

## Work Package 3 - TRAINING, Module D

*Sharing results, enforcement, local and cross border specifics*

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This is the 4th of 4 training modules developed in the Energy Efficiency Compliant Products 2014 (EEPLIANT) programme.

EEPLIANT is a programme of coordinated activities being undertaken by market surveillance authorities across the EU.

Much more detail on EEPLIANT is available on [www.eepliant.eu](http://www.eepliant.eu)

The materials covered in the 4 training modules are based on the document Best Practice Guidelines. Users of these training materials need to download a copy of these from <http://eepliant.eu/index.php/knowledge-base> in order to maximise the benefit from using training modules A, B, & C.

## Overview of this Module

### 1. Sharing of results (Testing and Document Inspection)

Discussion

### 2. Enforcement

Discussion

### 3. Local and cross-border specifics

Discussion

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## Best Practice Guidelines Section 2.8

# Sharing Results

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The following group of slides is covered in detail in Section 2.8 of the Best Practice Guidelines

## Sharing Results

- **A collaborative approach ensures**
  - best use of resources amongst MSAs
  - avoidance of duplication
  - demonstrates to economic operators that compliance is a Pan-European requirement.
- **MSAs share results at the end of the process or when non-compliance is confirmed**

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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.

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. The results of product targeting can also be shared, in order to coordinate the efforts of different MSAs towards more risky products.

## Sharing Results

- **Guiding principle of Regulation (EC) No 765/2008**
- **Supported by the Ecodesign and Energy Labelling Directives**
  - Mandatory under Articles 3 (Energy Labelling) and 12 (Ecodesign)
  - Authorities are required to inform Commission (when appropriate also other Member States) of market surveillance results
- **MS will be most successful at national and cross border level if authorities cooperate and share results:**
  - document inspections, screening tests,
  - compliance verification lab tests.

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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. It is also a requirement under Article 12 of the Ecodesign Directive and of Article 3 of the Energy labelling Directive. Both Directives states that Member States are required to keep the Commission and, where appropriate, other Member States informed of their market surveillance results and specifically that “in cases of withdrawal of the product from the market or prohibition on placing the product on the market, the Commission and the other Member States shall be immediately informed”.

## Support for sharing Results

- **Administrative Cooperation (ADCO)**
  - Member States are obliged to appoint MSA in directive specific ADCO Working Groups. The Ecodesign and Energy Labelling ADCOs meet twice a year as forums for MSAs to exchange information and best practices.

-  **Europäische Kommission** | **CIRCABC**  
The Communication and Information Resource Centre allows secure sharing of documents for the various ADCO and other working groups

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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. These are described in this and the following 2 slides.

Member States are obliged to appoint MSAs in directive specific Administrative Cooperation (ADCO) Working Groups though not all of the EU MS currently send representatives to the meetings.

## Support for sharing Results



- ICSMS – The Commissions Information and Communication System for Market Surveillance, should be used by MSAs to record information on the products they are investigating.
- The generic templates in ICSMS can be used for energy labelling and ecodesign. ICSMS is expected to be further developed in 2017 for these regulatory areas.

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ICSMS is a database of product information compiled by MSAs. It covers almost all regulatory areas including ecodesign and energy labelling. It is the intention that all MSAs record all of their product inspection results (whether the product is found to be compliant or non-compliant) in this one database, though currently it appears that the majority do not. One of the reasons why MSAs do not use it is that whilst it has generic templates for ecodesign and energy labelling, it does not have any that are product specific and so users are unable to record detailed results information, nor make energy efficiency calculations within ICSMS.

It is expected that ICSMS will be further developed to provide product specific Directive Related Product Information (DRPI) templates for many of the products covered by the ecodesign and energy labelling regulations.

It appears that users who are very familiar with ICSMS are very enthusiastic about it. DG GROW can provide training for new users of ICSMS at its training facility in Brussels.

## Support for sharing Results

- **Ecopliant Database** for Ecodesign Market Surveillance
- Standalone ecodesign-specific system
- Review of transferability between the Ecopliant database & ICSMS is being carried out
- Further development to include energy labelling is being considered

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It had been intended to enable the ECOPLIANT database to also be used for energy labelling purposes. There is a budget dedicated to supporting this in the EEPLIANT project and the upgraded database will be made available to all EEPLIANT participants if the necessary developments become incorporated into the database. But...

