADCO-meetings.

⁸ <http://ec.europa.eu/consumers/safety/psmsp/>

2 Best Practice Guidelines

The main outcome of the experiences and analyses gained within the Ecopliant project are described in the below paragraphs. The Ecopliant Team recommends reading the seven developed subtask reports in order to have a full picture of all findings and recommendations⁹.

2.1 How to set up the national market surveillance

Member States are responsible for surveillance activities on their own territory. It is up to each Member State how to organise its market surveillance within the framework of the legislation. In this respect the adopted solutions vary among MS:

- Some Member States have delegated market surveillance responsibilities for a number of product related Directives and Regulations at one or a few national market surveillance authorities.
- Some Member States, on the other hand, have chosen to organise the ecodesign market surveillance together with ecodesign and energy policy development.
- Some countries have organised the ecodesign market surveillance at regional level, with one common national coordinator.
- In a number of EU countries, 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 subcontractors, for example when it comes to communication, technical expertise, document inspections and, of course, external test laboratories.

In addition to the monitoring, verification and enforcement activities, many MSAs arrange proactive and preventing activities to inform manufacturers and their representatives or importers about the ecodesign requirements that are in force or coming into force:

- Most commonly is for the MSAs to hold information meetings, send out newsletters and publish guidelines on how to comply.
- 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 ecodesign requirements of products.
- MSAs can make public announcement beforehand to inform manufacturers and their representatives or importers about planned market surveillance action(s), by e.g. publish their yearly market surveillance programme on their website. The publication of the results of market

⁹ Seven Ecopliant subtask reports available at <http://www.ecopliant.eu/wp2-reports-establish-best-practice/>

surveillance activities can be a way of discouraging possible improper behaviour by market actors.

- MSAs can also cooperate with national customs authorities in market surveillance of the Ecodesign Directive in order to prevent non-compliant products entering the EU-market.

2.1.1.1 Recommendations for Ecodesign MSAs

- *Each Member State should consider how to organise its market surveillance in order 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 can consider whether proactive and preventing activities should be carried out, in order to inform manufacturers, their representatives and importers about the ecodesign requirements 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.*
- *Ecodesign MSAs should consider cooperating with national customs authorities in market surveillance.*

2.2 How to establish Inspection Programmes

The expression national “inspection programme” indicates that this can be more than product testing. An Inspection Programme can include testing, document(s) inspection, visual product checks and also other surveillance activities.

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

The recommendations laid out in this section can be studied in detail in interim report “*Subtask 1.4 Testing programmes and Full Compliance Testing Activities*”.

2.2.1 Development of national inspection programmes

When developing a national inspection programme, detecting non-compliant products is the main objective. However, each individual MSA might also see additional desired output of such programmes. 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.

Therefore, regardless of such factors as national legislation or resources, national inspection programmes should be designed and developed mainly to detect non-compliant products that have been or are being placed on the market.

When developing national inspection programmes, MSAs should focus attention both on the desired *outcome* 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 gauge levels of compliance in order to get an overview of the market or for any other kind of data collection
4. To use non-compliance as a means to start a dialogue in order to engage industry or business

The methodology for achieving the expected outcome can be achieved in one or more of the following ways, which should be considered and described in the national inspection programme:

- Compliance testing according to the relevant EU legislation procedure
- Checks of other requirements (e.g. document inspection or information requirements)
- Visual product checks (in situ/in laboratory)
- Screen testing¹⁰

This decision may be based on resource and national considerations.

Once the intended outcome and associated methodology have been established, there are several factors that may help to focus and finally 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(ies) with a history of non-compliance can be targeted, or products covered by new legislation or products with high energy consumption, and so on. Additional information on this issue can be found in chapter 2.3 How to select products for inspection.

It is important to highlight that any test programme should include a strategy for disposal of products after tests have been conducted. Considerations should not only be based on national legislation and/or policy but also where possible in keeping with the spirit of the Ecodesign Directive and other EU legislation on (electric and electronic) waste disposal, addressing environmental concerns by using reliable disposal routes.

