Is it time for a European market surveillance coordination body? Redefining monitoring, verification, and enforcement of European product policy

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Abstract

Less than 1 % of the European market is currently verified via testing as either reaching the minimum performance standards laid out by the Ecodesign Directive, or that the energy class declared is indeed correct. Despite this, the complexity of these regulations is set to grow, both in terms of the number of products covered (Ecodesign work plan 2015–2017), and the range and scope of areas within each product regulated (possible combination and inclusion of circular economy – resource efficiency).

Member States are the sole bearers of the responsibility of market surveillance, yet despite tireless efforts, are barely able to scratch the surface in terms of the work needed to be done to reduce the estimated 15–25 % non-compliance rates found in this sector. With up to 100 TWh of lost savings at stake, and possibly many times more than that in the future, is it time to consider a more formal and centralised market surveillance body that would assist and facilitate market surveillance actions across Europe?

Such a coordinating body would not take over the role of the national MSAs, nor would it have or need the authority to impose sanctions on non-compliance. Instead it could draw upon the success of pan-EU projects such as Ecopliant, EEpliant, ATLETE, ATLETE2, ComeOnLabels, MarketWatch, INTAS, and ComplianTV. These projects have shown that central coordination both improves cooperation, and helps to better identify key causes of non-compliance and identification of suspicious products.

This paper outlines the potential model for a European coordination body, and highlights key areas where such a body would improve market surveillance across the whole of Europe.

Introduction

This paper will outline the reasoning for the development of a European Coordination Body (ECB) by highlighting the existing problems currently being faced by national Market Surveillance Authorities (MSAs) that cannot reasonably be expected to be resolved by a single Member State. Furthermore, the paper will outline the potential structure of such a coordinating body, as well as its ongoing role in the future.

This paper does not advocate for the centralisation of authority, nor does it necessarily support the idea of a European market surveillance authority with similar powers to those of the national authorities. The ECB described in this paper is intended to support the efforts of national authorities by the various means described throughout the paper. It is not intended as an agency to declare products as compliant or non-compliant, impose fines or sanctions, or otherwise undertake normal actions of MSAs.

SCOPE

In the scope of this paper, the ECB described throughout will have a particular focus on the Energy Labelling[1] and Ecodesign[2] Directives. These Directives do not set requirements for products directly, but through implementing and delegated

1. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0030
2. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0125

acts for each specific product category. Whilst other regulatory measures are considered in some chapters, the overall scope of the ECB, at this stage, will focus only on the products covered under these regulations.

POTENTIAL SAVINGS AND LOSSES

Energy labelling and efficiency policy delivers almost half of the 20 % energy efficiency target by 2020, saving roughly 175 Mtoe[3].

However, the current system enables both an assumption of conformity, and a system of self-labelling and declaration. Suppliers of products covered by these regulations do not need to undertake any specific registration or testing of their products before they enter the market. It is assumed a product is compliant to the minimum required standards of Ecodesign, and that all parameters of its Energy Label are accurately measured and declared.

Currently, best estimates suggest that less than 1 % of the products placed on the market regulated under Ecodesign and Energy Labelling are tested by MSAs in a laboratory to measure each of the parameters declared for either the Ecodesign or Labelling requirements[4]. Given the low monitoring rates, estimating the number of non-compliant products is difficult, but a range of projects and expert analysis estimate the figure to be somewhere between 10–25 % of products placed on the market[5]. This translates to an estimated loss of more than 100 TWh of annual final energy savings – as much as the current residential electricity consumption of Eastern Europe[6] or 42 million tonnes of CO_2 per year – the equivalent to 22 million car emissions, or three Fukushima-sized nuclear power plants producing this electricity.

Considering the cost of inaction is so high, both in terms of monetary losses through the production and maintenance of power supply, such an investment is clearly justified from an economic standpoint. The new Hinkley Point C nuclear power plant is now estimated to cost around 37 Billion GBP[7] (€43,692,272,848), and providing only a small amount of the electricity lost through non-compliance. Energy efficiency is becoming more and more important in the efforts to reduce emissions across the globe, but without proper investment in monitoring, verification and enforcement, these efforts will consistently under-perform.

