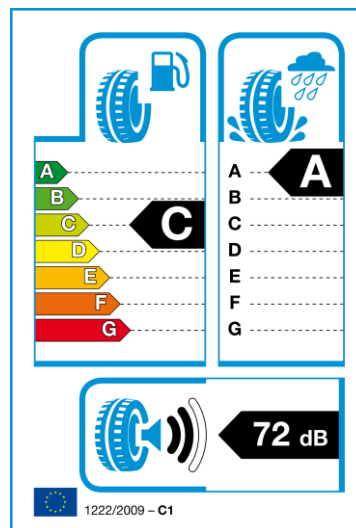


Good Practice Guidelines for Coordinated and Effective Market Surveillance of energy labelling of tyres

Version 2, September 2016



Introductory Notes to the Guidelines

These guidelines have been developed in the project *Market Surveillance Project TYRES 2015 (MSTyr15)* funded by the Horizon2020 programme.

Much of the content has been based on *Best practices for ecodesign and energy labelling market surveillance*¹ produced by the participants of the predecessor projects, EEPLIANT and ECOPLIANT.

The main target group for these guidelines are Ecodesign and Energy and Tyre Labelling Market Surveillance Authorities (MSAs).

It is intended that these will give a valuable input on how to monitor, verify and enforce energy labelling and related regulatory requirements for tyres.

Further copies of these guidelines and related materials can be obtained from www.mstyr.eu

NOTE 1: The recommendations in these guidelines are not meant to infringe national legislation or national prioritisations. In addition, the recommendations are in many cases to be seen as *good practices*, and not always *best practices*, since it is not possible to define best practices that suit all Member States and all MSAs.

NOTE 2: The sole responsibility for the content of this document lies with the partners of the MSTyr project. It does not necessarily reflect the opinion of the European Union. Neither the Executive Agency for Small and Medium-sized Enterprises (EASME) nor the European Commission are responsible for any use that may be made of the information contained therein.

The authors of this document wish to thank the creators of the ECOPLIANT and EEPLIANT best practice guidelines for the work they undertook to produce the original versions of them. Those well-researched guidelines have been used almost in their entirety to form the basis of this publication.

¹ Copy available from <http://eepliant.eu/index.php/knowledge-base>

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Structure and Scope of the MSTyr Guidelines

The guidelines have been structured into the following components:

Module A - Introduction and overview of the task of providing market surveillance for the Regulations governing the labelling of tyres.

Note: Part A is intended to provide a briefing for new staff or persons who are unfamiliar with the operation of market surveillance of tyres in the EU.

Module B - Summary of the legal background governing the labelling of tyres in the EU.

Note: Module B is intended for use by inspectorate staff of market surveillance authorities. It is available as a separate PDF file so can be loaded onto a laptop computer or similar for reference when conducting inspections in tyre distribution depots.

Module C - Description of the tyre label

Note: Module C is intended for use by inspectorate staff of market surveillance authorities. It is available as a separate PDF file so can be loaded onto a laptop computer or similar for reference when conducting inspections in tyre distribution depots.

Module D - Guidance for inspecting the display of labels on tyres and/or provision of information on tyre parameters

Note: Module D is intended for use by inspectorate staff of market surveillance authorities. It is available as a separate PDF file so can be loaded onto a laptop computer or similar for reference when conducting inspections in tyre distribution depots.

Module E - Guidance for making an examination of technical documentation for tyre labels

Note: Module E is intended for use by inspectorate staff of market surveillance authorities. It is available as a separate PDF file.

Module F - Recommendations for the Conduct of Market Surveillance Tests

Note: Module F is intended for use by inspectorate staff of market surveillance authorities. It is supplied as a separate PDF file so can be loaded onto a laptop computer or similar for reference when conducting discussions and inspections at tyre testing facilities.

NOTE: Module F is not yet available

1 Introduction to Part A

These guidelines comprising Part A have primarily been formulated based on the experiences and analyses gained within the ECOPLIANT and EEPLIANT projects². The ECOPLIANT project collected and analysed existing practices used by EU national MSAs for Ecodesign market surveillance.

Some of the guidelines contained in this document primarily constitute a balanced and agreed summary of findings and recommendations included in seven different subtask reports³ from ECOPLIANT. For a detailed description including the specific best practice recommendations, it is recommended to read the subtask reports that can be accessed from the URL addresses included in the appropriate sections of this document.

The recommendations in these guidelines are not meant to infringe national legislation or national prioritisations. These recommendations are in many cases seen as *good practices*, and not always *best practices*, since it is not possible to define best practices that suit all Member States and all MSAs.

Users are invited to provide feedback and advice for how these sections can be further developed.

1.1 Existing literature for MV&E of EU product legislation

Monitoring, verification and enforcement (MV&E) activities for market surveillance is a complex and multi-faceted matter. To describe *all* aspects of market surveillance, and develop an overall guidance for best practice for MSAs, is not within the remit of this project. This project focuses only on the most relevant aspects of tyres market surveillance.

Much work on MV&E has already been done for other product-related Directives e.g. in the consumer product safety area. Market surveillance procedures for product safety and for product performance are not fully comparable or interchangeable, but there are many similarities.

