

ECOPLIANT

European Ecodesign Compliance Project

Work Package 2: Overcoming Barriers and Establishing Best Practices

Task 1:

Identify and describe existing best practices for market surveillance
and possible barriers to coordination

Subtask 1.5: Enforcement Activity Follow Up

Final Report
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Draft Interim report Enforcement Activity Follow Up

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Contents

1. Introduction/description subtask	3
2. Results desk study, survey and interviews	4
2.1 Requirements Ecodesign directive for Enforcement.....	4
2.2 Requirements of regulation 765/2008 on Enforcement	5
2.3 General picture of legal enforcement systems and performance level.....	5
2.4 Barriers and possible solutions for strengthening enforcement	7
3. Analysis results and possible solutions.....	11
4. Preliminary conclusions/recommendations and way forward.....	13
5. Preliminary recommendations on Best Practices.....	15
6. Some remarks as result of comments of stakeholders on this draft report.....	15

The responsibility for the content and the recommendations of this subtask report lie with the author. They do not necessarily reflect the opinion of the ECOPLIANT project partners. However, the “Best practice” guidelines for coordinated and effective ecodesign market surveillance are the agreed views of the project partners.

1. Introduction/description subtask

In this subtask a general picture will be given about the general approach and the performance level of enforcement in the implementation of the Ecodesign Directive (EDD). It will give information about how enforcement is handled and carried out in the EU countries.

Looking to the working of enforcement systems there will be attention for barriers and also for possible solutions that are important in order to strengthening of the enforcement level.

A special accent will be on the possibility in the legal enforcement systems in the EU countries to use foreign data.

It is important to analyze and identify obstacles and opportunities to use foreign data as basis for enforcement actions.

In the legal systems of some countries, it is specifically mentioned that market surveillance information provided by Market surveillance Authorities (MSAs) in other EEA countries can be used in enforcement actions. Mostly there are certain requirements for foreign laboratories and for the tests e.g. the laboratories have to be recognized and certified in accordance with the prescribed testing standard; also there can be requirements for the language that is used in the foreign information (e.g. own language or English).

In other countries it is not allowed to randomly use foreign information for enforcement. It is then necessary that the MSA provide convincing and specific evidence why foreign data should be used.

There also countries where the legal system gives no information about the possibility to use foreign information in enforcement activities.

Using foreign data and enforcement across the border is important, to come to the same treatment of manufacturers and importers, to come to reducing of the costs and also for realizing an optimal use of knowledge.

This interim report gives a picture of the results of the investigations in the area of enforcement and gives possible solutions and recommendations for improvement as well as recommendations where further investigation is needed.

The results of this subtask are obtained by doing a desk study in which inter alia information of earlier studies was looked at.

A lot of information has come from a comprehensive survey that has been designed to establish the present situation among the EU/EEA market surveillance authorities. The main purpose of the survey has been to identify best practices applied by MSAs across Europe.

To complete the picture from the desk study and the survey, some interviews with MSAs are conducted.

2. Results desk study, survey and interviews

2.1 Requirements Ecodesign directive for Enforcement

The Ecodesign directive gives at several points information and requirements in the field of enforcement and how to bring this at a higher level.

A summary of some of the most important points will be given here.

- Member States (MS) have the obligation to transpose the Ecodesign directive into national law. The several implementation measurements are direct legally binding.
- Noting the importance of avoiding non-compliance, MS should ensure that the necessary means are available for effective market surveillance.
MS 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. MS 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 MS 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.
When there is sufficient evidence that a product might be non-compliant, the MS takes the necessary measures that can go so far as the prohibition of the placing on the market or ensure that it is withdrawn from the market until compliance is established.
In case of prohibition or withdrawal from the market, the Commission and the other MS shall be immediately informed thereof.
- 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.
- MSAs should exchange information on the measures envisaged within the scope of the Ecodesign directive with a view to improving surveillance of the market. Such cooperation should make the utmost use of electronic means of communication and relevant Community programs. The precise nature and structure of the exchange of information shall be decided by the Commission.
- 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.

