

# Market surveillance system

## *Energieverbrauchskennzeichnungsgesetz (EnVKG)* – Law on energy consumption labelling

(energy-related products, motor vehicles, tyres)

Status: December 2013

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## 1. Preamble

Rules on standard energy consumption labelling throughout Europe exist in three overarching product areas and, at the same time, demarcate the scope of the *Energieverbrauchskennzeichnungsgesetz* (*EnVKG* – Law on energy consumption labelling), the national transposing act:

- energy-related products within the meaning of Directive 2010/30/EU,
- passenger cars within the meaning of Directive 1999/94/EC,
- tyres within the meaning of Regulation (EC) No 1222/2009, amended by Regulation (EU) No 228/2011.

Energy consumption labelling at European level came in with Directive 92/75/EEC, which first introduced standard Europe-wide requirements for indicating energy consumption and the use of a coloured efficiency scale for household appliances. Efficiency labels for eight types of household appliances have been introduced progressively on the basis of this Directive since 1998.

In 2010, Directive 92/75/EEC was replaced by Directive 2010/30/EU and its scope was extended to cover "energy-related" products as well as energy-using products. It is still the EU Commission that decides what group of products is assigned an efficiency label and enacts regulations for specific products which are directly applicable in national law<sup>1</sup>. These products are subject to market surveillance.

The aim of standard rules on energy consumption labelling throughout Europe is to increase energy efficiency in the product sector and to create a level playing field for competition in the EU internal market. Standard Europe-wide requirements are intended to eliminate trade obstacles stemming from differences in the rules in individual Member States and promote fair competition within the EU internal market.

The rules on energy consumption labelling are closely aligned with the efficiency requirements under the Ecodesign Directive (Directive 2009/125/EC) and should therefore be seen in conjunction with them in the course of market surveillance too.

In addition to the energy-related products sector there are two further categories of products with comparable standardised EU-wide requirements:

- labelling of new passenger cars within the meaning of Directive 1999/94/EC and
- labelling of tyres within the meaning of Regulation (EC) No 1222/2009, amended by Regulation (EU) No 228/2011.

This system was developed by the *Bundesländer* together with the *Bundesministerium für Wirtschaft und Technologie* (Federal Ministry for Industry and Technology) and the *Bundesanstalt für Materialforschung und -prüfung* (Federal Institute for Research and Testing of Materials) and was discussed in the market surveillance *EVPG*

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<sup>1</sup> Cf. for energy-related products [www.evpg.bam.de/de/produktgruppen](http://www.evpg.bam.de/de/produktgruppen)

(*Energieverbrauchsrelevante-Produkte-Gesetz* – Law on energy-related products) /*EnVKG Bund-Länder Committee*. The system provides guidance for market surveillance under the *EnVKG*. It is neither definitive nor binding and is constantly being refined and updated.

## **2. Principles of and conditions for market surveillance**

The harmonised regulations for placing products on the market do not provide for any State approval or testing as a prerequisite for access to the market. Economic operators must ensure on their own responsibility that their products comply with all the relevant provisions of Union law. This liberal regulatory system for market access needs to be balanced by effective market surveillance in order to ensure that economic operators meet their obligations and place their products on the market in compliance with the rules. This means that a uniformly high standard of compliance with the requirements in force can be achieved throughout Europe and fair competition can be ensured as well.

Market surveillance under the *Energieverbrauchskennzeichnungsgesetz* is intended to monitor implementation of and compliance with the EU efficiency label requirements and to contribute to meeting energy efficiency aims. This serves the legitimate interest of manufacturers and importers in protection against unfair competition and hones the competitive edge of the industry operating within the purview of the *EnVKG*.

The public has an equally great interest in the enforcement of efficiency label requirements so that environmental protection aims are met, as do consumers who have an economic interest in the consumption and efficiency values indicated by manufacturers being correct.

In the relevant EU legal instruments (Directive 2010/30/EU, Directive 1999/94/EC and Regulation (EC) No 1222/2009) the Member States are requested to ensure that products are only offered for purchase, rent or any other use, exhibited or, in exceptional cases, taken into service, if the relevant consumption and efficiency requirements are in line with those under EU law.

In parallel with these requirements, Regulation (EC) No 765/2008 on accreditation and market surveillance has also been directly applicable since 1 January 2010. Article 15(2) of this Regulation provides that Articles 16 to 26 are applicable only in as far as Union harmonisation law does not contain any specific provisions pursuing the same aim. This also applies to the *Energieverbrauchskennzeichnungsgesetz*.