THE EUROPEAN SINGLE MARKET AND NATIONAL RESPONSIBILITY

> The Single Market refers to the EU as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services.[8]

The single market, without borders or differing regulatory requirements, effectively means that the compliance status of any product will be the same in any region or Member State. However, despite a single market, the European Union has 28 centralised market surveillance authorities (MSAs) and many, many more local and regional authorities. The exact set-up of monitoring, verification, and enforcement varies in all Member States, authorities can be stand-alone agencies, or divisions of environment, energy, economic, industrial, or other agencies or ministries within the nation, federal, regional, or local government. Often, Labelling and Ecodesign enforcement is not undertaken by the same team or agency. Furthermore, agencies responsible for either, or both, Ecodesign and Labelling enforcement will usually have responsibility for the enforcement of a number of other regulations.

A further argument can be made for increasing the monitoring, verification, and enforcement of European product policy due to the unfair economic advantage it gives those who are not compliant. A 'level playing field' gives integrity and strength to the single market, and without enforcement of non-compliance, the incentive to comply soon starts to deteriorate.

Current collaboration practices

A number of efforts have been made in recent years to improve the cooperation and collaboration of the various MSAs across the Union. The chapter describes the most prominent avenues of collaboration in the Union.

ADMINISTRATION AND COOPERATION (ADCO) GROUPS

Administration and Cooperation (ADCO) groups are informal groups of national MSAs that meet several times per year to discuss specific issues relating to market surveillance in their designated field. The ADCO groups are useful to promote a common and consistence approach to market surveillance. Funded by the European Commission (EC), its stated aims are[9]:

- To guarantee proper and uniform application of the provisions of the legislation within the Single Market
- To increase the efficiency of market surveillance throughout the Single Market bearing in mind the existence of different systems in EU countries
- To establish appropriate communication channels between national administrations and the Commission
- To setup and coordinate common actions such as cross border market surveillance activities
- To exchange views, reinforce cooperation on conformity assessment practices as well as individual cases, and solve practical problems
- To develop common practices and methodologies
- To inform each other of national methods and activities to develop and promote best practices
- To identify issues of shared interest relating to market surveillance and suggest common approaches on these.

3. https://ec.europa.eu/energy/en/topics/energy-efficiency/energy-efficient-products

4. https://ec.europa.eu/energy/sites/ener/files/documents/Final_technical_report-Evaluation_ELD_ED_June_2014.pdf – page 159.

5. http://www.energylabelevaluation.eu/tmce/Literature_report_Energy_Labelling_Ecodesign_2013-12-18_Ecofys.pdf – page 18.

6. http://www.market-watch.eu/about-us/

7. https://www.theguardian.com/uk-news/2016/jul/07/hinkley-point-c-nuclear-plant-costs-up-to-37bn

8. https://ec.europa.eu/growth/single-market_en

9. http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation/administrative-cooperation-groups_en

INTERNET-SUPPORTED INFORMATION AND COMMUNICATION SYSTEM (ICSMS)

The ICSMS system is an information exchange platform that enables MSAs to share information and data in a private and secure way. Built and maintained by the EC, it was intended to collect and share any information on non-compliant products, not otherwise communicated by the RAPEX system. However, a number of concerns have been raised about its ability to fulfil the needs of MSAs, with some arguing that it is more geared towards safety aspects, and that it can only hold information on non-compliant products, limiting its usefulness for cooperative actions – and thus is not widely used for Ecodesign and Energy Labelling enforcement[10]. Further, it has been stated that the information is also sometimes entered in national languages, and thus not readily usable for other Member States[11].