2.2 Requirements of regulation 765/2008 on Enforcement

In addition to the requirements in sectorial legislation (such as the Ecodesign directive and its implementing measures), and in the national legislations transposing the directives, there are general requirements for market surveillance on products available on the EU market stated in the EU Regulation 765/2008 on accreditation and market surveillance.

Requirements on monitoring, verification and enforcement are to be found in the 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 market surveillance authorities 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 market surveillance authorities 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.

Looking to other product directives, it seems to have been decided on Commission level that ICSMS is the system that is referred to in 765/2008. For Ecodesign market surveillance, it is not fully clear if this is the case.

At the moment it is not always clear how Ecodesign market surveillance correspond to the general obligations on market surveillance according to 765/2008.

The Commission has presented a new market surveillance package ("the new 765") in February 2013.

Ambiguities on how to use regulation 765/2008 in addition to Ecodesign legislation needs to be clarified. These clarifications and related solutions should be presented in the revision of the Ecodesign directive in 2014.

2.3 General picture of legal enforcement systems and performance level

The enforcement system

No extensive investigation has been conducted to get a precise picture of the enforcement systems in the EU countries and to estimate the level of enforcement on the Ecodesign directive. However, the general situation in Member States regarding enforcement has been investigated in other projects for example "Come On Labels" and "ATLETE".

A resume will be given here about how enforcement works at the moment focused on aspects like how to work with non-compliant situations, how to work with remedial actions and the practice in publishing of test results.



The activities focused on the Ecodesign directive are often organized in a direct link with the activities focused on Energy Labelling (e.g. same people, budget, test activities). In almost all countries the people working on market surveillance on energy labelling also work on market surveillance for Ecodesign.

Desk studies, interviews, reports from other projects, show that all countries have an enforcement system that gives the possibility to take action in cases of non-compliance regarding the Ecodesign directive.

Looking to the verification approaches (document inspection and/or testing), the kind of the enforcement action by non-compliant (ask for explanation or e.g. request for correction), amount of the fines/penalties for non-compliant, etc. there are many differences in the countries.

In general there is an approach that starts with confront the manufacturer/importer with the results that show a non-compliant products. Depending from the reaction of the manufacturer/importer, the MSA then takes action, which could be tests of additional three products, or a fine, or a prohibition to bring a product on the market, depending on the situation.

According to the Ecopliant survey, only around 50% of the Member States performs verification tests; the high costs for testing is mentioned as a main reason to perform no testing. The majority of the laboratories selected for testing are national laboratories but there are experiences with testing in foreign laboratories.

In cases of non-compliance the type of sanction and also the number of sanctions varies from one Member State to another. The most common type of sanctions are fines and warnings. It seems that a combination of corrective measures and administrative fines is an effective way to ensure compliance with the Ecodesign legislation.

It is remarkable that a majority of Member States do not publish their activities by making the results of product testing publically available. Doing so would ensure greater visibility and transparency to the activities carried out by the MSA's. The manufacturers' fear of negative news which may be the result of publishing the test results, is likely to lead to a higher level of compliance.

Another reported problem in enforcement action on Ecodesign is taking action against the manufacturer or importer in a foreign country when founding a non-compliant product in the MSA's own country.

At the moment the contacts between Member States countries are not always optimal and there are yet countries that do not have the basic level of implementation to take over the responsibility of action against the manufacturer/importer. In practice an action against the economic party in the MSA's own country often has the result that also the manufacturer starts a correction action in order to reach compliance.

Clarifications in 125/2009 Ecodesign directive about the definition of "economic operator", could help to give stronger possibilities based on clear legislation, to take action against the economic operator within the country where the product is judged as non-compliant.

The enforcement level

The general picture that emerges from interviews and the survey is that the level of market surveillance of the Ecodesign compliance is still low or irregular in several EU member states. The impact on the market seems to be low and a wide range of regulations are not yet monitored.