PROSAFE⁴ has published a book on Best Practice Techniques in Market Surveillance⁵, known amongst PROSAFE members and market surveillance officers as "the Book". Although related to consumer products/product safety market surveillance, some of the best practices described in the PROSAFE book are relevant for tyres market surveillance, especially in terms of the general overview on procedures.

² The ECOPLIANT project was granted financial support by the IEE-programme in early 2012. The project consortium consists of eleven partners; most of them market surveillance authorities (MSAs) for Ecodesign and some of them agencies and policy makers. The partners come from Denmark, Finland, Germany, Hungary, Ireland, Italy, The Netherlands, Spain, Sweden and the UK. Project coordination was led by UK DECC. The EEPLIANT project is funded by the Horizon2020 programme and is currently being coordinated by PROSAFE. More information on EEPLIANT can be found at www.eepliant.eu

³ Available at <http://www.ECOPLIANT.eu/wp2-reports-establish-best-practice/>

⁴ PROSAFE is a non-profit professional organisation for market surveillance authorities and officers from throughout the EEA.

⁵ See: http://www.prosafe.org/read_write/file/EMARS_Best_Practice_Book.pdf

Another publication that deals with international best practices for market surveillance is *Compliance Counts: A Practitioner's Guidebook on Best Practice Monitoring, Verification, and Enforcement for Appliance Standards & Labelling*⁶.

A third publication that provides more of an overview is the ISO (CASCO) guide *Principles and practices in product regulation and market surveillance*.⁷

At the time of preparing these guidelines (June 2016), the ADCO Chairs' draft cross-sectoral guidance document on market surveillance under the title "Horizontal good practices on market surveillance" and its accompanying "Toolbox" have been drafted but not finalised for publication. If/when these documents are published, we will review whether this document needs to be modified or withdrawn.

1.2 Primary goal of the MSTyr Guidelines

The MSTyr project has limited its scope to develop and describe the best practice procedures that are specific for tyres market surveillance.

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

- Organisation and strategy in national market surveillance
- How to establish inspection programmes
- How to select products for inspection
- How to identify EEA-wide product model numbers
- How to conduct label and document inspections
- How to conduct compliance verification laboratory tests
- Sharing of results amongst MSAs
- How to enforce the provisions of the ecodesign and energy labelling regulations

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

1.3 The legal base

The general objective of market surveillance is to ensure that products placed on the Single Market, put into service or made available, comply with applicable product-related legislation and that the products do not endanger health, safety or any other aspect of protection of public interests, e.g. energy efficiency. Market surveillance is carried out in a number of different areas, by different authorities and with backgrounds in different legislation.

Market surveillance is essential for the functioning of the Single Market in order to protect European consumers against risks presented by non-compliant products. In addition,

⁶ Available at http://www.clasponline.org/-/media/Files/SLDocuments/2006-2011/2010-09_MVEGuidebookSingle.pdf

⁷ http://www.iso.org/iso/casco_guide.pdf

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

The Regulations that form the legal base for market surveillance relevant to the guidelines in this document:

[Regulation \(EC\) No 765/2008](#)

General requirements for market surveillance on products available on the EU market are stated in the EU Regulation 765/2008 on accreditation and market surveillance⁸.

[REGULATION \(EC\) No 1222/2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters](#)

The main legal base for the labelling of tyres is contained within this document⁹

Market surveillance according to this regulation is the responsibility of all Member States. Member States are requested to monitor compliance through market surveillance authorities, as stated in Article 12: *In accordance with Regulation (EC) No 765/2008 Member States shall ensure that the authorities responsible for market surveillance verify compliance with Articles 4, 5 and 6 of this Regulation. This regulation identifies that tests for energy efficiency cannot be done in isolation wet grip performance of the tyre. As the only contact point between vehicles and roads, tyres have an essential role for road safety. Optimising the energy efficiency design characteristics of tyres and optimising (or at least not compromising) the wet grip characteristics is a major challenge in tyre development, i.e. developing a very fuel efficient tyre that has poor wet grip and hence poor safety performance is easy. Therefore, the approach in regulations is to put equal emphasis on fuel efficiency and wet braking performance to support energy efficiency objectives without compromising road safety policy goals.*

And, as improving wet grip may have an adverse impact on energy efficiency so regulations have been developed to cover this parameter

[REGULATION \(EU\) No 228/2011 with regard to the wet grip testing method for C1 tyres and](#)

[REGULATION \(EU\) No 1235/2011 with regard to the wet grip grading of tyres, the measurement of rolling resistance and the verification procedure](#)

And, as improving wet grip may have an adverse impact on external rolling noise so there are also regulatory requirements for the inclusion of noise levels on the tyre label too. Whilst limits are set out in **REGULATION (EC) No 1222/2009** the test parameters that are applicable are given in **Regulation (EC) No 661/2009**.

⁸ [Regulation \(EC\) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products](#)

⁹ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R1222>

1.4 The Tyre ADCO

The Tyre Surveillance Administrative Cooperation (Tyres ADCO) is an EU forum for cooperation between those national MSAs responsible for the market surveillance of products covered by REGULATION (EC) No 1222/2009. The ADCO meets once a year to discuss experiences in market surveillance practices and review those issues related to market surveillance on tyres. All those responsible national market surveillance authorities of the EEA countries are asked to participate in the ADCO and to share the outcomes of the meetings.