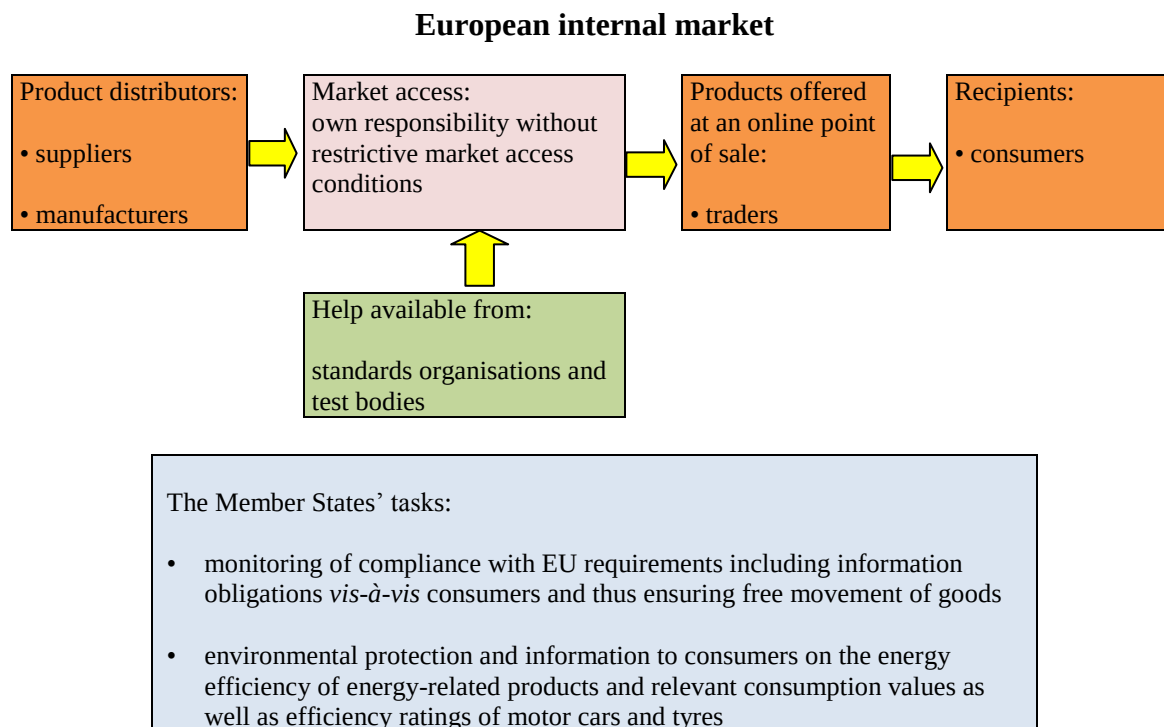
The Member States' obligation to organise market surveillance efficiently and comprehensively and to set up suitable surveillance instruments to that end was transposed and put into practice in Germany by the provisions of Articles 5 *et seq.* *EnVKG*. These stipulate that the competent market surveillance authorities shall guarantee effective market surveillance. The foundation for this is the surveillance system which, in particular, comprises the following:

- collection and evaluation of available information to ascertain non-compliance blackspots and on product flows and supplies, together with the relevant economic operators,

- set-up, regular adjustment and implementation of surveillance programmes with which products can be tested by random sampling and on the required scale, and documentation and evaluation of these programmes and
- regular testing and analysis, at least every four years, of the system's effectiveness.

### 3. Market participants

The following illustration shows who the market participants are.



*Illustration 1: Summary of market operations*

Depending on the specific regulations they contain, the relevant EU legal instruments and the *EnVKG* in its capacity as the national transposing act are addressed to the following economic operators:

- **Manufacturers**

Manufacturers are any natural or legal persons who manufacture a product or develop it and have it manufactured and place it on the market under their own names or their own brand.

- **Authorised representatives**

Manufacturers may commission natural or legal persons to act on their behalf as authorised representatives. Authorised representatives must have their registered office in the European economic area and fulfil the manufacturer's responsibilities.

- **Importers**

Importers are natural or legal persons with their registered office in the European economic area who import products originating in a non-Member State into the European economic area as part of their business.

- **Suppliers**

Suppliers are manufacturers, their authorised representatives or importers.

If there are no suppliers within the meaning of the above, suppliers are any natural or legal persons who place on the market or take into operation energy-related products or tyres.

- **Traders**

Traders are any natural or legal persons who offer for sale to final consumers energy-related products or exhibit such products or, except in the case of suppliers or importers, make available tyres on the market or offer for sale or exhibit new passenger cars.

Suppliers, manufacturers, authorised representatives and importers must ensure that the relevant information, labels, information sheets etc. are delivered to or made available to traders with the products and that the data they contain are correct.

Other market participants are:

- **Market surveillance authorities**

The national market surveillance authorities ensure that the products governed by the *EnVKG* comply with the requirements for consumption labelling and other product information for the purposes of the *EnVKV* or the directly applicable delegated Commission regulations, the *Pkw-EnVKV* (Order on energy consumption labelling for passenger cars) and the Tyre Regulation (EC) No 1222/2009.

- ***Deutsche Akkreditierungsstelle (DAkkS – German accreditation body)***

The *DAkkS* is the central body in Germany for the purposes of Regulation (EC) No 765/2008, which assesses the competence of bodies and issues accreditation if all the requirements are met.

- **Accredited conformity assessment bodies and other similarly competent bodies**

Accredited conformity assessment bodies or other similarly competent bodies (cf. § 5(4) and (5) *EnVKG*) are bodies which can test certain product requirements on behalf of the market surveillance authorities once they have provided evidence of their competence. The preferred form these bodies take is that of a conformity assessment body which is accredited in accordance with Article 4(1) of Regulation (EC) No 765/2008. If the services of other bodies or experts are enlisted, it is up to the competent authorities of the *Länder* to assess their competence or aptitude.

- ***Bundesanstalt für Materialforschung und -prüfung (BAM – Federal Institute for Materials, Research and Testing)***

The *BAM* supports the market surveillance authorities in the field of energy-related products and performs central coordination tasks.

- ***Bundesministerium für Wirtschaft und Technologie (BMWi – Federal Ministry for Industry and Technology)***

The *BMWi* supports the market surveillance authorities in the field of *Pkw-EnVKV* and the Tyre Regulation (EC) No 1222/2009 and represents the Federal Government in the European Union.