Since the use of both the ECOPLIANT and ICSMS databases can cause resourcing issues for MSAs, a review is being undertaken of the interface options and capabilities between ICSMS and the ECOPLIANT database. It is possible that the two systems could merge or automatically communicate with each other to minimise input workload for MSAs though it is more likely that ICSMS will be further developed to include the additional features of the ECOPLIANT database. If so, ICSMS is expected to be used in place of the ECOPLIANT database.



## Recommendations

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

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These RECOMMENDATIONS are those given at the end of Section 2.8 of the Best Practice Guidelines.

## Discussion

### **Sharing Results**

*Do you share results on a regular basis? How?*

*How would you improve this?*

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This slide encourages you to reflect on the information provided in the preceding slides and to discuss the content and main topics with colleagues.

## Best Practice Guidelines Section 2.9

# Enforcement

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The following group of slides is covered in detail in Section 2.9 of the Best Practice Guidelines

## Enforcement

- Enforcement is action taken by MSAs against manufacturers and importers of non-compliant products
- Relies on transparent and rigorous product inspection
- Investment in enforcement is necessary to protect consumers
- Legal enforcement systems vary between Member States

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Enforcement is the responsibility of each MS, though enforcement actions can be much more effective where several MSAs collaborate and synchronise their enforcement activities.

## Enabling enforcement

- The responsibilities for enforcement by the Member States are best described in the Ecodesign Directive. It requires the MS' to:
  - ensure that the necessary means are available for effective market surveillance
  - take all appropriate measures to ensure that only complying products come onto the market
  - designate the authorities responsible for market surveillance
  - arrange for these authorities to have and use the necessary powers to take the appropriate measures incumbent upon them under the Directive

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## Enabling enforcement

### The Ecodesign Directive states that:

- Member States should arrange tasks and powers of authorities to enable:
  - Organization of appropriate checks
  - Require concerned parties to provide all necessary information
  - take samples of products and subject them to compliance checks

### The Energy Labelling Directive states that

- Member State(s) concerned shall take the necessary preventive measures and measures aimed at ensuring compliance

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The Ecodesign Directive says “...Member States should ensure that the necessary means are available for effective market surveillance. Member States shall take all appropriate measures to ensure that only products come on the market that comply. They shall...

- organize appropriate checks
- require the parties concerned to provide all necessary information
- take samples of products and subject them to compliance checks...

Where a Member State ascertains that a product is not compliant the manufacturer shall be obliged to make the product comply with the provisions of the applicable implementing measure. Where there is sufficient evidence that a product might be non-compliant, the Member State shall take the necessary measures which, depending on the gravity of the non-compliance, can go as far as the prohibition of the placing on the market of the product until compliance is established...”

## Enabling enforcement

- Regulation 765/2008 also states that Member States should withdraw non-compliant products and cooperate to share information
- Both ICSMS and CIRCABC have been used for test data transfer
- Until either a revised Ecodesign or Energy Labelling Directive or new regulation on market surveillance is agreed, each country must follow its own national legislation and practices

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## Enforcement in Practice

### When finding a non-compliant product..

- Many MSAs confront the manufacturer/importer with the results of the inspection
- The reaction of manufacturer decides how the MSA will proceed:
  - Manufacturer proposes and implements remedies = may close case
  - In other cases the MSA may initiate physical product test
  - Failure of step 1 verification procedure -> three additional tests (step 2)
  - Finally fines and sales bans can be executed, depending on situation

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It is likely that most MSAs follow the so-called “enforcement pyramid” that begins with dialogue between the parties and informal requests to comply, followed (if necessary) by warnings, civil penalties and, in extremis, legal action through the courts.