RAPID ALERT SYSTEM (RAPEX)

The RAPEX system allows for a fast exchange of information, and immediate notification of dangerous products found on the single market. Used primarily for safety concerns covered by other regulations, it is rarely used for Ecodesign and Energy labelling.

PAN-EUROPEAN PROJECTS

This section outlines some of the most recent projects that have been undertaken in the area of market surveillance. They each provide examples of multiple stakeholder cooperation, albeit for a limited period of time.

ATLETE (Appliance Testing for Energy Label Evaluation) – 2009 to 2011

The main goal of the ATLETE project[12] was to increase European-wide implementation and control of energy labelling and eco-design implementing measures for cold appliances. The developed methodology is applicable with very minor adaptations for any Energy-using Products (EuP).

ATLETE II (Appliance Testing for Washing Machines Energy Label and Ecodesign Evaluation) – 2012–2014

The goals of ATLETE II[13] were to check the pan-EU compliance of (50) washing machines to the energy labelling and Ecodesign requirements using the new measurement method and to improve the capability of testing laboratories in using the new harmonised standard, while contemporarily support the cooperation among national authorities for an effective market control.

Come On Labels (Come On Labels – Common Appliance Policy – All for One, One for All – Energy Labels) – 2010–2013

The Come On Labels project[14] aimed at collecting, summarising and sharing the best European experience related to the energy labelling of household appliances and defining and applying the most effective supporting actions for the proper implementation of the new labelling scheme.

ComplianTV (Compliance of TV and monitors with Energy Label & Ecodesign requirements) – 2013–2015

The ComplianTV project[15] aimed to provide a fully-fledged and detailed methodological guidance to allow EU Member State Market Surveillance Authorities to face the new legislative and market challenges for TVs and computer monitors in an effective and cost-efficient way (with a support of aligned concerted testing and the development of a database).

Ecopliant (European Eco-design Compliance Project) – 2012–2015

The objective of ECOPLIANT[16] was to strengthen market surveillance and so increasing compliance with the Directive and the relevant implementing measures. ECOPLIANT established systems to coordinate, in the most cost-effective manner, the monitoring, verification and enforcement (MV&E) of eco-design requirements across the European Single Market; and by increasing knowledge and experience of best practice amongst Market Surveillance Authorities (MSAs).

EEPliant (Energy Efficiency ComPLIANT Products) – 2015–2017

The key objective of EEPLIANT[17] is to help deliver the intended economic and environment benefits of the Energy Labelling and Ecodesign Directives by increasing the rates of compliance with them. This will be achieved through coordinating the monitoring, verification and enforcement activities of 13 Market Surveillance Authorities across the EU Single Market.

INTAS (Industrial and tertiary testing and application of standards) – 2016–2019

The aim of the INTAS project[18] is to provide technical and cooperative support, as well as capacity building activities, to Market Surveillance Authorities (MSAs). The need for the INTAS project arises from the difficulty that MSAs and market actors face in establishing and verifying compliance with energy performance requirements for large industrial products subject to requirements of the Ecodesign Directive, specifically transformers and industrial fans.

MarketWatch (Involvement of Civil Society in Market Surveillance of Ecodesign and Energy Labelling) – 2013–2016

The objectives of MarketWatch were to raise awareness in the civil society community on the importance of the enforcement of regulations, as well as to centralise and share their practices, and conduct large campaigns of verification of proper energy labelling implementation by hundreds of retailers of the requirements through visits to physical and online shops as well as the physical testing of suspicious products regulated under Ecodesign and Energy Labelling.

10. https://ec.europa.eu/energy/sites/ener/files/documents/Final_technical_report-Evaluation_ELD_ED_June_2014.pdf – page 168.

11. http://www.ecopliant.eu/wp-content/uploads/2014/06/Report-on-overview-of-EEA-workshops.pdf (page 6).