Also the report on the project "Come On Labels" from march 2013, indicate that some of the authorities in the investigation stated that they are unable to perform any Ecodesign

related surveillance activities and for the nearest future have no intention of doing so. Some countries plan formal checks of the technical documentation but claimed no plan for performing product testing.

DG ENTR has completed an evaluation in 2012 and this report shows that non-compliance is in the order of 10% to 20% and especially that a lack of human and financial resources prevents effective control: *“Market surveillance and enforcement is an area of some concern, posing a threat to the credibility of the legislative framework and undermining the efforts of industry”.*

The exchange of information about individual activities via e.g. a data system like ICSMS, has until recently been low.

At this moment, an attempt is made to improve the level of activities and enforcement by several activities/actions. Central activities like the ADCO Ecodesign and joint actions like the Ecopliant project are undertaken to increase the level of surveillance activities.

2.4 Barriers and possible solutions for strengthening enforcement

This section is about the barriers and possible solutions in order to achieve a higher level of enforcement. In the first part the focus is on the general situation and in the second part the focus will be on the barriers and solutions in using foreign data. In this latter part special attention will be given to the outcome of the survey carried out in the Ecopliant project.

2.4.1 General picture

There are several barriers that make that the enforcement of the Ecodesign directive is not at the desired level. For some of them there are possible solutions.

In several reports, reviews in the past and interviews carried out in this project, the following barriers are mentioned as being most important.

- There is a lack of financial and human resources allocated to market surveillance activities from national governments
- Resources are allocated for other priorities within a limited budget
- Problems with technically and legally complicated processes with new product groups
- Testing facilities/laboratories are sometimes insufficient at MSA level.
- Majority of MSAs consider the testing costs as too expensive for their budget
- It is important to have one data base to share test results and market surveillance plans. Till now there is still no database up and running.

Regarding to these barriers, following solutions and recommendations are suggested.

- International exchange of experience and participation in international projects is useful to strengthen the enforcement
- The Commission should (in one way or another) support authorities with guidelines, best practice etc. to achieve higher resource efficiency
- EU guidelines/ a practical guide for market surveillance and simple-checks manuals should be developed (for instance about how carry out indicative measurements for energy use in standby situation)
- One suitable database should be used, which is legally binding for all MSAs to use

- Experience till now show that corrective measures with administrative fines is considered an effective way to ensure compliance with the Ecodesign directive legislation
- The lack of access to adequate testing laboratories infrastructure can resolved by the use of laboratories from other MS or endorsing the test results already performed in other countries within EU. Publishing a list of independent test laboratories in each country can give access to competitive product testing for every country. At the moment the Nando (New Approach Notified and Designated Organisations) Information System from the EU Commission exists and gives a list including identification numbers of each notified body as well as the tasks for which it has been notified, and are subject to regular update. The information is made available as provided by the designating authorities of the Member States.
- To facilitate exchange of information and using laboratories in another country, the linguistic barriers should be overcome preferable by using one language and using standardised formats
- National governments should allocate more funds for market surveillance activities as a significant number of MSA's reported that they are facing staffing constraints. With an enhanced cooperation between different MSAs, also promoted by an active role of the Commission, an overall higher efficiency can be achieved, even if some countries can only allocate few resources to market surveillance
- Consideration could be given to the feasibility of introducing a requirement in the Ecodesign Directive or in individual Implementing Measures for the registration of new products by those placing these products in the EU market. The registration should be at an EU level and designed to minimise administrative costs. It would assist in market surveillance but also serve as a key source of information to monitor developments in the market (recommendation ATLETE II)¹

2.4.2 Using foreign data

Foreign data is in this context defined as data that not have been achieved under the supervision of the MSA in a laboratory in the own country. In the first place it is data from another MSA measured under his responsibility.

It is also possible that the foreign data come from a project like ATLETE in which data are obtained under responsibility from the project management which may be consist of MSA's but also of representatives from the industry. Another possibility is that foreign data come from an industry organisation.

In principle all these kinds of foreign data are considered as data that possibly can be used in enforcement actions. However the result of the enforcement action will depending from the quality of the data (accredited laboratory or not) and also from the different legal systems will give more or less possibilities to use these different kinds of data.