## Enforcing Penalties

- Member States should determine the penalties to be applied in cases of non-compliance
  - Penalties should be effective, proportionate and dissuasive
  - They should take into account the extent of non-compliance and the number of non-complying units placed on the Community market
- In case of prohibition/withdrawal from the market, the Commission and other Member States shall be immediately informed.
- The concerned party shall be notified of such a decision and informed of the legal remedies available under the laws in force in the Member State, and the time limits applying to such remedies

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MSAs are expected to have a formal procedure for dealing with enforcement since the level of action taken by the MSA is likely to vary with the level of non-compliance and its circumstances. There needs to be a consistent approach to the application and level of sanctions applied.

## Enforcement example: NMRO (UK)



- The Macrory Review (2006) identified **six principles** that should underpin any **regulatory sanctioning** regime:
- Aim to **change the behaviour** of the offender
- Aim to **eliminate any financial gain** or benefit from non-compliance
- **Be responsive** and consider what is appropriate for the particular offender and the regulatory issue
- **Be proportionate** to the nature of the offence and the harm caused
- Aim to **restore** the harm caused by the regulatory non-compliance, where appropriate
- Aim to **deter** future non-compliance.

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## Enforcement example: NMRO (UK)



The sanctions available to the NMRO in the UK under the Energy Labelling Directive 2010/30/EU are:

• **Compliance Notice**

- written notice requiring action from economic operator to bring products into compliance with the law and/or return to compliance within a specified period.

• **Variable Monetary Penalty**

- Monetary penalty designed to eliminate financial gain or benefit
- may impose for moderate to serious offences.
- can be issued with a compliance notice or a stop notice.

• **Stop Notice**

- Written notice which requiring immediate action in relation to an offence
- Prohibits an economic operator from carrying on an activity.

• **Enforcement Undertaking**

- voluntary agreement driven by an economic operator
- specific actions that make amends for non-compliance and its effects in specific timeframe.

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## Enforcement example: NMRO (UK)

- In the UK, Statutory Instrument 2010 No. 2617 (The Ecodesign for Energy-Related Products Regulations 2010), provides the NMRO with powers to enforce the ecodesign regulations.
- Key component: **Use of civil sanctions and cost recovery**
- Civil sanctions allow for discretionary, proportionate and cost effective courses of enforcement action to be taken.
- In case of an offence, all available evidence and all actions of the economic operator are considered
- Accordingly, NMRO considers issuing some form of sanction and any other appropriate preventative or remedial action.
- If noncompliance is proven, NMRO can require manufacturers to pay for the costs of testing where appropriate.

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This, and the examples in the following slides, are case studies taken from Section 2.9 of the Best Practice Guidelines.

Case studies can provide a useful route to learning since they provide a real and practical description for how an activity is undertaken by a similar organisation.

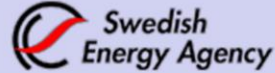
## Enforcement example



- **Swedish Energy Agency (SEA)** is Swedish MSA for Ecodesign & Energy labelling
  - SEA often handles suspected non-compliance with **voluntary remedy actions**
  - SEA **always approaches the supplier** when non-compliance is suspected from document inspection or in Step 1 verification procedure.
- Supplier (manufacturer/importer) receives a letter explaining the case:
  - With possible test report and other non-compliance documentation
  - If applicable, informing manufacturer that three further units of the product may be tested, and ***if proven non-compliant they will be charged for whole testing costs.***
  - Manufacturer/importer asked to reply to the SEA within 10 days.
  - Also asked to fill in form where he can state if he is only a retailer and therefore not the responsible manufacturer or EU-importer. If retailer, must state where products were purchased and provide invoice so further action can be taken.

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## Enforcement example



- Most of the time ( $\approx 90\%$ ), **manufacturer/importer submits information** or proposal that **solves the case at this stage**.
- Often a **voluntary remedy action** is proposed
  - E.g. changes to product technical characteristics, changes to the technical information, or voluntary withdrawal from the market.
  - If considered appropriate, SEA will close case
  - Follow-ups will be made, if necessary
- Unfortunately information is often provided to **show product is out of scope** of the applicable regulation
  - e.g. by providing information on when the product was placed on the market
  - by claiming “special purpose” product, which is possible in some regulations
  - Often, SEA will close these cases.