12. http://www.atlete.eu/

13. http://www.atlete.eu/2/

14. http://www.come-on-labels.eu/about-the-project/welcome-eu

15. http://www.compliantv.eu/eu/about-the-project/home

16. http://www.ecopliant.eu/

17. http://www.eepliant.eu/

18. http://intas-testing.eu/

SELINA (Standby and Off-Mode Energy Losses In New Appliances Measured in Shops) – 2008–2010

The Intelligent Energy for Europe (IEE) project SELINA[19] carried out a large-scale monitoring campaign in shops in order to characterise the low power modes of new appliances being sold in the EU market.

Proposed structure and general format

The main functions of a European Coordination Body (ECB), and indeed the main distinction from the current collaboration efforts, is on-going and long-term planning of coordinated European market surveillance actions. An ECB would provide consistent administrative, technical, legal, and regulatory support for Member States planning to undertake testing actions – details of which are further described below.

In addition to this, a range of other activities are envisioned. The following section outlines the range of roles and functions that could be undertaken, broken into 4 distinct teams. These teams have been designed to cover the overall work of the proposed roles of the ECB made throughout this paper.

ECB PROJECT DEVELOPMENT TEAM

Core competencies

- Develop new research projects on specific issues and challenges
- Provide administrative support to European Coordinated Actions (CAs)
- Prepare dissemination and communication actions on projects and CAs
- Coordinate with technical, legal, and policy teams within and outside of the ECB
- Act as ongoing contact point for market surveillance-related projects
- Prepare appropriate technical, financial, or administrative reports on CAs

This team would be responsible for the development of new projects, including under funding schemes such as Horizon2020[20]. This team would also be responsible for liaison with ongoing projects and coordinated actions. In this role, they would be responsible for collecting and archiving reports and materials from such projects, ensuring they are not lost after the end of the actions. The project development team would take on board the experiences of the other teams as well as outside sources to design and develop projects that aim to tackle EU-wide issues.

ECB TECHNICAL EXPERTISE TEAM

Core competencies

- Provide in-house, or procurement of specific product expertise
- Develop network of available expertise on products within each member state and amongst relevant stakeholders
- Develop and maintain network of laboratories across the EU, and their relevant certifications
- Provide assistance to relevant stakeholders, and project management, legal, and policy teams
- Lead on research and development reports and provide expert analysis when needed

The technical expertise team will provide in-house product-specific expertise. Such technical expertise is necessary for the independent development of research and development projects, as well as coordinated actions.

ECB LEGAL TEAM

Core competences

- Assist in the development and revision of legal tools, for example the blue book guide[21]
- Develop and research legal tools, and provide feedback for member states pursuing legal actions for non-compliance
- Assess and collect information on national legal processes and structures in relation to market surveillance activities
- Develop and maintain a library of non-compliant cases for reference purposes
- Oversee any necessary translation work

The legal team will be responsible for the assistance of building prosecution cases against non-compliant suppliers. The team will also assist in the activities of the other teams.

ECB POLICY AND REGULATION TEAM

Core competencies

- Monitor developments in other regulatory areas relating to energy-related products e.g. WEEE, RoHS
- Inform relevant stakeholders of new or changing regulatory requirements, or develop tools to allow dissemination at national level
- Provide materials to support industry compliance
- Develop working groups to allow for stakeholder feedback
- Monitor and attend relevant cooperative action and project meetings
- Attend and provide feedback to relevant regulatory forums

19. https://ec.europa.eu/energy/intelligent/projects/en/projects/selina

20. https://ec.europa.eu/research/participants/portal/desktop/en/opportunities/h2020/topics/ee-16-2016-2017.html

21. http://ec.europa.eu/DocsRoom/documents/18027/

The regulatory team will monitor the work of national and European institutions, and work closely with a range of stakeholders in relation to market surveillance. The team will be responsible for feeding back information to stakeholders from decision makers, as well as providing the European institutions, as well as national agencies, insights and data on compliance and market surveillance issues.

Coordination of joint testing activities

Projects such as Ecopliant and EEpliant have shown the coordination of multiple Member States in coordinated testing actions takes time and resources. The division of labour must be shared and agreed, and required project management for administration and financial management.