- **Customs**

The customs authorities are involved in inspecting products imported to the Union in accordance with Articles 27–29 of Regulation (EC) No 765/2008. The market surveillance authorities inform the customs authorities about the product categories in which there are suspected non-conformities and the characteristics which identify non-compliant products. The customs authorities forward relevant information to the market surveillance authorities (cf. § 5(2) *EnVKG*).

- **Industrial associations**

The industrial associations represent the companies' interests and at the same time provide valuable input with regard to product requirements.

- **Consumer associations**

Consumer associations are the representatives of the consumers' interests and at the same time provide valuable input with regard to consumer products.

- **Environmental protection associations**

Environmental protection associations provide valuable input with regard to environmental requirements for products.

- **Consumers/users**

Consumers/users influence the market by their behaviour and the efficiency label is intended to give them an incentive to buy efficient products.

Associations and consumers provide input for market surveillance and are advocates of fair competition.

## **4. Structure and tasks of the competent authorities and bodies**

### **4.1. Federal tasks**

The *Bundesministerium für Wirtschaft und Technologie* is responsible for coordination and support in the field of market surveillance. It represents the Federal Government *vis-à-vis* the EU in particular with regard to:

- legislative projects
- adopting of delegated EU legal instruments for specific products
- passing on information to the EU and Member States
- supporting the *Länder*
- attending the meetings of the ADCO (Administrative cooperation) groups (cf. point 10) at EU level together with the respective representatives of the *Bundesländer* and the *BAM* in accordance with the *Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union* (*EUZBLG* – Act on cooperation between the *Bund* (Federation) and the *Länder* (Federal States) in European Union affairs).

The *Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit* (Federal Ministry for the Environment, Nature Conservation and Reactor Safety) is involved at technical level and the *Bundesministerium für Verkehr, Bau und Stadtentwicklung* (Federal Ministry for Transport, Building and Urban Development) in respect of issues related to buildings and transport.

The *BMW* is supported by the *BAM* which is a designated body for the purposes of § 13 *EnVKG* and is therefore responsible for collecting and distributing information. It thereby supports

- stakeholders (industry, environmental associations, etc.) in drafting regulations for specific products (by sending representatives to the consultation forum),
- industry, especially micro companies, and small and medium enterprises (SME), in complying with the law,
- the market surveillance authorities (exchange of information between the EU Member States in the ADCO, office in the *Bund-Länder-Ausschuss* (*Bund/Länder* Committee),
- consumers and companies by informing them of infringements and the consequences thereof, recalls and bans on sales.

The *BAM* is, as the designated body under the *EnVKG*, the national contact in the energy-related product sector for official reporting procedures and is responsible for discharging reporting duties *vis-à-vis* the EU Commission.

#### **4.2. Tasks of the *Länder***

In Germany, the *Länder* are responsible for enforcement and interpretation of the *EnVKG*. Market surveillance is one of the key tasks of the *Länder* authorities. The *Länder* appoint market surveillance authorities and provide these with sufficient qualified staff.

In addition the *Bund-Länder-Committee* (cf. point 7) is an important forum for coordinating overarching market surveillance issues.



At European level one *Land* represents the others in the respective ADCO group in collaboration with the *Bund*, in accordance with the *Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union (EUZBLG)*. The *Länder* represent their interests in the discussion of issues arising with European legal instruments and administrative cooperation.

#### 4.2.1. Competences in the *Länder*

The highest competent authorities in the *Länder* are responsible for ensuring coordination of surveillance and development and updating of the surveillance system. Table 1 shows the competences in the *Länder* separately in accordance with the classification in the *EnVKG* for the sectors of energy-related products (*EnVKV*), passenger cars (*Pkw-EnVKV*) and tyres (Regulation (EC) No 1222/2009).