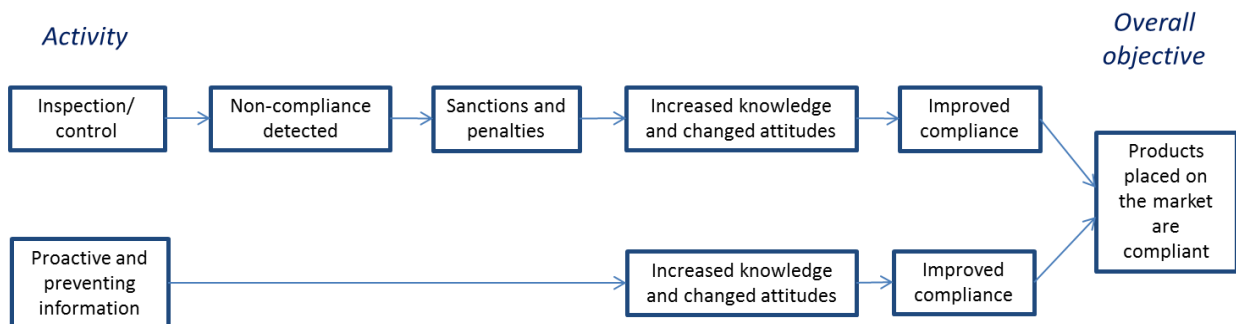
2 Good Practice Guidelines

2.1 Organisation and strategy in national market surveillance

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

MSAs can use in-house personnel for all market surveillance activities. Some MSAs do however also use the expertise of other public bodies, such as energy agencies and/or private sector subcontractors, for example when it comes to communication, technical expertise, document inspections and, of course, external laboratories for the testing of products.

In addition to inspection and control activities, many MSAs, as illustrated below, proactively inform manufacturers and their representatives or importers about the regulatory requirements that are in force or coming into force. This can be an effective way to improve compliance, especially when it comes to newly adopted regulations.



The role of proactive and preventative information activities in market surveillance

Examples of proactive information activities:

- Most commonly, MSAs hold information meetings, send out newsletters and publish guidelines on how to comply with the specific legislative provisions.
- Some MSAs issue brochures, guides and leaflets.
- Some MSAs work in cooperation with other public bodies such as Chambers of Commerce and national Agencies to disseminate information about the regulatory requirements for products.
- MSAs can make public announcements beforehand to inform manufacturers and their representatives or importers about planned market surveillance action(s), by e.g. publishing their yearly market surveillance programme on their website.

Example of current practice:

UK Regulatory Body publishes Tyre Labelling Factsheet online

The UK Government body responsible for the tyre labelling regulations has published a factsheet “Practical Guidance for UK suppliers” on its website https://www.gov.uk/government/uploads/system/.../tyre_federation_booklet.pdf. The guidance had been developed by the then enforcement body in conjunction with the national tyre industry body.

Some MSAs publish the results of market surveillance activities on their website or in other public forums. This can be a way of discouraging possible improper behaviour by economic operators and be seen as an extra sanction in case of non-compliance. Publication can be in the form of case-by-case-publications, sectorial reports or annual reports, all depending on national legislation and strategies.

Since manufacturing of tyres is in many cases based outside of Europe, cooperation with Customs authorities can be an effective way to prevent non-compliant tyres from entering the EU-market. However, Customs often have other priorities and activities, which prevents them from prioritising checking the compliance of imported tyres. It might however be useful to actively provide national Customs authorities with simple guidance material about the regulations and relevant product requirements in force.

Some MSAs take part in the national processes when new regulations are implemented and national positions are established. Representatives of other MSAs may participate in the meetings where requirements for tyres were discussed and agreed among EU co-legislators. MSAs can provide important input to the regulatory process e.g. to ensure new regulations are clear, consistent and enforceable.

Recommendations for MSAs

- *Each Member State should consider how to organise its market surveillance in order to make it most appropriate for the specific national conditions.*
- *MSAs should consider whether in-house personnel should be used for all market surveillance activities or if external expertise should be used.*
- *MSAs should consider whether proactive and preventative activities should be carried out in order to inform manufacturers, their representatives and importers about the regulations that are in force or will come into force.*
- *MSAs should consider if the results of market surveillance activities should be published or made publicly available in other forms.*
- *MSAs should consider how to cooperate with national Customs authorities in market surveillance.*
- *MSAs should consider taking part in the formulation of a national position on proposed new legislation, especially regarding enforceability.*
- *MSAs should cooperate and provide each other and the Commission with information in order to assist the application of these Regulations e.g. through the ADCO and by electronic means of communication.*

2.2 How to establish Inspection Programmes

Within these Guidelines, the expression “national inspection programme” is used to indicate a number of actions that go beyond product testing. An Inspection Programme can in fact be done at different levels including quick technical inspection, document(s) inspection, visual product checks, visual label checks, product laboratory testing, and also other surveillance activities.