¹⁰ The definition of screen tests is given in chapter 2.3.

2.2.1.1 Recommendations for Ecodesign MSAs

- *National inspection programmes should be designed and developed to 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*
 - *Ensure that there is a clearly defined desired content*
 - *Ensure that there is methodology to develop content*
 - *Ensure that there is a suitable disposal strategy in place*

2.2.2 Coordination of inspection programmes

Coordination of inspection programmes between MSAs is an important way to use the available resources in the most efficient way. Coordination can be done between national MSAs, e.g. MSAs responsible for different product directives (e.g. energy labelling, RoHS and/or LVD-directives) and/or among regional MSA, or EU-wide, e.g. between Ecodesign MSAs. Sharing details of planned testing programmes is not a legislative provision of the Directive, although sharing results on non-compliant products is instead mandatory, but many MSAs currently share additional information in order to meet mutual objectives. Coordination opportunities might for example occur via the Ecodesign ADCO or on a regional level or even on an international level (i.e. coordination of market surveillance among major worldwide markets). Collaboration provides numerous benefits, e.g. increased capacity and cost savings and increased access to laboratory facilities.

There might however be barriers to an effective coordination of inspection programmes. Barriers to sharing details of planned testing programmes can be typically explained by the following factors which should be properly addressed if coordinated inspection programmes are to be successfully put in place:

- **Defined objectives:** the purpose of sharing planned inspection programmes should be set and agreed among participants.
- **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.

2.2.2.1 Recommendations for Ecodesign MSAs

- *When coordinating inspection programmes, ensure that existing opportunities – EU-wide and regional - are identified and taken advantage of*
- *Ensure also that barriers are identified and properly managed before coordinated inspection programmes are developed*

2.3 How to select products for inspection

Ecodesign MSAs deal with a vast amount of product categories, brands and models. Therefore, it is necessary for the MSAs to carefully select products to be inspected. There are different targeting techniques and methods to use when selecting products for inspection. The different targeting methods have different benefits and effectiveness, depending also on the specific objective of the inspections (see the discussion in the above chapter).

Targeting techniques can be used to select first the product categories and then the relevant brands and models.

Product selection criteria can be divided into two main groups that give also a different outcome:

1. “random or statistical based approach”
2. “targeted approach” (mostly risk-based sampling).

A risk-based sampling is a selection approach for products, brands and/or models based on a set of factors related to an increased risk of failing the compliance tests. “Risk” needs to be interpreted widely, to include risks posed by poor product coverage or non-responsiveness to stakeholder complaints. In general, it is more common to select products according to a set of criteria rather than choose a random sample for testing; however examples do exist on the combination of the random and the targeted approach for products selection.

Among the possible criteria, some appear to be most frequently used by MSAs. When selecting product categories, e.g. for national inspection programmes (see 2.2), the following selection criteria are more often used by Ecodesign MSAs:

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

For brand selection, Ecodesign MSAs more often 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, Ecodesign MSAs consider the following criteria of outmost importance:

- Model highlighted by other Member State complaints
- Model highlighted by intelligence from consumer groups and/or individuals
- Model for which the technical documentation indicates possible risks for technical non-compliance
- Model highlighted from complaints or findings of other organisations (i.e. environmental NGOs, EU projects, etc.).

In addition, some MSAs also have sampling strategy for selection of the individual samples of the models that are to be inspected. The individual samples of the product to be verified should preferably be randomly chosen and picked-up, to make sure that they are not special or premium units.

The so called *screening techniques* are among the available tools for selection of products with a higher probability of being non-compliant. According to the working definition valid for the Ecopliant project, screening tests are: *preliminary low cost screening 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 accredited laboratories. Screening tests can be carried out in the field or by MSA personnel, rather than by a sub-contracted accredited laboratory where all relevant parameters can be controlled.*

Examples of screening techniques that have been applied - by a few MSA - are in situ/in shop measurements of “standby” power consumption of electrical household and office equipment in order to select products for further compliance verification, along with screening tests using a more simple test equipment for the measurement of the power consumption of electric power supplies, standby regulation products, simple set-top boxes and TVs. Also the use of simplified versions of the harmonised standards has been applied by these MSAs for product screening.