| <b>Land</b>                   | <b>EnVKV sector</b>                                                                                              | <b>Pkw-EnVKV sector</b>                                                                                          | <b>Tyre sector</b>                                                                                               |
|-------------------------------|------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| Baden-Württemberg             | Ministerium für Umwelt, Klima und Energiewirtschaft Baden Württemberg                                            | Ministerium für Umwelt, Klima und Energiewirtschaft Baden Württemberg                                            | Ministerium für Umwelt, Klima und Energiewirtschaft Baden Württemberg                                            |
| Bavaria                       | Bayerisches Staatsministerium für Arbeit und Sozialordnung, Familie und Frauen                                   | Bayerisches Staatsministerium für Wirtschaft, Infrastruktur, Verkehr und Technologie                             | Bayerisches Staatsministerium für Wirtschaft, Infrastruktur, Verkehr und Technologie                             |
| Berlin                        | Senatsverwaltung für Wirtschaft, Technologie und Forschung                                                       | Senatsverwaltung für Wirtschaft, Technologie und Forschung                                                       | Senatsverwaltung für Wirtschaft, Technologie und Forschung                                                       |
| Brandenburg                   | Ministerium für Wirtschaft und Europaangelegenheiten (MWE)                                                       | Ministerium für Wirtschaft und Europaangelegenheiten (MWE)                                                       | Ministerium für Wirtschaft und Europaangelegenheiten (MWE)                                                       |
| Bremen                        | Senator für Umwelt, Bau und Verkehr                                                                              | Senator für Umwelt, Bau und Verkehr                                                                              |                                                                                                                  |
| Hamburg                       | Behörde für Stadtentwicklung und Umwelt                                                                          | Behörde für Stadtentwicklung und Umwelt                                                                          | Behörde für Stadtentwicklung und Umwelt                                                                          |
| Hessen                        | Hessisches Ministerium für Umwelt, Energie, Landwirtschaft und Verbraucherschutz                                 | Hessisches Ministerium für Umwelt, Energie, Landwirtschaft und Verbraucherschutz                                 | Hessisches Ministerium für Umwelt, Energie, Landwirtschaft und Verbraucherschutz                                 |
| Mecklenburg-Western Pomerania | Ministerium für Energie, Infrastruktur und Landesentwicklung Mecklenburg-Vorpommern                              | Ministerium für Energie, Infrastruktur und Landesentwicklung Mecklenburg-Vorpommern                              | Ministerium für Energie, Infrastruktur und Landesentwicklung Mecklenburg-Vorpommern                              |
| Lower Saxony                  | Niedersächsisches Ministerium für Umwelt, Energie und Klimaschutz                                                | Niedersächsisches Ministerium für Umwelt, Energie und Klimaschutz                                                | Niedersächsisches Ministerium für Umwelt, Energie und Klimaschutz                                                |
| North Rhine-Westphalia        | Ministerium für Wirtschaft, Energie, Industrie, Mittelstand und Handwerk des Landes Nordrhein-Westfalen (MWEIMH) | Ministerium für Wirtschaft, Energie, Industrie, Mittelstand und Handwerk des Landes Nordrhein-Westfalen (MWEIMH) | Ministerium für Klimaschutz, Umwelt, Landwirtschaft, Natur- und Verbraucherschutz des Landes Nordrhein-Westfalen |
| Rhineland-Palatinate          | Ministerium für Wirtschaft, Klimaschutz, Energie und Landesplanung Rheinland-Pfalz                               | Ministerium für Wirtschaft, Klimaschutz, Energie und Landesplanung Rheinland-Pfalz                               | Ministerium für Wirtschaft, Klimaschutz, Energie und Landesplanung Rheinland-Pfalz                               |
| Saarland                      | Ministerium für Wirtschaft, Arbeit, Energie und Verkehr                                                          | Ministerium für Wirtschaft, Arbeit, Energie und Verkehr                                                          |                                                                                                                  |

| <b>Land</b>        | <b>EnVKV sector</b>                                                      | <b>Pkw-EnVKV sector</b>                                          | <b>Tyre sector</b>                                               |
|--------------------|--------------------------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------|
| Saxony             | Sächsisches Staatsministerium für Wirtschaft, Arbeit und Verkehr         | Sächsisches Staatsministerium für Wirtschaft, Arbeit und Verkehr | Sächsisches Staatsministerium für Wirtschaft, Arbeit und Verkehr |
| Saxony-Anhalt      | Ministerium für Wissenschaft und Wirtschaft                              | Ministerium für Wissenschaft und Wirtschaft                      | Ministerium für Wissenschaft und Wirtschaft                      |
| Schleswig-Holstein | Ministerium für Energiewende, Landwirtschaft, Umwelt und ländliche Räume |                                                                  |                                                                  |
| Thuringia          | Thüringer Ministerium für Wirtschaft, Arbeit und Technologie             | Thüringer Ministerium für Wirtschaft, Arbeit und Technologie     | Thüringer Ministerium für Wirtschaft, Arbeit und Technologie     |

Table 1: Overview of the highest competent Land authorities in the EnVKG sector. Status May 2013

#### 4.2.2. Local market surveillance authorities in the Länder

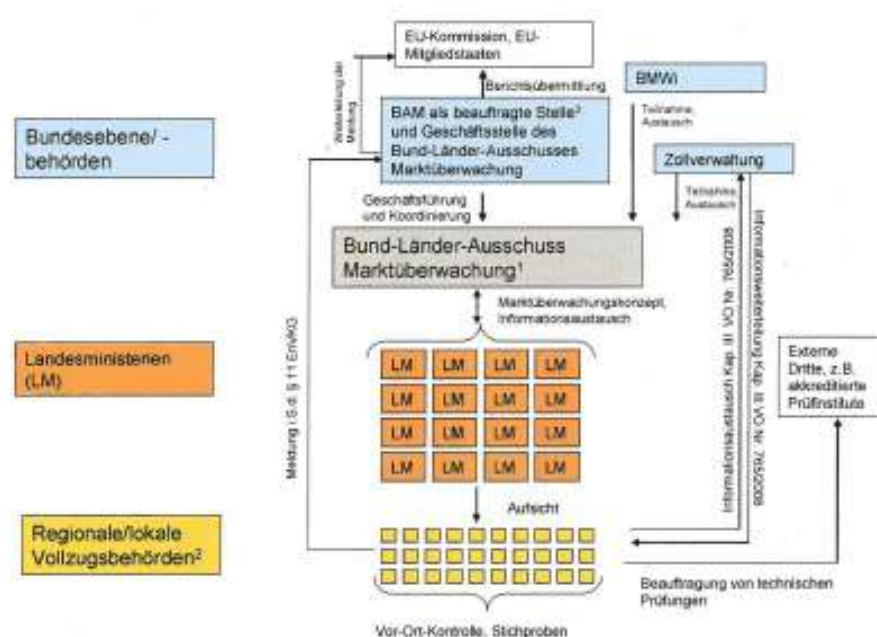
Table 2 below gives an overview of the local market surveillance authorities in the Länder responsible for market surveillance in accordance with the EnVKG. The competences are shown separately in line with the classification in the EnVKG for the sectors of energy-related products (EnVKV), passenger cars (Pkw-EnVKV) and tyres (Regulation (EC) No 1222/2009).