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

More detail on the recommendations can be found in <http://www.ECOPLIANT.eu/wp-content/uploads/2013/10/D1.4-Testing-Programmes-and-Full-Compliance-Testing-Activities.pdf>

2.2.1 Development of national inspection programmes

Since REGULATION (EC) No 1222/2009 clearly places the responsibility for checking compliance with the Member States, then national inspection programmes should be designed and developed to detect non-compliant tyres that are in the market. MSAs should focus attention both on the desired *outcome* (result) of the programme and *content* (verification methodologies) of the programme.

There are several outcomes that can be considered and expected from a national inspection programme:

1. To detect non-compliant products
2. To ensure that detected non-compliance is dealt with by appropriate enforcement actions
3. To establish levels of compliance in order to get an overview of the market or for any other kind of data collection
4. To use non-compliance (suspected or confirmed) as a means to start a dialogue in order to engage industry or business.

There are different compliance verification methodologies that can be applied to achieve the expected outcome. Those that should be considered for the national inspection programme are:

- Checks on declarations made on the labels affixed to tyres on display or described in catalogues or internet pages
- Visual product checks (in situ/in laboratory)
- Checks of other requirements e.g. document inspection or information requirements,
- Compliance testing according to the procedure given in the regulations

Once the intended outcome and associated methodology have been established, there are several factors that may help to determine the content of the inspection programme i.e. what should actually be inspected, when, by whom and on what grounds. For example, tyre category(s) with a history of non-compliance can be targeted. Additional information on this issue can be found in Chapter 2.3.

Any inspection programme should include a strategy for disposal of the tyres taken from the market after their verification checks/testing has been conducted.

2.2.1.1 Recommendations for MSAs

- *National inspection programmes should be designed and developed to effectively detect non-compliant tyres that have been or are being placed on the market*
- *When developing a national inspection programme:*
 - *Ensure that there is a clearly defined desired outcome (what would you like to achieve)*
 - *Ensure that there is a clearly defined desired content (which tyre categories and specific products to select)*
 - *Ensure that there is methodology to develop content (what methods should be used: shop visits, internet searches, visual inspections, document inspections, testing)*
 - *Ensure that there is a suitable disposal strategy in place.*

2.2.2 Coordination of inspection programmes

Coordination of inspection programmes between MSAs can use the available resources much more efficiently. This can be done between national MSAs, e.g. MSAs responsible for different product directives e.g. energy labelling, RoHS and/or LVD-directives etc. and/or among regional MSA, or EU-wide, e.g. between tyre MSAs (such as in MSTyr). Sharing details of planned inspection programmes is not a legislative provision of the regulations, even though sharing results on non-compliant products is mandatory. Many MSAs however currently share additional information in order to meet mutual objectives. Coordination opportunities might for example occur via the ADCO or on an EU level through the types of programme coordinated by PROSAFE.

Sharing information, programme coordination and further collaboration amongst MSAs provides numerous benefits, e.g. increased capacity and skills building, cost savings, better access to laboratory facilities etc. There are some practical opportunities and tools for sharing of information between MSAs. A number of support systems are in place for MSAs at EU level, such as the ADCO, Circabc and ICSMS. More information regarding platforms where data can be shared is given in Chapter 2.8.

There can be barriers to an effective coordination of inspection programmes. These can be typically explained by the following factors, which should be addressed if coordination of inspection programmes is to be achieved:

- **Defined objectives:** the purpose of sharing information about planned inspection programmes should be set and agreed among participants. The task is to arrive at coordination (or at a coordinated planning) of the inspection programmes.
- **Detail:** the level of detail (e.g. tyre category or model specific) to be shared, as this may impact on resources requested from each participant of a coordinated inspection programme.
- **Confidentiality:** ownership and access to data should be established and agreed in advance.
- **Communication:** contact points should be appointed to ensure proper communication and data flow and that any changes to inspection programmes are rapidly shared.
- **Time constraint:** careful time consideration and appropriate process planning is needed for establishing national inspection programmes.
- **Flexibility:** the capability of each partner to positively manage changes in the initial process planning should be considered, since it varies between countries.

Example of current practice in another regulatory area:

Sharing inspection programmes and data among the Nordic countries

The Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) have had a close cooperation in Ecodesign and Energy labelling market surveillance since 2011. As the Nordic markets for products often have the same manufacturers, importers and products, the conditions for market surveillance cooperation are good. All market surveillance officers in all five countries have some involvement in the cooperation. As a part of this, the countries exchange their yearly market surveillance plans. So far, the plans have been shared by e-mails, but recently a web service has been set up for sharing information.

By sharing market surveillance programmes, common inspection areas are identified at an early stage. If two or more countries have decided to test the same product category, reconciliations are made to avoid selecting the same product models. The results of inspections are also shared. Because the Nordic market is fairly homogenous, there have been cases where non-compliant products have been withdrawn in several Nordic countries based on test results from just one country.

2.2.1.1 Recommendations for MSAs

- *When coordinating inspection programmes, ensure that existing opportunities - EU-wide and regional - are identified and taken advantage of.*
- *When inspection programmes are written in national languages, ensure that there is a comprehensive summary in a widely shared language, for example English.*
- *Ensure also that barriers are identified and properly managed before coordinated inspection programmes are planned and developed.*

More detail on the recommendations can be found in <http://www.ECOPLIANT.eu/wp-content/uploads/2013/10/D1.2-Document-Inspection.pdf>

2.3 How to select tyres for detailed inspection

There are more than 350 different brands of tyres on the EU market. Such brands may offer a range of different models and sizes of tyre. Therefore, it is necessary for the MSAs to carefully select the types of tyre to be inspected. There are different techniques to use for these selections. These have different benefits and effectiveness, depending on the specific objective of the inspections.