It is important to point out that a screening test is not the same as Step 1 of the EU verification procedure¹¹. MSA actions against economic operators cannot start based on a screening test result, but instead only on the basis of a suspected or verified non-compliance following the two Step procedure described in the EU ecodesign legislation. Screening tests can however be used to initiate an informal dialogue with the manufacturer to clarify some aspects of a product. Likewise, screening tests can initiate a closer inspection of the individual model’s official documents, as well as the contrary may happen: the documental inspection can lead to a screening test that in turn may highlight a reasonable suspect of higher risk of non-compliance and suggest to go for a compliance verification procedure.

The recommendations laid out in this section are described in detail in interim report “*Subtask 1.3 Techniques for Selecting Products for Testing*”.

2.3.1.1 Recommendations for Ecodesign MSAs

- *Effective product targeting is especially important when a legislation (e.g. Ecodesign of ErP) deals with a vast amount of product categories, which may not all be subject to yearly market surveillance activities.*

¹¹ The EU ecodesign implementing measures establish the procedure to be followed by MSA when verifying 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.

- *Well-thought-out targeting techniques should be applied when selecting product categories as well as brands and models for compliance inspection.*
- *Specific criteria ('risk factor') to select product categories, brands and specific models for compliance inspection can be applied. Important selection criteria for Ecodesign MSA are:*
 - *High energy consumption and new legislation covering a product.*
 - *High market share and history of non-compliance for brands, along with their not frequently involvement in surveillance.*
 - *Other Member State or international complaints*
 - *Ambiguities in the technical documentation for a model.*
- *The product targeting must be justifiable on a range of grounds. In order to avoid criticism or bias, “guidelines” detailing the criteria used for targeting products for verification tests should be published by the MSAs.*
- *Random and targeted product selection can be successfully combined with a market share approach.*
- *Product documentation inspection can be used as a product targeting technique prior to lab test. See also chapter 2.5 How to conduct document inspection.*
- *Complaints or reports about possible non-compliant products from outside parties can be an important targeting method.*
- *Screening tests can also be a tool for the selection of products with a higher probability of being non-compliant. Screening tests should however not be used to start any action against economic operators.*
- *The specific samples selected for testing need to be randomly chosen and picked-up. They should be representative of what is being supplied to the market. Thus if samples are obtained directly from the producer, MSA must see to that the samples chosen are indeed randomly selected and not a “premium” unit.*

2.4 How to identify EEA-wide product model numbers

As the EU market for certain products looks today, a specific product model (appliance) is sometimes sold under different product model numbers and different trademarks, even if they are in technical terms the same product.

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

The documentation compiled by the manufacturer can also refer to a “basic model” of the product, from which the test reports, calculations and information of other models derive.

The different trademarks and different model identification for equivalent products is often a problem for MSAs controlling the national markets, and this is especially a barrier for increased coordination of market surveillance activities across the EU.

However, information that clarifies the situation for a certain product can be required by the MSAs, according to the annex VI of Ecodesign Directive 2009/125/EC. It states that the EC declaration of conformity must contain the following elements:

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

Some implementing regulations include further requirements.

Therefore, MSAs can request the relevant information of the 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 shall be included in the technical file as an “identity declaration”. This declaration should 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. If the technical file clarifies which models are actually equivalent or are derived from a basic one, and for which reasons, there is no need of a specific document.

The recommendations laid out in this section, as well as the developed protocols, are described in detail in interim report “*Subtask 1.1 Identifying EU wide product model numbers*”.

2.4.1.1 Recommendations for Ecodesign 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).*
- *In order 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.*

2.5 How to conduct document inspection

Products that are regulated under the Ecodesign Directive 2009/125/EC need to have a technical documentation file, consisting of documents relating to the conformity assessment that has been carried out by the manufacturer, and making possible an assessment of the conformity of the product with the requirements of the directive and the specific regulation.