| <b>Land</b>                   | <b>Enforcement in accordance with EnVKV</b>                                                                   | <b>Enforcement in accordance with Pkw-EnVKV</b>                                    | <b>Tyres</b>                                                                                |
|-------------------------------|---------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Baden-Württemberg             | Gemeinden der Stadtkreise und die Landratsämter als untere Verwaltungsbehörde                                 | Gemeinden der Stadtkreise und die Landratsämter als untere Verwaltungsbehörde      | Gemeinden der Stadtkreise und die Landratsämter als untere Verwaltungsbehörde               |
| Bavaria                       | Gewerbeaufsichtsämter bei den Regierungen; Schwerpunktamt: Gewerbeaufsichtsamt bei der Regierung von Schwaben | Planned: Gewerbeaufsichtsämter bei den Regierungen                                 | Planned: Gewerbeaufsichtsämter bei den Regierungen                                          |
| Berlin                        | LAGetSi (Landesamt für Arbeitsschutz, Gesundheitsschutz und technische Sicherheit)                            | LAGetSi (Landesamt für Arbeitsschutz, Gesundheitsschutz und technische Sicherheit) | Planned: LAGetSi (Landesamt für Arbeitsschutz, Gesundheitsschutz und technische Sicherheit) |
| Brandenburg                   | Landesamt für Arbeitsschutz (LAS)                                                                             | Landesamt für Arbeitsschutz (LAS)                                                  |                                                                                             |
| Bremen                        | Gewerbeaufsicht Bremen                                                                                        | Gewerbeaufsicht Bremen                                                             |                                                                                             |
| Hamburg                       | Bezirksämter                                                                                                  | Bezirksämter                                                                       | Bezirksämter                                                                                |
| Hessen                        | Hessische Eichdirektion                                                                                       | Hessische Eichdirektion                                                            | Hessische Eichdirektion                                                                     |
| Mecklenburg-Western Pomerania | Ämter und amtsfreie Gemeinden                                                                                 |                                                                                    |                                                                                             |
| Lower Saxony                  | Gewerbeaufsichtsämter (GAÄ)                                                                                   | Gewerbeaufsichtsämter (GAÄ)                                                        |                                                                                             |
| North Rhine-Westphalia        | Landesbetrieb Mess- und Eichwesen Nordrhein-Westfalen (LBME)                                                  | Landesbetrieb Mess- und Eichwesen Nordrhein-Westfalen (LBME)                       |                                                                                             |
| Rhineland-Palatinate          | Landesamt für Mess- und Eichwesen Rheinland-Pfalz                                                             | Landesamt für Mess- und Eichwesen Rheinland-Pfalz                                  |                                                                                             |
| Saarland                      | Landesamt für Umwelt- und Arbeitsschutz                                                                       | Landesamt für Umwelt- und Arbeitsschutz                                            |                                                                                             |

| Land               | Enforcement in accordance with <i>EnVKV</i>                           | Enforcement in accordance with <i>Pkw-EnVKV</i> | Tyres |
|--------------------|-----------------------------------------------------------------------|-------------------------------------------------|-------|
| Saxony             |                                                                       |                                                 |       |
| Saxony-Anhalt      | Landesamt für Verbraucherschutz<br>Fachbereich 5<br>(Gewerbeaufsicht) | Planned: Landkreise und Kreisfreie Städte       |       |
| Schleswig-Holstein | Ämter und amtsfreie Gemeinden                                         | Ämter und amtsfreie Gemeinden                   |       |
| Thuringia          | Landesverwaltungsamt                                                  | Landesverwaltungsamt                            |       |

Table 2: Competent authorities in the Länder for market surveillance under *EnVKG* in conjunction with the provisions of the *EnVKV*, *Pkw-EnVKV* and the Tyre Regulation (EC) No 1222/2009; as at May 2013

### 4.3. Structure of market surveillance in the field of the energy consumption labelling law



| Key to graphic on page 12 of original text                                                   |                                                                                     |
|----------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| Original text                                                                                | Translation                                                                         |
| Bundesebene/- behörden                                                                       | Federal level/authorities                                                           |
| Landesministerien (LM)                                                                       | Land ministries (LM)                                                                |
| Regionale/lokale Vollzugsbehörden²                                                           | Regional/local enforcement authorities²                                             |
| EU Commission, EU-Mitgliedstaaten                                                            | EU Commission and Member States                                                     |
| Berichtsübermittlung                                                                         | Forwarding of reports                                                               |
| BAM als beauftragte Stelle³ und Geschäftsstelle des Bund-Länder-Ausschusses Marktüberwachung | BAM as the designated body and office of the Bund-Länder-Ausschuss Marktüberwachung |
| Geschäftsführung und Koordinierung                                                           | Management and coordination                                                         |
| Bund-Länder-Ausschuss Marktüberwachung¹                                                      | Bund-Länder-Committee on market surveillance¹                                       |
| Marktüberwachungskonzept, Informationsaustausch                                              | Information exchange on market surveillance system                                  |
| Aufsicht                                                                                     | Supervision                                                                         |
| Vor-Ort-Kontrolle, Stichproben                                                               | On-site inspections, random samples                                                 |
| BMWi                                                                                         | BMWi                                                                                |