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## Enforcement example



- If no acceptable response from manufacturer/importer
  - SEA can test three additional units, if appropriate.
  - If non-compliant, SEA can issue sanctions, fines and ban products.
- When non-compliance is “minor”, SEA may send an administrative “warning” or “observation”
  - This informs manufacturer that minor non-compliance should be corrected.
  - E.g. small mistakes or problems in the technical documentation.
- Recently in a number of cases the manufacturer or importer was in Germany. The complete cases were sent to BAM, Germany’s Ecodesign market surveillance coordinator.
- SEA practices are expected to develop further in the coming years.

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## Enforcement example



Government of  
the Netherlands

### Enforcement Procedure

- First a warning and time period to the importer/manufacture (e.g. 2 months for incomplete documents) to eliminate the offence is given.
- If still non-compliant after two months, a 2<sup>nd</sup> time period for a penalty is imposed. This penalty must be paid if non-compliant after this period.
- Penalties and time periods correspond to the level of the offence.
  - The period must be reasonable for the type of deficiency
  - the penalty will be determined by e.g. the extent of marketed products or the benefits of non-compliance.
- Until now there were many situations in which warnings were given and a few penalties were awarded. So far manufacturers /importers have taken action during the warning period or before a penalty would be imposed.

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## Enforcing across borders

- Taking action against importers/manufacturers situated in another country is challenging for MSAs
- Enforcement ability depends on national legislation
  - Some MSAs can, or will try to address the economic operator within their own country.
  - Other MSAs forward the suspected noncompliance cases to the MSA in the manufacturer/importer country

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There is a process in ICSMS “passing the baton” in which the responsibility for taking action is transferred 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 product is based in their territory.

The possibility of MSAs using data provided by a MSA in another MS as a basis for their enforcement actions is important for optimising use of existing resources. How much this is possible depends on the legal system in each country but also on other factors like the quality 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.

## Recommendations

- *National legislation and national practices will determine the enforcement system of each country, but it can be useful for MSAs to study enforcement systems of other EU-countries in order to compare handling of suspected non-compliance cases.*
- *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*
  - *try to address the manufacturer or importer in the country where he is situated (even if no legal jurisdiction in this foreign country)*
  - *transfer the case to the MSA in the country where the manufacturer or importer is situated*
  - *prohibit the product from being placed on the national market.*

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The RECOMMENDATIONS given in this and the next 2 slides are most of those given at the end of Section 2.9 of the Best Practice Guidelines. They highlight topics that impact on the effectiveness enforcement - so all MSAs should consider whether their operational procedures should be further adapted in order to continue to improve the effectiveness of their work.

## Recommendations

- *Scale up the level of enforcement activities by using the EU-wide available inspection resources in the most efficient manner, e.g. by optimal use of information and available data, including foreign data.*
- *Assess the quality of possible foreign data. Try to make the best possible use of foreign data.*
- *If not possible to use foreign data directly, at least use this data to start your own investigation or to target products within your own market surveillance programme.*

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## Recommendations

- *Share your own data with other EU-MSAs.*
- *If possible, make sure your inspection data can be made available in a commonly shared language (such as English) for easier transfer to other EU-countries.*
- *Arrange good support and communication between MSA supplying and receiving data.*

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## Recommendations

- *Communicate good results and possible problems and barriers to the data supplier.*
- *Record inspection results in EU-wide data bases in order to spread available data. The database to be developed in Ecopliant can be a first step.*
- *Consider participation in EU exchange of experience and data (e.g. ADCO) and participation in EU projects, in order to strengthen the enforcement level.*

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## Discussion

### **Enforcement**

*What is your local enforcement experience?*

*Do you take a soft approach or a hard approach?*

*Do you feel that you have sufficient enforcement power?*

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This slide encourages you to reflect on the information provided in the preceding slides and to discuss the content and main topics with colleagues.



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# Local and Cross Border Specifics

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## Discussion

### **Local Specifics**

*How is enforcement and market surveillance carried out in your local context?*

### **Cross Border Specifics**

*How do you work across borders?  
Which particular opportunities and challenges do you see?*

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This slide encourages you to reflect on the information provided in the preceding slides and to discuss the content and main topics with colleagues.