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 both in the Ecodesign Directive and in the product specific implementing regulations. Typically, the technical documentation should include: test reports, EU-declaration of conformity and/or technical information, calculations and a list of equivalent models (asked for by some implementing regulations) and of the appliances covered by the same technical file (identity declaration).

Within the Ecopliant project, the minimum content of a technical documentation for a number of products have been identified. Based on this analysis, protocols for document inspections have been developed.

The recommendations laid out in this section, as well as the developed protocols, can be studied in detail in interim report “*Subtask 1.2 Document Inspection Requirements*”.

2.5.1.1 Recommendations for Ecodesign MSAs

- *Document inspection is an important part of market surveillance and should be considered when establishing national inspection programmes (see 2.2).*
- *Document inspection is a stand-alone activity: if the documentation of a product does not meet the requirements of its corresponding ecodesign regulation, the product does not comply with the relevant implementing measure under the Ecodesign Directive.*
- *An effective document inspection can lead to significant costs saving in market surveillance and should be considered when establishing national inspection programmes (see 2.2).*
- *It can also be used as a very useful method to select products for further compliance verification through lab testing.*
- *It is essential to define harmonised rules for document inspection in all the MS. 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 it could be accepted only in some of them.*
- *Before starting a document inspection, 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 clarified.*
- *The technical documentation file must include a list of all equivalent models of all the appliances covered by the same technical file (identity declaration) and of the appliances where the same basic model is used to derive compliance by calculation or interpolation*
- *It is necessary to check that the manufacturer has not used measurement tolerances prescribed in the legislation for MSA to achieve a more favourable score or classification than the test reported in the documentation can justify.*

2.6 How to conduct compliance verification laboratory tests

The technical product compliance is determined through measurements done in test laboratories following (harmonized) standards.

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

The recommendations laid out in this section are described in detail in interim report “*Subtask 1.4 Testing programmes and Full Compliance Testing Activities*” and “*Subtask 1.6 Sharing Data between Member States*”.

2.6.1 Compliance verification through laboratory testing activities

The purpose of this section is to describe how qualified (and possibly accredited) laboratories in the EEA should be used by MSAs to get test results according to the verification procedure defined in the EU Ecodesign legislation.

The importance and use of accurate measurements in relation to the Ecodesign Directive is stated throughout the product specific implementing regulations, 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 the Ecodesign Directive. When selecting laboratories for testing, many MSAs base their choice on criteria like expertise, reliability of result, accreditation, budget and services offered.

Accreditation itself guarantees a degree of reliability and expertise of the accredited laboratory and is viewed by many MSAs as an essential component in the process of laboratory selection.

When conducting verification testing, the mitigating or control of results should always be a consideration. Mutual recognition is one way of achieving this. In basic terms, within the Ecopliant project, mutual recognition means the increased use and acceptance of results from qualified (and accredited) laboratories, including results from laboratories in other countries. In this way, the free-trade goal of a ‘*product tested once and accepted everywhere*¹²’ can be realised.

2.6.1.1 Recommendations for Ecodesign MSAs

- *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 e.g. the applicable verification procedure to be used*

¹² Source – ILAC <https://www.ilac.org/home.html>

- *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*

2.6.2 Third Party Funding

The monitoring, verification and enforcement of the Ecodesign Directive require a certain amount of resources (human, financial, time). In some cases such resources can be beyond the national possibilities, thus making market surveillance almost impossible and as consequence putting at risk the Directive's intended economic and environmental benefits. Some MSAs consider funding by third parties as a way to enlarge the available economic resources for laboratory testing.

A third party can be described as any private or public subject not directly involved in market surveillance e.g. trades association, industry or grants, and other funding initiatives. There are several opportunities that can be applied to third party funding which include but are not limited to the following:

- **Regulatory:** Some MSAs have for example powers which allow for the recovery of testing and other costs. This regulatory process can be considered as a reactive form of third party funding.
- **Industry Cooperation:** Some MSAs strive to build successful and proactive relationships with industry in order to develop and progress market surveillance projects which 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. This form of funding is considered as a mutually proactive form of third party funding.
- **EU Programmes:** Third party funding can also come via programme initiatives such as the Intelligent Energy Europe (IEE) programme that has co-funded the Ecopliant project. This form of funding is considered as a proactive form of third party funding.