|                                                  |                                                           |
|--------------------------------------------------|-----------------------------------------------------------|
| Teilnahme, Austausch                             | Participation, exchanges                                  |
| Zollverwaltung                                   | Customs administrations                                   |
| Teilnahme, Austausch                             | Participation, exchanges                                  |
| Externe Dritte, z.B. akkreditierte Prüfinstitute | External third parties, such as accredited testing bodies |
| Beauftragung von technischen Prüfungen           | Commissioning of technical testing                        |
| Informationsaustausch Kap. III VO Nr. 765/2008   | Information exchange Chapter III Regulation No 765/2008   |
| Meldung i.S.d. § 11 EnVKG                        | Reporting for the purposes of § 11 <i>EnVKG</i>           |
| Weiterleitung der Meldung                        | Forwarding of reports                                     |

- 1 Responsible for ecodesign since autumn 2010; responsible for ecodesign and energy consumption labelling (energy-related products, tyres, passenger cars) since June 2012.
- 2 The number varies with the *Land* – enforcement authorities of the *Land* or local enforcement authorities.
- 3 BAM is the designated body for the field of ecodesign and energy-related products for the purposes of *EnVKV*, but not for the passenger car and tyre sectors.

#### 4.4. Powers of the market surveillance authorities

The powers of the market surveillance authorities are laid down in Regulation (EC) No 765/2008 and in the *EnVKG*.

Under § 8-10 of the *EnVKG* the market surveillance authorities are authorised to:

- order that the necessary information is posted,
- order that the required documentation is made available or the required information supplied,
- order that samples are taken or made available free of charge,
- order that a product is tested by an accredited or similarly competent body or by a suitable expert,
- prohibit a product from being offered for sale or exhibited temporarily for the period of time required for the testing,
- order measures to be taken to ensure that incorrect or incomplete consumption labelling or product information is corrected (including advertising information, catalogues and Internet advertising),
- order measures to be taken to ensure that a product is only offered for sale or exhibited when the requirements for energy consumption labelling and other product information have been met,
- in the case of persistent infringement
  - prohibit a product from being offered for sale or exhibited,
  - prohibit a product from being put into circulation,

- order a product to be withdrawn, recalled or seized,
- prohibit a product from being taken into service.

Market surveillance authorities or their authorised representatives make suitable checks on an appropriate scale on the basis of random samples for:

- the affixing of labels,
- existence, completeness and veracity of documents,
- if necessary, the composition of a product.

To that end they have the rights they require to enter business premises or properties in which products within the meaning of the *EnVKG* are manufactured, stored for placing on the market, or are offered for sale or exhibited. The costs of visits and checks may be charged to the manufacturers or economic operators concerned if the tests show that the requirements have not been met. The competent authorities and their authorised representatives may require the economic operator concerned to take samples and provide samples free of charge.

For action taken by the authorities, the principle of proportionality and the procedural regulations laid down in *EnVKG*, such as hearing of the economic operators concerned in accordance with § 9(2) *EnVKG*, apply. Further obligations of the authorities for administrative activities are laid down in the respective laws of the *Länder*. § 9(3) *EnVKG* and § 59 of the *Verwaltungsgerichtsordnung* (Administrative Judicial Code) also apply.

#### **4.5. Commissioning and delegation**

The market surveillance authorities may, under § 5(4) *EnVKG*, involve third parties in performing their tasks. This can be done by commissioning third parties to carry out non-sovereign tasks such as on-site inspections, technical product testing, etc.

§ 5(5) *EnVKG* also authorises the governments of the *Länder* to delegate market surveillance tasks to certain bodies by means of a legal order.

## **5. Strategic approaches to market surveillance**

The market surveillance authorities pursue two strategic approaches to ensuring fair competition and compliance with the requirements of the *EnVKG* and the relevant EU regulations:

- monitoring and measures under administrative law (such as ordering technical testing to be conducted on a product and, as a last resort, prohibiting its distribution)
- information and advice: offering information catering to specific target groups and situations.

## 5.1. Surveillance

A basic distinction is made between reactive and proactive market surveillance. Market surveillance activities involve all economic operators and cover, in particular:

- product sources (manufacturers and suppliers)
- products on sale (trade)
- product information (advertising information, catalogues, Internet advertising).

If any irregularities are found at product level, market surveillance seeks to take action at the product source. If they are found at trade level and are attributable to a trading stage further upstream, suitable measures are to be taken.

In order to organise a standard approach and cooperation between the market surveillance authorities a market surveillance manual is being drawn up which is tailored specifically to the *EnVKG* sector. Until this has been completed, the manual which has proved its value in the sector of the *Gesetz über die Bereitstellung von Produkten auf dem Markt (ProdSG – Act on the placing of products on the market)* (or the old *Geräte- und Produktsicherheitsgesetz (Equipment and Product Safety Act)*) is applicable.

### 5.1.1. Reactive market surveillance

On receipt of complaints, notifications, information or requests for administrative assistance the market surveillance authorities investigate the circumstances and take the necessary decisions. Especially where there is a suspicion of systematic irregularities, the market surveillance authorities involve other market surveillance bodies in the course of administrative and enforcement assistance in their investigations and, if appropriate, initiate overarching targeted action as part of active market surveillance.