As the recent summary on the public consultation on enforcement and compliance has shown, market surveillance authorities are already lacking the sufficient financial and human resources needed to undertake their work most effectively[22]. If national authorities lack the means to address their own testing needs, it cannot be expected that any single Member State bear the burden of responsibility to coordinate multiple Member States in coordinated actions.

To address this issue, one of the main roles of the ECB would be to plan, develop, and coordinate joint testing actions. Such actions would be developed on several factors, including the receipt of intelligence and information, the difficulty and complexity of testing, and the availability of models, or the specific needs of Member States.

Coordinated joint testing has rarely taken place outside of the ATLETE, EEpliant and Ecopliant projects, yet these projects have shown significant success in the ability for Member States to effectively collaborate. One of the main issues is simply the time and resources needed to coordinate such operations. Administration, planning, preparation would all be undertaken by the ECB, maintaining a permanent staff to assist in the planning and coordination of the joint testing activities between the member states.

Drawing on existing requirements for planning and reporting of market surveillance activities in this area, the ECB would be able to much more closely analyse and combine national work plans, where they overlap. This would also offer greater long-term planning and anticipation of future needs – based on regulatory and technological development.

Coordination with stakeholders

An issue highlighted in the findings and recommendations of projects such as ATLETE. ATLETE2, and ComplianTV is that there can often be a lack of clarity or understanding in the regulatory text. This is also supported in the recent consultation on enforcement and compliance which suggests that there is not lonely sometimes difficulty in identifying and understanding correct information on the technical rules that products need to follow, but that when stakeholders do seek clarification they most often refer directly to the Commission[23] – indicating that seeking assistance on a national level is either unfeasible, or not possible. Further to this, the report also indicates that MSAs often struggle to contact businesses to undertake compliance assessment[24]. This is for several reasons, including, most notably, in inability – either due to language, cost, or resources, to identify business contacts in other Member States.

To deal with these issues, a European Coordination body (ECB) would be to act a centralised contact point for the various stakeholders in the area of energy-related products. Notably, these stakeholders would include:

- Consumer and Environmental associations
- Manufacturers/Suppliers
- Retailers/Dealers
- Dealers, Suppliers, and other stakeholders from outside the European Union
- Laboratories

An ECB would be a focal point for complaints on specific models and products, and for intelligence on product brands, models, or categories. An ECB could also act as the first point of contact for information for stakeholders in regard to compliance issues. Whilst it unlikely that such a body would be able to offer specific advice on the legality or not of a specific product, it would be able to escalate concerns to the ADCO group, or provide details of any previous similar cases related to that product. This work, in collaboration with other areas of the ECBs work would contribute to the identification of patterns of suspicious products and key causes of non-compliance.

A working group of key stakeholders will also be able to assist in developing coordinated actions, as well as participate directly or indirectly in the research and development programmes described below.

EUROPEAN LABORATORIES: IDENTIFICATION AND CLASSIFICATION

As one barrier to market surveillance is varying levels of availability of certified test laboratories, and with the potential expansion of the size and scope of product regulation, this problem will inevitably become more common.

For the purposes of legal actions against non-compliant products, there are often particular rules and procedures that must be following in the procurement, shipping, handling, and storage of units during physical testing[25]. Such procedures may be difficult to monitor and enforce in other regions or Members States. A coordinated European approach could help improve and standardise procurement and handling procedures, which are generally outside of the scope of harmonised standards.

Location and Language barriers

A simple, yet profound barrier to using laboratories outside of the Member State is simply one of language. Whilst many can work in English as a common language, it cannot be expected that all parties can work proficiently in a 2nd language. Furthermore, national protocol may dictate that all work is submitted

22. http://ec.europa.eu/DocsRoom/documents/21181 (page 8).

23. http://ec.europa.eu/DocsRoom/documents/21181 (page 13).