2.6.2.1 Recommendations for Ecodesign 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 a MSA retain the following characteristics as these factors help to support the operational effectiveness and efficiency of market surveillance:*
 - *Independence*
 - *Transparency*
 - *Impartiality*
 - *Objectivity.*

2.7 Sharing of inspection results

It has been recognised that market surveillance, both at national and cross border level, can only be truly successful when public authorities cooperate and share information such as test or documental inspection results. Therefore, results from national inspections should preferably be shared between MSAs. This relates to document inspections, preliminary screening test results and compliance verification laboratory test results.

The recommendations laid out in this section are described in detail in interim report “*Subtask 1.4 Testing programmes and Full Compliance Testing Activities*” and “*Subtask 1.6 Sharing Data between Member States*”.

The concept of exchanging information is not only mandatory under Article 12 of the Ecodesign Directive, but is also one of the guiding principles of Regulation (EC) No 765/2008 which sets out the mandatory requirements for accreditation and market surveillance relating to the marketing of products. In recital 27 of the Ecodesign Directive, it is also stated that surveillance authorities should exchange information according to Regulation (EC) No 765/2008. In addition, Article 3(3) of the Ecodesign Directive states that Member States are required to keep the Commission and, where appropriate, other Member States informed of their market surveillance results.

The desired outcome of the coordination and sharing of information about products inspection results is to create a collaborative approach to market surveillance. A collaborative approach ensures best use of resources amongst MSAs, avoids duplication and demonstrates to economic operators that compliance is a Pan-European requirement.

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 practical opportunities and tools for sharing of test results. A number of support systems are in place for MSAs at EU level:

- ADCO: Member States are obliged to appoint MSA in directive specific Administrative Cooperation (ADCO) Working Groups. The Ecodesign ADCO is currently (2013-2014) chaired by the Netherlands and meets twice a year as a forum for MSAs to exchange information and best practices.
- Circabc: The Communication and Information Resource Centre (Circa) is an electronic workspace developed by the Commission to allow with the secure sharing of documents for the various ADCO and other working or interest groups. It is accessible to the members of these groups.
- 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 aspects.
- ICSMS: ICSMS is the Commissions Information and Communication System for Market Surveillance. This database is owned by the EU Commission and all MSAs are obliged to use it to record information on products which 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 can be used also for ecodesign.

In addition, the Ecopliant project is currently developing an online information repository that will allow Ecodesign MSAs upload and search testing plans and communicate their results with each other. A tailor-made database, designed for use by all MSA's, will assist in developing a responsive framework for ecodesign market surveillance¹³. The ability to share data will have the dual benefits of improving the effectiveness of market surveillance across the EEA and at the same time of reducing its cost through the elimination of duplicated activity. The Ecopliant database will be a standalone ecodesign-specific system and is not intended as a replacement for ICSMS. However, as part of Ecopliant WP4, a review of transferability between ICSMS & the Ecopliant database will be carried out and a paper setting out options and recommendations on the feed-in of Ecopliant to ICSMS or its successor(s) will be submitted to the Commission in the latter half of 2014.

2.7.1.1 Recommendations for Ecodesign MSAs

- *Fulfil legislative obligations (European and national) relating to the exchange of information when carrying out market surveillance*
- *Make use of existing common and accessible formats or platforms and the Ecopliant database when available*
- *Consider security and confidentiality issues which may restrict the sharing of information*
- *A register of MSA contacts should be created and maintained if successful communication is to be achieved.*

2.8 How to enforce the provisions of the ecodesign regulations

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 in order to protect market and consumers against non-compliant products.

The recommendations laid out in this section are described in detail in interim report "*Subtask 1.5 Enforcement Activity Follow Up*".