### 5.1.2. Proactive market surveillance

Under Article 19(1) of Regulation (EC) No 765/2008, the market surveillance authorities conduct a suitable sampling programme on an appropriate scale in order to check the labelling and other product information either on a documentary basis or, if appropriate, by physical inspection and laboratory testing (cf. point 4.4). Proactive market surveillance concentrates on targeted issues where the probability and severity of possible infringements are taken into account. The key to this approach is that the available resources are used to maximum effect and infringements of the provisions laying down the protective aims kept to a minimum.

In order to flesh out the general principles set out in Regulation (EC) No 765/2008, the *Länder* devise market surveillance programmes for carrying out their checks and coordinate these in the *Bund-Länder-Committee* to avoid any duplication of work. In this way key competences can be built up for checking certain product segments in the long term.

Market surveillance programmes are updated every year. The other Member States and the EU Commission are informed about the programmes by the *BMWi* or the

*BAM*. The public is informed about them by electronic communications from the *Länder* or the *BMWi* and the *BAM*.

Market surveillance activities comprise the following steps:

- **Planning**

Planning involves basic investigations (such as flows of goods), definition of the aims, planning of sampling (number, location, extent), involving project partners and determining to what level of detail inspection is required;

- **Sampling or inspection**

Sampling involves sampling of products in accordance with the statutory powers in order to procure the information required (marketing chain, manufacturer, importer, documents, etc.). Inspection comprises *in situ* checks at outlets and of labelling and, if necessary, documentation;

- **Product testing**

Products are tested by sight, more detailed examination or laboratory testing. The level at which testing is carried out and the scale and location are laid down during planning in keeping with the aims which have been defined;

- **Evaluation of the test results**

Evaluation of the test results comprises summarising the results, analysing them with regard to cross-sector shortcomings or systemic deficiencies (quality of the bodies named, information shortfalls, import/export problems, etc.);

- **Specific measures for individual cases.**

## **5.2. Information and advice – flanking measures**

The strategic aim “Information and advice: offering information to cater for specific target groups and situations” is a non-binding complement (“Raising awareness by persuasion” and “Cooperation with market participants”) to the activities pursued by the *Länder* specified under 5.1 and may include the following measures:

- **Raising awareness by persuasion**

Professional knowledge management and press and publicity work are to be used to provide information on principles, findings, measures and aims of the *EnVKG* and the European regulations. This makes a major contribution to raising the awareness of participants in the European internal market of market access conditions and enables the knowledge which has been acquired to be passed on.

- **Cooperation with participants in the market**

Where this is possible and useful, efficiency is ensured by cooperating with other participants in the market.

- **Information for consumers**

The BMWi informs consumers about saving energy in the household and about the EU efficiency label, for example via the “*Initiative EnergieEffizienz*” (energy efficiency initiative) of the *Deutschen Energie Agentur GmbH (dena)*.

### **5.3. Sources of information**

The following sources of information are used in market surveillance:

- reports/notifications from other legal sectors and other Member States
- reports on shortcomings/notifications from market surveillance authorities and other authorities, e.g. via ICSMS
- market controls at fairs and exhibitions where these come within the purview of the *EnVKG*
- information from citizens and competitors
- information from industrial, consumer protection and environmental protection associations
- tests such as those carried out by *Stiftung Warentest* and *Öko-Test*
- information from the media
- reports from the customs authorities
- Internet research
- relevant databases on product manufacturers
- results of market surveillance in the *EVPG* sector.

## **6. Qualification of personnel**

Technically qualified staff (such as engineers) are required to conduct market surveillance in the *EnVKG* sector. They are trained at introductory training or similar courses. In the course of continuing training, new regulations for specific products and practical issues are examined and current issues are discussed at regular service meetings. Further continuing training for staff, also with external partners, may be offered at the initiative of the *Bund-Länder Committee*.

## **7. Coordination of market surveillance/organisational measures**

The highest market surveillance authorities of the *Länder* coordinate surveillance and ensure that the surveillance system is developed and updated with the support of the *BAM* and the *BMW*i and assess the function of surveillance activity regularly, at least every four years. The results are made available to the other Member States, the EU Commission and the public. In order to coordinate enforcement in the field of the



*EnVKG*, a cross-*Länder* working party, which is called the *Bund-Länder-Ausschuss Marktüberwachung EVPG/EnVKG* (*Bund-Länder-Committee on EVPG/EnVKG* market surveillance), was set up similarly to those in other legal sectors. Its key tasks include the following:

- coordination of cooperation between the market surveillance authorities of the *Länder*,
- cross-*Länder* coordinated planning of market surveillance activities within Germany,
- promotion of exchanges of experience between *Länder*,
- cooperation with industry, distributors and associations,
- setting up and support of suitable information and communication structures between the *Länder* and the *Bund*,
- drawing up standardised procedures for market surveillance (guidelines, checklists),
- updating the plan for coordinating market surveillance in Germany.

Cross-*Länder* cooperation makes a crucial contribution to using resources to best effect and avoiding duplication of effort.

Cross-*Länder* coordination is a key aspect of an effective market surveillance system in the Federal Republic of Germany. The aim is to ensure a coordinated standardised approach in performing market surveillance tasks – particularly enforcement tasks. At the same time, cross-*Länder* coordination takes advantage of not inconsiderable synergies.