Starting point should be not to exclude a kind of foreign data from using them for a enforcement action. Practice should be make clear what is possible and what is not.

As indicated above, using foreign data as a basis of enforcement actions, is important and necessary for various reasons.

For example for countries that have no laboratories to conduct tests in the own country, it is desirable that data that come from a foreign laboratory can be used for an enforcement action.

¹ Please note that this shall not be considered as a recommendation by the Ecopliant project, but as a general possibility

Also the high costs of tests and the sometimes low budgets that are available for MSAs, make it necessary to come to a high efficiency enforcement operation by using all information and data there is.

Using foreign data make it possible to do tests where the knowledge and the experience are. It will also help to come more and more to a uniform approach in market surveillance and will help to realize a level playing field across the EU.

In this chapter special attention will be given to the results regarding to using foreign data, from the comprehensive survey (including additional interviews) that has been designed to establish the present situation among the EU/EEA market surveillance authorities.

2.4.2.1 Enforcement actions when manufacturer is situated in another EU country

Main results survey

The question posed in the survey was:

"If you, as the national market surveillance authority (MSA) in your country, find a non-compliant product on your national market, and it turns out that the responsible manufacturer/manufacture's representative/importer is situated in another EU-country, what would you do? "

- Around seven out of ten respondents state that they would notify the responsible MSA in the EU country where the manufacturer/manufacture's representative/importer is situated.
- Around seven out of ten respondents state that they would take enforcement action against the economic operator that is situated within their own country.
- Half of the respondents state that they would also notify the Commission and/or ADCO. The answers to this question were not congruent, i.e. the respondents gave a very mixed variety of answers.
- When comparing the distribution of the responses to this question, it can be seen that there are 6 respondents out of 19 which state that they would act in accordance with three of the measures in this scenario. These are: I take enforcement action against the economic operator that is situated within my own country, I notify the responsible MSA in the EU country where the manufacturer/manufacture's representative/importer is situated, and I notify the Commission and/or ADCO.

First conclusion

National and European legislation gives no possibility to take enforcement action in another country. Positive is that a lot of countries, when finding non-compliant products, take action against the economic operator that is situated within the own country. They notify the responsible MSA in the EU country where the manufacturer/manufacture's representative/importer is situated, as well.

2.4.2.2 Using data from other member states for enforcement actions

Main results survey

The question posed in the survey was:

"If you, as the national market surveillance authority (MSA) for your country, receive information from another European MSA about a non-compliant product for which the legal manufacturer/manufacture's representative/importer is situated in your country, what can you do according to your national legislation? "

- If information is received by the country in question from another European MSA about a non-compliant product, for which the legal manufacturer/manufacturer's representative/importer is active in the own country, the potential to act according national legislation, exists. This also applies in the situation that the non-compliant product is not available on the market in the own country.
- Just over eight out of ten say that this information can be used to launch an own investigation.
- Almost half state that, with the aid of the information, they can take enforcement action against this manufacturer/manufacturer's representative/importer in the own country.
- Among the respondents, there is some experience (37%) of using data from other member states for enforcement actions (53 % no experience).

First conclusion

Often countries use the foreign data about a non-compliant product, as a start or help by doing further investigations. 50% of the responding countries say they can take action based on the foreign data only.

In almost 40% of the respondents there is actual experience with enforcement actions based on foreign data. Further investigation in countries with experience, shows that the quality of the information is very important; the data must show clear evidence of non-compliance and come preferable from an accredited laboratory.

2.4.2.3 Experiences, Barriers and Solutions in Enforcement based on foreign data

In this chapter the most important comments from the survey will be described with accent on the experiences, the observed barriers and the possible solutions.