Product selection criteria can be divided into two main groups. Both give a different outcome:

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

The product selection should be justifiable on a number of grounds. To avoid criticism or bias, “guidelines” detailing the criteria used for targeting products should be developed and published by the MSAs.

Risk-based sampling is a selection approach for brands and/or models based on a set of factors related to a perceived increased risk of those tyres failing the compliance requirements. In general, it is more common to select tyres according to a set of criteria rather than choose a random sample for testing - especially where resources e.g. budgets for testing, are constrained. However, examples do exist of the combination of the random and the targeted approach for products selection.

Random selection is typically made when there is no data available or the MSA has no previous experience of that tyre sector or of the tyre regulations. Sometimes it includes previously “good” manufacturers, who have not had any products tested for some time.

The following selection criteria have been found to be frequently used by MSAs working in other regulatory areas (and are expected to be equally applicable to energy labelling of tyres):

- (Tyre) sectors with high energy consumption
- (Tyre) category with a history of relative high levels of non-compliance
- (Tyre) category involved in international complaints.
- (Tyre) category with new technology being used

For brand selection, MSAs can use the following criteria:

- Brand with a history of non-compliance
- Brand involved in international complaints
- Brand with a high market share
- Brand in low price segment of the market
- Brand with low price/high performance claim ratio

When it comes to model selection, MSAs have considered the following criteria to be of most importance:

- Model highlighted by other Member State complaints
- Model highlighted by intelligence or complaints from consumer groups and/or individuals
- Model for which the technical documentation indicates possible risks for technical non-compliance
- Model highlighted from findings of other organisations i.e. environmental NGOs, EU projects, etc.
- Model with high market share, new technology, smaller size, unusual design features

In addition, some MSAs also have sampling strategies for the selection of the individual samples of the models that are to be inspected. Preferably, these should be randomly chosen and picked-up by the MSAs to make sure that they are not "special" or "premium" units.

2.3.1 Recommendations for MSAs

- *Effective product targeting is especially important when legislation covers such a large number of tyre types.*
- *Well-thought-out targeting techniques should be applied when selecting brands and models for compliance inspection.*
- *Specific criteria ('risk factor') to select product categories, brands and specific models for compliance inspection can be applied. Important selection criteria for MSAs are:*
 - *High energy consumption.*
 - *High market share and history of non-compliance for brands.*
 - *Other Member State or international complaints.*
 - *Ambiguities in the supplied technical documentation.*
- *Product targeting must be justifiable. In order to avoid criticism or bias, "guidelines" detailing the criteria used for targeting products should be published by the MSAs.*
- *If resources permit, random and targeted product selection can be successfully combined with a market share approach.*
- *Product documentation inspection can be used as a product targeting technique prior to laboratory testing. See Section 2.6.*
- *Complaints or reports or other forms of intelligence from external parties about possible non-compliant products can be an important targeting method.*
- *The specific samples selected for testing need to be randomly chosen and picked-up by MSAs. They should be representative of what is being supplied to the market. If samples are obtained directly from the producer, MSAs must ensure that the samples chosen are not specially prepared "premium" units.*

More detail on the recommendations can be found in <http://www.ECOPLIANT.eu/wp-content/uploads/2013/10/D1.3-Product-Targeting-Techniques.pdf>

2.4 How to conduct a label inspection at point of distribution to the end-user

REGULATION (EC) No 1222/2009 requires tyres to have one of the following:

- A label stuck to the tyre indicating the fuel efficiency class, the external rolling noise class and measured value and, where applicable, the wet grip class

Or...

- before the sale of the tyre, the label is shown to the end-user and is clearly displayed in the immediate proximity of the tyre at the point of sale.

The label needs to fulfil the applicable requirements; otherwise the tyre does not meet the requirements of the regulation. Most of these requirements can be checked by a visual examination of the information displayed on tyres at the point of sale or in catalogues, internet web pages and advertising materials. MSA staff will need to travel in order to inspect products at the point of sale. However, as there can often be a range of tyres available for inspection at a single location, then this form of market surveillance can be a cost effective activity.

Two parties share responsibility for ensuring that the label is available for examination by the end user - the supplier for making the necessary information available and the sales organisation (if different) for ensuring the information is correctly displayed. Experience has shown that the failure to display the correct information is more often traced to the actions (or lack of actions) by the sales organisation. This is a factor to consider when planning a label inspection programme where extra attention may be given to sales organisations with:

- A history of non-compliance.
- Selling product categories with a history of relative high levels of non-compliance.

2.4.1 Recommendations for MSAs

- *Label inspection is an important part of market surveillance and should be considered when establishing national inspection programmes.*
- *Label inspection can be a stand-alone activity: if the content of the label does not meet the requirements of the regulation, then there is a non-conformance.*
- *It can also aid the selection of models for further compliance verification through document inspection and laboratory testing.*

2.5 How to conduct document inspection

Para 4 of Article 4 of REGULATION (EC) No 1222/2009 reads “Suppliers shall make technical documentation available to the authorities of Member States on request, for a period ending five years after the last tyre of a given tyre type has been made available on the market. The technical documentation shall be sufficiently detailed as to allow the authorities to verify the accuracy of information provided on the label with regard to fuel efficiency, wet grip and external rolling noise.”