## **8. Cooperation with the customs**

Market surveillance is at its most efficient when it stops non-compliant products from being distributed at source, i.e. at the manufacturers. However, with increasing globalisation the number of imported products whose manufacturers have their registered offices outside the EU is on the rise too. In many sectors these products now have a much larger market share than the products manufactured in the EU. Cooperation between the market surveillance authorities and the customs authorities is therefore particularly important and a key aspect of it is the information passed on to the market surveillance authorities by the customs if the characteristics of an imported product suggest that it does not comply with Community provisions (Article 27(3) Regulation (EC) No 765/2008). To this end the market surveillance authorities give the customs the information needed to identify potentially non-compliant products with the greatest possible accuracy. Amongst other things, risk profiles are drafted with the help of which the customs authorities can stop energy-related products from third countries when they suspect that they do not comply with Community provisions and can have them tested by the market surveillance authorities.

## **9. Exchange of information between market surveillance authorities**

Efficient market surveillance requires information to be exchanged about ongoing investigations, the results of product testing and measures initiated and completed. At EU

level this is the task of ADCO (cf. point 10) and at national level the authorities exchange information electronically as far as possible.

The EU Commission would like to see the ICSMS being used as a market surveillance tool by all the Member States, as required by Regulation (EC) No 765/2008 (system under Article 23). If the ICSMS (Information and Communication System for Market Surveillance)<sup>2</sup> proves to be deployable for energy consumption labelling too, it should be used. This assumes, however, that it is useful for both controls at traders and manufacturers.

## **10. Coordination of administrative assistance in Germany and Europe**

Although technical harmonisation has brought about an internal market with free movement of goods across national borders, market surveillance takes place at individual State level. Suitable arrangements for administrative cooperation between the national authorities therefore need to be made in order to enhance the efficiency of market surveillance and to reduce the effect of differences in supervisory practice. This is done partly in the ADCO group on Directive 2010/30/EU. This body meets twice a year, with the chair rotating between the Member States. Germany is represented by the *BMW*, the *BAM* and a delegate from the *Länder* who is appointed by the *Bund-Länder-Committee*. An ADCO group was also set up for market surveillance in the tyre sector under Regulation (EC) No 1222/2009.

A duty of cross-border cooperation has been enshrined in European law since 1 January 2010. Under Article 24(2) of Regulation (EC) No 765/2008 market surveillance authorities must support and provide administrative assistance to each other by making available information on documents, conducting suitable investigations or taking other suitable measures and taking part in investigations initiated in other Member States. The flow of information between competent authorities and the EU Commission and the authorities of other Member States is coordinated by the *BAM* for energy-related products and by the *BMW* for the passenger car and tyre sectors.

## **11. Cooperation and dialogue especially with EU bodies, other ADCO groups, testing bodies, environmental associations and consumer protection authorities**

The basic conditions for market surveillance are the same in all legal sectors. Exchange of information and dialogue between the working party of the *Länder* in the sector of the *EnVKG* with bodies in other sectors (*EVPG*, *ProdSG*, chemicals law, building product law, motor vehicle law, *EMVG* (Act on Electromagnetic Compatibility), etc.) must be

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<sup>2</sup> ICSMS is an Internet-supported information and communications system for the market surveillance authorities which is used by all the *Länder* in Germany and currently by 11 Member States in the EU and by Switzerland. The database contains, in a sector not accessible to the public, information on products which have been tested by the market surveillance authorities. The system offers the possibility of passing on information in a targeted fashion to the competent authorities and to transfer case handling. A steering module enables safeguard clause notifications to be dealt with efficiently. To inform consumers and other interested parties, there is a public sector in which product information can be posted by suppliers and the market surveillance authorities and where the market surveillance authorities may also be contacted electronically.

ensured permanently, if only in order to make use of the synergies. The *Bund-Länder-Committee* has consistently urged that corresponding arrangements be created to this end.

## 12. Updating

Market surveillance plans are updated after a suitable period of time in which further practical experience and findings can be collected at the market surveillance authorities and discussed in the *Bund-Länder-Ausschuss Marktüberwachung EVPG/EnVKG*.

| <b>Energy consumption labelling</b>                        | <b>Number of product tests under the 2014 market surveillance programmes</b> |
|------------------------------------------------------------|------------------------------------------------------------------------------|
|                                                            |                                                                              |
| <b>Energy-related products</b>                             |                                                                              |
| Directive 96/60/EC<br>household combined washer/driers     |                                                                              |
| Directive 2002/40/EC<br>household electric ovens           |                                                                              |
| Regulation 1059/2010<br>household dishwashers              | at least 150                                                                 |
| Regulation 1060/2010<br>household refrigerating appliances | at least 215                                                                 |
| Regulation 1061/2010<br>household washing machines         | at least 205                                                                 |
| Regulation 1062/2010<br>televisions                        | at least 200                                                                 |
| Regulation 626/2011<br>air conditioners                    | at least 50                                                                  |
| Regulation 392/2012<br>household tumble driers             | at least 150                                                                 |
| Regulation 874/2012<br>electrical lamps and luminaires     | at least 355 lamps, 50 luminaires                                            |
| Regulation 665/2013<br>vacuum cleaners                     | yes                                                                          |
|                                                            |                                                                              |
| <b>Passenger cars</b>                                      | at least 1050                                                                |
|                                                            |                                                                              |
| <b>Tyres</b>                                               | at least 400                                                                 |