Experiences/conditions

- Testing data come from accredited laboratory in EU
- The data from the foreign MSA are based on statutory procedures and general accepted methods of measurement
- The forwarded material (test reports, communication etc.) must clearly show evidence of non-compliance
- Support from the MSA in the country where the data are coming from is often necessary e.g. to give additional information on the data
- Experienced problems by enforcement actions based on foreign data are: lack of information, lack of communication by the member state supplying the information, the time elapsed since the product was purchased and tested

Barriers

- Only some comments indicate that it is not possible to impose penalties outside the formal legal procedure for selecting, taken and testing samples from the market
- Unclearness in definition and responsibility in the Ecodesign directive of an economic operator; who can be regarded as economic operator in the own country when the manufacturer is located in another country? And may he be addressed in case of non-compliance?
- Choosing a non-accredited laboratory, that is possible regarding the Ecodesign directive, can give problems when the manufacturer brings tests coming from an accredited laboratory.

- Especially by using foreign data, a suitable database used by all countries, is important and is now being missed
- Test reports are often made in the national language that gives problems in understanding and is unsuitable for sharing the test results

Solutions

- Clarification of the role of 765/2008, and its articles and clarifications in 125/2009 Ecodesign directive e.g. explanation about the definition of "economic operator", the definition of "placing on the market" etc.
- Important is:- giving support by the country where the data are coming from- start to try out in some cases in different countries how it works in practice; there is, we suppose, not yet much experience
- Use of database; A joint European suitable database should be set up which should be legally binding for all MSAs to use; the data base to develop in Ecopliant can be a first step.
- Countries that have more resources to spend can expand the cooperation with member states which have not, i.e. sharing test results and best practices without demanding anything in return.
- A pan European practical guide for market surveillance will help to set a uniform procedure and approach for market surveillance
- MSAs must communicate with each other if foreign data are to be used and test reports to be written in English language appears to be most desirable.

Comments on RAPEX procedure

- RAPEX system works good: when a product is found to be unsafe on the European market, the member state makes a notification on Rapex and every country can immediately take action when the product is found on their market. However, RAPEX is designed for situations that pose safety or health risks. RAPEX might not be a suitable system to use for Ecodesign.
- Withdrawal of products or impose penalties based only on information received from another country MSA, is (only) possible under the RAPEX procedure

3. Analysis results and possible solutions

The lack of resources is often used as a reason by countries for a low level of market surveillance. To bring the performance to a higher level and make it more effective, best practice procedures and data should be exchanged more. Sharing information between market surveillance authorities and using foreign data, is essential to avoid the repetition of tests and document inspections. This can give an improvement of effectiveness of enforcement and a higher performance level at the same costs.

The lack of knowledge or the lack of possibilities to do measurements in the MSA's own country, also makes it very important, that foreign data can and actually will be used. At this time sharing data is not yet widely used relating to Ecodesign.

The key question is; what are the reasons that there is still so little sharing of information and use of foreign data?

It is important to note that only in a few cases it seems to be a problem of the legal system that makes it difficult to use foreign data for enforcement actions. Most countries indicate that there are no direct barriers in their legal system to use foreign information. However, on the other hand, there are no points that facilitates the use of foreign data.



If the information meets requirements e.g. the foreign data are coming from an accredited laboratory and there is a good support from the country where the data originate, no fundamental problems seem to prohibit the use of these data in an enforcement action.

This is positive because changing legal systems, in the case they prohibit using foreign information, would be difficult and would require a long procedure. Positive is also that a number of countries say they can take action based on foreign data only and that in some cases there is also actual and positive experience by doing so.

Giving an answer on the question about the possibilities of using data is difficult, simply because of the experience in countries is limited and a lot of countries have no experience at all. Important is to start with gaining experience, to stimulate to come to more sharing e.g. by joint actions promoted by the Commission and as a follow up of projects like ATLETE that delivers good quality of data that come from mainly accredited labs.

Countries that have data that are appropriate to use for an enforcement action against a manufacturer in another country should give these to that country and stimulate that an enforcement action follows in which as much as needed support is given.

Looking at the main barriers and possible solutions in using foreign data that have been indicated especially in the survey, the following can be said:

Data base

One suitable data base that is used by all countries and that is legally binding for all MSAs is necessary as a basis for a good exchange of information and data.