24. http://ec.europa.eu/DocsRoom/documents/21181 (page18).

25. http://www.ecopliant.eu/wp-content/uploads/2013/10/D3.1-Final-Report-on-Developing-a-Pilot-Action-for-European-Co-ordinated-MVE.pdf - UK NMO example – page 19

in the national language of that Member State, particularly if legal action is to be pursued.

An ECB could help to mitigate this issue by developing and maintaining common standard templates for use in testing products. Following the example defined in the ATLETE projects[26], a simple excel template could be developed that is language neutral, allowing all parties to use it with ease. A template would be needed for each of the product categories, but if the excel cell number does not vary within the templates; all parties will know exactly what each piece of data represents.

Lack of knowledge on available laboratories across the Union

One role of an ECB could be to set up and maintain a detailed list of certified laboratories within the EU. With over 40 separate product categories, as well as a substantial range of products within some of those categories, it would be difficult to find appropriate laboratories in each Member State. Having an available list of labs and what they are able and experienced in testing, would help ease the transition into the use of 'outside' labs.

Further, such a list would also help to identify which are the products most difficult to test by highlighting when very few, if any, labs can test to a high standard.

The idea behind identifying and dealing with these issues would ultimately be to reassure Member States that confidence and excellence can be found in laboratories outside of their national borders – with accreditation and reliability of results being rated as the most important factors in laboratory selection[27]. By harmonising various aspects identified above, it will encourage MSAs to, at the very least, consider using foreign laboratories. In the examples of coordinated and joint testing, all participating Member States would be satisfied and confident in the quality of the work undertaken.

Legal assistance to Member States

The process of declaring a product as non-compliant can be long and expensive. Legal challenges to decisions may complicate these matters further. To aid Member States in this process, and thus encourage enforcement action, a dedicated legal team could provide non-binding but impartial legal advice. Such a legal team could also develop tools and best practice guides for Member States.

A catalogue of legal cases where Member States have pursued non-compliance could be built and maintained and used as a reference for future action, further assisting national efforts.

A legal team would also be able to assist in defining unclear or ambiguous wording in legislative text, and provide input to common tools such as the blue book guide.[28]

RESTRICTIONS DUE TO NATIONAL ADMINISTRATION

A secondary role of a legal team could be to catalogue the various legislative and administrative structures within Member States. MSAs vary between Member States in terms of size, structure, and range of responsibilities. There are also several different national rules and procedures to follow when undertaking market surveillance work. By compiling such information, a transition can be made to combine these administrative structures as much as possible, further facilitating cooperation.

Research and development

A European Coordination body could use the expertise, skills, and resources of a dedicated monitoring agency to lead on the research and development in several areas that would benefit the activities of all MSAs.

CUSTOMS RELATIONS AND CROSS-BORDER PROCUREMENT

Customs are more burdensome for some Member States more than others due to the presence of large ports on their territory (Hamburg, Rotterdam and Antwerp for example). It is suggested that collaboration with other MSs may not over-burdensome. Surveillance actions in this area are described thus:

> Art. 27.3 Regulation 765/2008[29]
>
> The authorities in charge of external border controls shall suspend release of a product for free circulation on the Community market when any of the following findings are made in the course of the checks referred to in paragraph 1:
>
> a) the product displays characteristics which give cause to believe that the product, when properly installed, maintained and used, presents a serious risk to health, safety, the environment or any other public interest referred to in Article 1;
>
> b) the product is not accompanied by the written or electronic documentation required by the relevant Community harmonisation legislation or is not marked in accordance with that legislation;
>
> c) the CE marking has been affixed to the product in a false or misleading manner.
>
> The authorities in charge of external border controls shall immediately notify the market surveillance authorities of any such suspension.

Whilst collaboration could indeed be increased in this area, several checklists and tools are needed to deal with the large and diverse number of products coming into the single market. With these products ranging from lightbulbs to electric motors, a clear and universal system would be needed to ensure appropriate checks can be made at customs borders. Further, the unequal distribution of the larger ports amongst the union means that a centralised approach could redistribute resources to better reflect the burden bore by these MSs.