The legal enforcement systems for ecodesign vary between the Member States. In the Ecodesign Directive, some general requirements are set up, as in Article 3 and 7:

¹³ ICSMS was reviewed for its suitability but was deemed to be more geared towards safety-based directives and its use in the Ecopliant project was limited in that it only holds information on products which have been found to be non-compliant (excludes products inspected or tested which were found to be compliant) and cannot facilitate coordination or sharing of activities between Member States. Also, as the Ecopliant database will contain classified and / or commercially sensitive information on testing plans of Member States and details of live enforcement cases, access must be restricted to EEA Ecodesign MSA's only.

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 in order to assist the operation of the Ecodesign Directive.

A set of requirements are also included in Regulation 765/2008.

- According to Article 16(2) the Member States shall ensure that products that do not comply with the legislation are withdrawn or their being made available of the market is prohibited or restricted and that the other Member States are informed accordingly. Article 19(1)-(2) states that MSAs shall perform appropriate checks on the characteristics of products on an adequate scale, by means of documentary checks and, where appropriate, physical and laboratory checks on the basis of adequate samples. Economic operators are obligated to submit all necessary documentation and information that the MSA require.
- There are also some paragraphs regarding cooperation and mutual assistance, e.g. Article 24. Article 23 e.g. is about information management. 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.

For several product directives, it has been decided ICSMS is the system that is referred to in 765/2008. For Ecodesign, both ICSMS and CIRCABC have been used for transfer of test data.

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 reaction of the manufacturer decides how the MSA will proceed. If remedy actions are proposed by the manufacturer, and these are acceptable and satisfactorily completed, 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). In the end, fines and sales bans can be executed, depending on the situation.

Taking enforcement action against a manufacturer or importer that is situated in another EU-country is found to be a challenge for some MSAs. The prerequisites for the MSA's possibility to act depend on the respective national legislation. When these problems arise, some MSAs can or will try to address the economic operator within their own country. Other MSAs forward the suspected non-compliance cases to the MSA in which country the manufacturer or importer is situated. Until either a revised Ecodesign Directive or new regulation on market surveillance is agreed, each country must follow its own national legislation and practices when handling cases of this nature.

The possibility for MSAs to use foreign data as basis for national enforcement actions is important in order to make optimal use of existing resources. Foreign 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 part. One example is data that has been obtained by a MSA in another EU-country. It is also possible that foreign data can come from a project like ATLETE and ATLETE II¹⁴. Another possibility is that foreign data come from an industry organisation. In principle, all these kinds of foreign data could, under certain conditions, be used for enforcement actions. To what extent 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 try to make the best possible use of foreign data. See also chapter 2.7 Sharing of inspection results.

2.8.1.1 Recommendations for Ecodesign MSAs:

- *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 foreign data.*
- *Assess the quality of possible foreign data. Try to make the best possible use of foreign data.*

¹⁴ Read more: www.atlete.eu for the ATLETE project on refrigerating appliances and ATLETE II project on washing machines.

- *If not possible to use foreign data directly, at least use this data to start your own investigation or to target products within your own market surveillance programme.*
- *Share your own data with other EU-MSAs.*
- *If possible, make sure your inspection data can be made available in a commonly shared language (such as English) for easier transfer to other EU-countries.*
- *Arrange good support and communication between MSA supplying and receiving data.*
- *Communicate good results and possible problems and barriers to the data supplier.*
- *Record inspection results in EU-wide data bases in order to spread available data. The database to be developed in Ecopliant can be a first step.*
- *Consider participation in EU exchange of experience and data (e.g. ADCO) and participation in EU projects, in order to strengthen the enforcement level.*

3 Summing up

The purpose of these guidelines is to describe *best practices for ecodesign market surveillance*. The guidelines have been formulated based on collected information and experiences and analyses gained within the Ecopliant project. This is the first version of the guidelines. As the Ecopliant project partners gain additional experience throughout the project, these guidelines will be updated.

The Ecopliant Team is also in the process of developing a package of training tools for Ecodesign MSAs personnel based on these guidelines. The training tools will be delivered through a series of training seminars in 2014 for MSA personnel, both from consortium members and other EEA countries. At these seminars, the guidelines and recommendations will also be discussed, challenged and developed further.