At this time the situation regarding this point is not clear.

Regulation 765/2008 (setting out the requirements for accreditation and market surveillance relating to the marketing of products) states, that the Commission should provide a database with the possibility to exchange such information. However, at the moment there are several systems and the method of using them is not clear.

There is the ICSMS (Information and Communication System for Market Surveillance), so far mainly used for safety issues. Another system is CIRCA, the database used by the Commission. Beside these there is the RAPEX system (Rapid Alert Information System) that is still essentially focusing on direct risks for health but could perhaps also facilitate the rapid exchange of information on products posing a risk for the environment like products that are not compliant with the Ecodesign directive.

There are some initiatives from the Commission that can bring improvements.

The ICSMS system will be improved and modernized e.g. to make it easier for the user to search product information.

In the new proposal for horizontal rules for market surveillance, the Commission proposes that ICSMS and RAPEX are merged. With a merge or an interface between the RAPEX and the ICSMS system, ICSMS will then inject data in RAPEX. This could make it possible also for data concerning Ecodesign to be notified in a similar way as in the RAPEX system, e.g. in cases of extreme non-compliance situations. An important question is whether and if so, how you want to use RAPEX also for situations with a risk for the environment.

Also the proposed new "Market Surveillance Regulation" has objectives in this area e.g.:

- Promoting use of foreign data and facilitate this via ICSMS
- Align general market surveillance rules

Regardless of these activities it is important coming soon to a clear process and appointments how to handle the Ecodesign data in a way that they can optimal be used for enforcement actions, also in the case of foreign data.



Some important questions are: which (one) database will be definitively used? can significant non-compliant situations on Ecodesign directive get a notification in RAPEX with an obligation for the MSA to take action?

The data base to develop in the Ecopliant project can be a first, facilitative step to make the data base for Ecodesign (ICSMS?) complete appropriate.

Clarifications

In the case of using foreign data it is e.g. important to have a clear picture of who is responsible in situations of non-compliance.

Issues that need more clearness or have to be indicate as more ambiguous are e.g.:

- the definition of "economic operator" ; important for taking actions in the own country when the manufacturer is located in another country
- the definition of "placing on the market"; to have a clear picture about who is responsible for meet the requirements
- a lot of countries prefer that would be stated in the EU regulations that only accredited laboratories are used to ensure the quality of the (foreign) data cannot be criticized.

Many solutions for cases of unclearness at the moment, can be given by the new "Market Surveillance Regulation" which is now being developed.

This regulation aims at clarifying the existing regulatory framework for market surveillance in the field of non- food products. Enforcement rules will be more uniform, surveillance procedures will be more streamlined and the activities of the MSAs in the EU will require an enhanced coordination and monitoring.

Practical guide

Coming to a practical guide for market surveillance will help reaching more uniformity, will support the countries with less experience and resources.

The project Ecopliant aims to establish best practice for the market surveillance of the Ecodesign directive. The challenge will be to make this to a practical guide that is user-friendly and that will actually be used by the MSAs.

Language

Which language to be used in using foreign data?

Test reports are often made in the national language because it is easier to understand so. However, test reports written in the national language make it very difficult to share them with another country e.g. to use them for an enforcement action and especially to use them in a legal procedure.

A lot of countries prefer that all the test reports on products that are under the Ecodesign directive are written in English, the language that is most widespread in the EU.

4. Preliminary conclusions/recommendations and way forward

In this chapter the main conclusions to come to a higher level of enforcement are described with emphasis on those situations where using foreign data is the basis for enforcement actions.

Conclusions/recommendations

- Effective enforcement is essential to keep the implementation of the Ecodesign Directive credible and to realize the intended energy savings. Member State surveillance authorities need to scale up the level of activity in this area in a way



that the sometimes scarce resources are used in the most efficient manner e.g. by optimal use of information and all available data, including foreign data.