NON-COMPLIANCE RATES

Using the resources at its disposal, an ECB could help to realise clear, accurate, and up to date information on the levels of non-compliance, both in broader regulatory context, and for specific products. Such information would be useful in under-

26. http://www.atlete.eu/2/final-results/2-non-categorizzato/58-full-individual-results

27. http://www.ecopliant.eu/wp-content/uploads/2013/10/D1.4-Testing-Programmes-and-Full-Compliance-Testing-Activities.pdf page 13

28. http://ec.europa.eu/DocsRoom/documents/18027/

29. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0030:0047:en:PDF

standing the loss of savings across The Union, and help identify where more efforts are needed to fulfil long-term goals on efficiency and emissions reduction.

ROUND-ROBIN TESTING

Round-robin testing serves multiple purposes in the MV&E of products in the EU. Most notably these include:

- Helping to identify and justify measurement uncertainty and therefore tolerances applied to parameters within test methods
- Provide evidence of the capability and expertise of existing laboratories
- Assist in the proper calibration of testing equipment for the laboratories involved
- Help to identify short-comings and issues within the designated measurement method – simply by identifying areas where the laboratory has had to use its judgement in place of specific guidelines

An ECB could systematically undertake round-robin testing for products as and when needed. For example, upon complaints from industry of inadequate test standards already developed, new product categories becoming regulated, or helping laboratories come up to speed on harmonised measurement methods. Another function of a RRT would be to help setting tolerances in a (revised) product regulation.

The overall outcome of such a programme would therefore be of benefit to suppliers, MSA, and European laboratories.

PRODUCT-SPECIFIC VERIFICATION TESTING METHODOLOGIES

As products continue to grow more complex, new and reliable testing methodologies are needed to be developed in order to ensure enforcement is possible. Whilst test methodologies are developed by the European standardisation bodies, these do not always translate to workable methodologies for market surveillance authorities, as the INTAS[30] project demonstrates. An ECB could help to overcome difficulties that will inevitably be faced by:

- Systems, or product-in-product scenarios
- Large products
- Small scale, or unique and custom made products
- Business to business sales
- Digitally-updated products and the internet of things
- Industrial and tertiary products
- Resource efficiency requirements
- Reparability and durability requirements

Whilst the technical aspects are defined away from the MSAs, there can be issues overlooked, or problems not anticipated when this theoretical method is put into practice. A lack of expertise within the MSA may also cause difficulties when undertaking monitoring, verification, and enforcement actions. An ECB could not only help to build such expertise by undertaking such research projects, but also keeps and maintains that knowledge as national staff transition to other roles.

KNOWLEDGE CENTRE AND TRAINING

All the areas of work described throughout this paper would ultimately feed in to the final role of an ECB, one of training and knowledge retention. The various coordinated actions, research projects, and legal support – as well as documented input from various other stakeholders, would be the foundation of training and guidance.

Specific and frequent training could take place on administrative, technical, and legal aspects of market surveillance, as well as 'training the trainer' situations where tools can be provided for representatives of national MSAs to return and undertake national level training in native languages.

In addition, the reports, outcomes, and other materials from the large number of national and pan-EU projects would be catalogued and stored for future reference. The shelf-life of these projects are relatively short, and the outputs can be lost after several years, particularly if there are many personnel changes.

Such a programme will help to build continuity and retain the wealth of knowledge and experience developed over the years across the whole of the European Union.

Financing the European Coordination Body

Several options exist for financing a European Coordination body. A number of these were explored in the recent pubic consultation on enforcement and compliance[31]:

- Revenue obtained through sanctions could be directly allocated to national and European market surveillance operations
- Administrations fees could be levied on operators to finance surveillance operations
- Programmes could be funded directly from the European level – that is, a budget could be approved and allocated by the European institutions.
- Funding through specific projects through schemes such as Horizon2020

Each of these options has pros and cons, and garners varying levels of support from public authorities, business, and civil society. In reality, a combination of each of these options would likely provide a suitable operating budget for a European Coordination Body.