This technical documentation needs to fulfil the applicable requirements. Otherwise the tyre does not meet the requirements of the regulation. Therefore, document inspection is an important methodology for market surveillance, often relatively inexpensive to perform, and should be considered when establishing national inspection programmes. Note that compliant documentation does not necessarily mean a technically compliant product.

Obtaining documentation for tyres has proved challenging for some MSAs simply because the supplier is not situated in their country i.e. where they have no jurisdiction. See Sections 2.7 and 2.8 for advice on dealing with this type of issue.

Example of current practice in another regulatory area:

Denmark uses document inspection as means to select models for lab testing

Laboratory testing of products according to regulations can be an economic burden for MSAs. Thus, it can be a good idea to target the laboratory tests in order to reserve laboratory tests just for those models with a well-founded suspicion of non-compliance. The Danish Market Authority usually begins inspection of a product series by conducting document inspections of several models. In cases where the documentation is clearly non-compliant, the product does not comply with the applicable regulation and actions can be taken directly. However, in many cases, the formal non-compliance cannot be established, but the MSA has a well-founded suspicion upon which to base the further enforcement activities.

On the basis of the information obtained from the document inspection, a subset of the inspected models is chosen for lab tests. When selecting models for lab tests on this basis, the following factors are inter alia taken into account:

- Models, which according to the results from the document inspections are clearly non-compliant, are excluded from laboratory tests.
- The brand's performance in previous inspections
- Overall impression of the presented documents (credibility, transparency, issuer of documents)

2.5.1 Recommendations for MSAs

- *Document inspection is an important part of market surveillance and should be considered when establishing national inspection programmes.*
- *Document inspection is a stand-alone activity: if the documentation of a tyre does not meet the requirements of the regulation, the tyre does not comply.*
- *It can also be used as a method to select models for further compliance verification through laboratory testing.*
- *It is essential to define harmonised rules for inspections, including document inspections, for all the Member States. Otherwise, with different rules and procedures, the same manufacturer/importer could send the same documentation to*

different national MSAs in the same or different countries and find it was only accepted in some of them.

More detail on the recommendations can be found in <http://www.ECOPLIANT.eu/wp-content/uploads/2013/10/D1.2-Document-Inspection.pdf>

2.6 How to conduct compliance verification laboratory tests

The purpose of this section is to describe how laboratories in the EEA should be used by MSAs for testing according to the verification procedure defined in the Regulations for tyres.

The technical product compliance is determined through measurements done in accordance with the methods given in Commission Regulation (EU) No 1235/2011 of 29 November 2011 amending Regulation (EC) No 1222/2009 with regard to the wet grip grading of tyres, the measurement of rolling resistance and the verification procedure.

This verification procedure, given in Annex IV, requires one tyre to be tested initially. If its results meet the values declared on the label, then the test is successfully passed. If they do not, then three more tyres have to be tested and the average of the results taken.

Annex IVa, describes the laboratory alignment procedure for the measurement of rolling resistance. It is important to be aware of this as the MSA will need to have complete confidence in the accuracy of the test results.

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

2.6.1 Compliance verification through laboratory testing activities

When conducting verification testing, the usability of results should always be a consideration. Mutual recognition, which could mean the increased use and acceptance of results from the reference laboratories, including results from laboratories in other countries, is one way of achieving this.

If there are no suitably skilled tyre test laboratories in their MS, some MSAs could consider managing the testing to take place in another country through one their own national laboratories. That can enable expert supervision of the non-national laboratory and can ensure that the test reports are translated into the correct language for the MSA.

2.6.1.1 Recommendations for MSAs

- *The technical product compliance should be determined through measurements done in reference laboratories following the method(s) published in the tyre regulations.*
- *When selecting laboratories, the following practical considerations should also be made:*
 - *Clear objectives, including the applicable verification procedure to be used*
 - *Legal considerations, e.g. handling of evidence in line with national processes*
 - *Financial planning*
 - *Contingency planning, e.g. in the event of unforeseen circumstances*
 - *Mutual recognition of the test results by other MSAs in other Member States*
 - *Laboratories should not have contracts with manufacturers, importers or dealers of the tyres to be tested*

2.6.2 Third Party Funding

The monitoring, verification and enforcement of these regulations requires resources (human, financial, time). In some cases, MSAs may not have all such resources making market surveillance almost impossible and as consequence putting at risk the regulation's intended economic and environmental benefits. Some MSAs consider funding by third parties as a way to enlarge the available economic resources for laboratory testing.

A third party can be described as any private or public subject not directly involved in market surveillance e.g. trade associations, industry or grants, and other funding initiatives including European Commission's co-funded projects, such MSTyr. There are several opportunities for third party funding which include but are not limited to the following:

- **Regulatory:** Some MSAs have powers that allow for the recovery of testing and other costs from suppliers of noncompliant products.
- **Industry Cooperation:** Some MSAs strive to build successful and proactive relationships with industry in order to develop and progress market surveillance projects that are mutually beneficial to both parties. Cooperation can come in many guises: direct funding (subsidies), indirect funding (access to human or laboratory resources) and shared work.
- **EU Programmes:** Third party funding can also come via programme initiatives such as the Horizon2020 programme that is funding the MSTyr project.