- International exchange of experience and participation in international projects is useful to strengthen the enforcement; support authorities with best practice, guidelines etc. to achieve higher resource efficiency.
- The lack of access to adequate testing laboratories infrastructure can be resolved by the use of laboratories from other MS or endorsing the test results already performed in other countries within EU. Publishing a list of accredited test laboratories in each country can give access to competitive product testing for every country. The existing list on the Nando (New Approach Notified and Designated Organisations) Information System from the EU Commission can contribute to a solution at this point.
- The use of foreign data in enforcement actions is possible on the basis of the legal systems in most countries; there is above all a lack of experience and important is to stimulate starting gaining experience by means of joint actions and based on reliable information (e.g. from ATLETE II project). Countries should give relevant data for an enforcement action in another country to that country and stimulate and support the subsequent enforcement action.
- A suitable data base that is used by all countries and that is legally binding for all MSAs, is a precondition for a more intensively sharing of data. Based on the data base to develop in the Ecopliant project as first step, clearness about the choice of a system (ICSMS, RAPEX, CIRCA) and appointments about the way of working with it, is very desirable.
- The new "Market Surveillance Regulation" that aims to clarify the existing framework for market surveillance in the field of non-food products. Along with the coming evaluation of the Ecodesign directive, these possibilities must make that more clarity will come on several definitions and way of conduct the market surveillance (e.g. role of the regulation, definition "economic operator", definition "placing on market", preference to work with accredited labs).
- The complexity of the regulations in Ecodesign directive and the growing amount of them, make that a practical guide for market surveillance would be useful; it can bring more uniformity and would give support for countries that have less experience and resources. Establishing best practice in the Ecopliant project could be a first step for this purpose.
- A lot of countries prefer that the language to be used in foreign information/data, should be English, in order to make them widely comprehensible and appropriate in legal procedures.

Way forward

For the coming period most important is to stimulate starting activities with using foreign data in some countries. This can be based on results from projects like ATLETE II, but also based on the results of the test programs in the Ecopliant project.

It will be determined if and how the test results out of the project are used by another MSA. Opportunities will be identified and support and encouraging will be given to the MSA to follow up on the test results.



Based on the experiences there will be an analyse to identify how barriers have been overcome and a case study will be produced to demonstrate effectiveness of the recommendations done in this report.

In the following pilot action in the project, there will be special attention to determine what kind of information is necessary regarding to enforcement actions in general and especial for those based on foreign data. This information is included in the project database to track market surveillance enforcement activities across the EU.

At the same time the recommendations done in this report to come to strengthen enforcement and using foreign data, will be followed and where possible and necessary action will be taken.

5. Preliminary recommendations on Best Practices

Some preliminary points based on best practice to start using foreign data:

- start actually gaining experience with using foreign data
- try to find/get data e.g. out of Ecopliant project or ATLETE II
- ensure you have data from an accredited laboratory
- ensure data are in English
- arrange good support and communicate with the MSA where the data come from
- communicate good results and also the experienced barriers to the data supplier and to Ecopliant project

6. Some remarks as result of comments of stakeholders on this draft report

Agreed is that it is not possible for a market surveillance authority to take directly action in situations of non-compliance against a manufacturer in another country because of the lack of a legal basis.

Stakeholders endorse the importance of using foreign data in enforcement actions and support the intentions of the MSA's to do so.

Agreement is about the importance of the quality of data and therefore to work with labs that are competent (accreditation can be useful indicator but is not a must).

Stakeholders emphasize, as also done in this report, the use of one European database like ICSMS for data exchange and also the use of "language neutral" test reports.

The question is asked whether there is an official criterion for foreign data to be used and whether there is a list of countries that can/can't use foreign data.

The answer is that the project is looking to build information on what is possible with different kind of foreign data (e.g. developed under supervision of MSA or not, coming from industry organisation). At the moment there is no clearness about countries that can use foreign data because of the lack of experience at this point.

The project will come with recommendations of what MSAs can and can't do.

Thereafter, it will be down to the EC to evaluate and asses the need of future projects to either follow up on Ecopliant recommendations and/or implement the necessary changes to legislation if appropriate.

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