A guaranteed and sustained operating grant must be awarded in order to ensure the consistency and future planning of the core competencies of the ECB. This may be tied proportionally to the number of products entering the market, the total size of the market constituting products regulated under Ecodesign and Energy Labelling, or other relatable factors.

The proposed mandatory registration system for products regulated specifically under Energy Labelling offers the opportunity to levy a small charge that could be distributed to

30. http://intas-testing.eu/

31. http://ec.europa.eu/DocsRoom/documents/21181

both the upkeep and management of the subsequent database, as well as market surveillance activities. This would boost the available funding when large numbers of products are entering the market, allowing for the ECB to keep up with the market size.

Funding for very specific research into product or technology types would be needed in a timely manner to address problems as the technology is entering the market.

Finally, successful legal action taken against operators, and supported by the ECB, that result in financial sanctions being imposed could be distributed between the national public authority and the ECB.

Conclusions and recommendations

Inadequate market surveillance threatens to reduce the expected energy savings in the European Union. In the longer term, an unequal playing field and the inability to enforce legislation, threatens the single market and reduces the incentive of business to research and innovate in energy efficiency.

This paper has highlighted the key issues that befall the European Union when it relies solely on a loose collection of national market surveillance authorities to enforce a single market. Its key points are as follows:

- European Member States are currently unable to provide enough resources to adequately monitor their individual markets for compliance to Ecodesign and Energy Labelling regulations. A single coordination body offers the potential collective planning, action, and enforcement of regulations.
- By setting up and maintaining a coordinating body, the European Union has the potential to significantly increase the number of products tested that are entering its market.
- A centralised body would overcome geographical and language barriers, as well as act a s focal point for all stakeholders
- A centralised body would be able to undertake or assist in the development of necessary research and development for complex new products, large or unique products, those affected by digital or software updates, as well as deal with potential upcoming technological advances
- Support in complex and expensive legal actions undertaken by Member States
- A coordination body could act as an independent coordinator for joint testing actions, reducing the administrative burden on Member States

The overall outcome of such investment would be closer realisation of the full energy savings potential of Ecodesign and Energy Labelling, as well as a level playing field for industry to continue to invest in more efficient technologies – boosting confidence in the European single market.

There are however a number of areas that would require further investigation and research, not least the question of funding. Substantial funding would be needed to support a number of full time staff, as well as likely for extensive travel. In the areas of research, significant funding would be required for expert input and analysis – although this would not be as large as already designated for the work undertaken in product-specific preparatory studies during the development of implementing measures or delegated acts. There would also likely be at least a contribution needed for the costs of the tests themselves, though this should be shared with the participating member states.

Another area not considered in this paper is the link to the anticipated (as of February 2017) registration database for energy-labelled products, and how a coordinating body would interact and work with such a registration system. Further work would be needed to realise just how these would work together, or whether it might be feasible to merge the two systems.

Member State uptake is also an issue that has not been explored in this paper. Indeed, one of the overall aims of this paper was to generate discussion – not to speak on behalf of the MSAs. Whilst no survey was undertaken to gauge the willingness of Member States to participate and interact with a European Coordination Body, the participation of many of the Member States in projects such as Ecopliant, Eepliant, and INTAS demonstrates an interest in collaborative working. Further research could be undertaken to assess the intention of each Member State to work more collaboratively if there were a permanent and centralised coordination.

In addition to this, it would also be needed to test collaborative working with the ECB, and look into detail on how exactly collaboration would take place, and if there were any legal issues to contend with. For example, would email exchanges be possible? Or would communication have to run through more official channels? Would Member States have the right to reject findings, or question the allocation of funds for coordinated testing actions?

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