2.6.1.2 Recommendations for MSAs

- *Different third party funding models can exist and can be used by MSAs as part of a balanced approach to raise financial resources in the context of national market surveillance actions.*
- *However, regardless of the model or models used, it is essential that a MSA retain the following characteristics as these factors help to support the operational effectiveness and efficiency of market surveillance:*
 - *Independence*
 - *Transparency*
 - *Impartiality*
 - *Objectivity.*

The recommendations laid out in this section are described in detail in

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

2.7 Sharing of inspection results amongst MSAs

Market surveillance, both at national and cross border level, can only be truly successful when public authorities cooperate and share information. Ideally, results from national inspections should be shared between MSAs whenever possible. This relates to label and document inspections and compliance verification laboratory test results. Plans for targeting particular parts of the tyre market can also be shared in order to coordinate the efforts of different MSAs towards riskier products and avoid duplication of activities.

The concept of exchanging information is one of the guiding principles of Regulation (EC) 765/2008 which sets out the mandatory requirements for accreditation and market surveillance relating to the marketing of products. The desired outcome of the coordination and sharing of information regarding product inspection results is to create a collaborative approach to market surveillance. A collaborative approach ensures most effective use of resources amongst MSAs, avoids duplication of work and demonstrates to economic operators that compliance is a pan-European requirement, although addressed at national level.

Among MSAs that are sharing test results, the information is normally shared as soon as the process has ended or the non-compliance has been confirmed.

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

- ADCO: Member States are obliged to appoint MSAs in directive specific Administrative Cooperation (ADCO) Working Groups. The Tyres ADCO is currently (2016) chaired by the DG ENER and meets twice a year as a forum for MSAs to exchange information and best practices.
- Circabc: The Communication and Information Resource Centre (Circa) is an electronic workspace developed by the Commission to enable secure sharing of documents for the various ADCO and other working or interest groups.
- ICSMS: Information and Communication System for Market Surveillance -a database maintained by the European Commission. All MSAs are obliged to use it to record information on products that present a risk as specified in Regulation 765/2008. A further use of ICSMS is to use it to notify the intention of passing the responsibility for dealing with a non-compliance to another MSA. This feature “passing the baton” can apply where another MSA is better placed to deal with the non-compliance, perhaps because they have specialist experience or perhaps because the headquarters of the supplier or manufacturing plant of the tyre is based in their territory.
- RAPEX: The EU Rapid Alert System (RAPEX) is a system used to facilitate the rapid exchange of information and actions by MSAs to prevent or restrict products which present a serious risk to the health and safety of consumers. It is normally not used for tyres.

Recommendations for MSAs

- *Fulfil legislative obligations relating to the exchange of information when carrying out market surveillance*
- *Make use of existing common and accessible formats or platforms:*
 - *ICSMS could be used for sharing case data, especially regarding non-compliant tyres.*
- *Consider security and confidentiality issues which may restrict the sharing of information. Note that ICSMS is intended as a secure database that is only accessible to MSAs.*
- *A register of MSA contacts should be created and maintained if successful communication is to be achieved.*

The recommendations laid out in this section are described in detail in <http://www.ECOPLIANT.eu/wp-content/uploads/2013/10/D1.6-Sharing-Data-Between-Member-States.pdf>

2.8 How to enforce the provisions of the tyres regulations

Enforcement is the action taken by the market surveillance authorities against manufacturers and importers of non-compliant tyres. Enforcement relies on transparent and rigorous product inspection. Investment in this effort is necessary in order to protect economic operators and consumers against non-compliant products.

Article 12 of REGULATION (EC) No 1222/2009 specifically deals with enforcement, though it says little more than “... Member States shall ensure that the authorities responsible for market surveillance verify compliance with...this Regulation...”

As the legal enforcement systems are the responsibility of each MS, the ways in which they deal with non-compliant tyres can vary.

In practice, when finding a suspected non-compliant tyre, many MSAs follow an approach that starts with confronting the manufacturer/importer with the results of the inspection. The response of the manufacturer can influence how the MSA will proceed. If the manufacturer proposes corrective actions, and these are acceptable and completed in a satisfactory manner, the MSA might close the case. In other scenarios, the MSA might decide to initiate a physical test of the tyre. Depending on the circumstances, fines and sales bans could be imposed.

Example of current practice in another regulatory area:

Suspected non-compliance often handled with voluntary remedy actions in Sweden

When finding suspected non-compliance, whether it is from a document inspection or from Step 1 in the verification procedure (testing one single unit, if applicable), the Swedish MSA always starts with approaching the manufacturer (or importer). The manufacturer will receive a letter explaining the case, including possible test report and other documentation that is showing suspected non-compliance. In this letter, if applicable in the specific case, the Swedish MSA also informs the manufacturer that if necessary, three additional units of the product might be tested, and in case of proven non-compliance, the manufacturer will be charged for the whole testing cost. Sweden is a relatively small market and lots of goods come from other EU-countries. The company is therefore asked to fill in a form where he can state if he is only a retailer and therefore not the responsible manufacturer or EU-importer. In that case, he has to state from whom he has bought the products and he is asked to provide an invoice. By receiving the information in this form, the Swedish MSA knows in which country the responsible manufacturer or importer is situated, and the MSA can plan its future actions based on this.

In most cases, the manufacturer submits some kind of information or proposal that can solve the case already at this stage. Often the manufacturer proposes a voluntary remedy action that will stop the suspected non-compliance, e.g. changes of the technical characteristics of the products, changes in the technical information, or voluntary withdrawal from the market. If voluntary remedy actions are considered appropriate, the MSA will close the case. Follow-ups will be made, if necessary. Unfortunately, it is also quite common that the manufacturer provides some information that shows that the product is out of scope of the applicable regulation, e.g. by providing information on when the product was placed on the market, or by claiming “special purpose” product, which is possible according to some regulations. Often, the MSA will close these cases.

If there is no acceptable response from the manufacturer, the Swedish MSA can go ahead and test three additional units of the product. If confirmed non-compliance, the Swedish MSA has the possibility to issue sanctions and fines and also to ban products.

The Swedish MSA has recently had a number of cases where the responsible manufacturer or importer has been situated in Germany. The complete case with suspected non-compliance has in these cases been sent to BAM, who is coordinating the Ecodesign market surveillance in Germany.

When finding suspected non-compliance that is deemed as “minor”, the Swedish MSA sometimes only sends out an administrative “warning” or “observation”, informing the manufacturer that minor non-compliance has been detected and that it should be corrected. “Minor” non-compliance can for example be small mistakes or problems in the technical documentation.

Taking enforcement action against a manufacturer or importer that is situated in another EU country can be challenging for MSAs. When these problems arise, some MSAs try to address the economic operator within their own country. Other MSAs forward the suspected non-compliance cases to the MSA in the country where the manufacturer or importer is situated. Until this issue is clarified further through revisions to the existing regulations or a new regulation on market surveillance, each country must follow its own national rules when handling these types of cases.

The possibility of MSAs using externally sourced data as a basis for their enforcement actions is important for optimising use of existing resources. External data in this context is defined as data that has not been gathered under the supervision of the MSA in question itself, but comes from another source e.g. data gathered by a MSA in another EU country. It is also possible that foreign data can come from a EC project like MSTyr or from an

industry organisation. In principle, all these kinds of foreign data could, under certain conditions, be used for enforcement actions. How much this is possible depends on the legal system in each country but also on other factors like the reference status of the laboratory responsible for the measurements, sampling procedure, handling of tested products and so on. The starting point for MSAs should be to assess the foreign data and to try to make the best possible use of it.

2.8.1 Recommendations for MSAs

- *National legislation and national practices will determine the enforcement system of each country, but it is useful for MSAs to study enforcement systems of other EU-countries in order to compare how suspected non-compliance cases are handled.*
- *A guiding principle, set in the EU legislation, is that enforcement actions should always be appropriate, proportionate and dissuasive.*
- *Consider if public publishing of market surveillance results is in line with your national legislation and strategies.*
- *Handling of non-compliant cases where the manufacturer or importer is situated in another EU-country may differ depending on national legislations. If no specific procedure is stipulated in the national legislation, the MSA could*
 1. *try to address the manufacturer or importer in the country where they are situated (even if no legal jurisdiction in this foreign country)*
 2. *transfer the case to the MSA in the country where the manufacturer or importer is situated*
 3. *prohibit the product from being placed on the national market*
- *Scale up the level of enforcement activities by using the EU-wide available inspection resources in the most efficient manner, e.g. by optimal use of information and available data, including external data.*
- *Assess the quality of external data and make a risk-assessment to evaluate if the results can be acted upon. Use it wherever you can.*
- *Share your own data with other MSAs in EEA countries.*
- *If possible, make sure your inspection data can be made available in a commonly shared language (such as English) for easier transfer to other EEA countries.*
- *Arrange good support and communication between MSA supplying and receiving data.*
- *Communicate good results and possible problems and barriers to the data supplier.*
- *Record inspection results in EU-wide databases e.g. ICSMS, in order to spread available data.*
- *Consider participation in exchange of EU experience and data (e.g. ADCO), and participation in EU projects, in order to strengthen the enforcement level.*
- *For improved cross-border cooperation in market surveillance, the MSAs can ask in which countries the product and its equivalent models are sold.*
- *For improved cross-border cooperation in market surveillance, the MSAs can ask in which country the manufacturer or importer is situated.*

The recommendations laid out in this section are described in detail in <http://www.ECOPLIANT.eu/wp-content/uploads/2013/10/D1.5-Enforcement-Activity-Follow-Up.pdf>

3 Summing up

The purpose of these guidelines is to provide an introduction to *Good Practices for Coordinated and Effective Market Surveillance of tyres*.

However, these guidelines have primarily been formulated based on collected information and experiences and analyses gained within the ECOPLIANT and EEPLIANT projects so this version is not expected to be final version of these guidelines. As experiences and practices amongst tyre MSAs continue to evolve over time, these best practice guidelines will be developed further to reflect those changes.