



ATLETE II
Appliance Testing for Washing Machines
Energy Label & Ecodesign Evaluation

**Implications of the Energy Labelling
Directive (2010/30/EU) and the
Ecodesign Directive
(2009/125/EC) on market surveillance
activities –
Review of surveys and
recommendations**

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About the ATLETE II project

Energy labels and ecodesign requirements are crucial drivers for market transformation towards more efficient appliances and phasing-out of the least efficient ones.

In addition, consumers should be sure that the products found on the EU market comply with the legislative requirements.

The goals of the ATLETE II project are to check the pan-EU compliance of washing machines with energy labelling and eco-design requirements using the new measurement method, to improve the capacity of testing laboratories and at the same time support co-operation among national Authorities for effective market surveillance.

The Project starts in May 2012 and is due to be concluded by end October 2014.¹



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¹ More information: http://www.atlete.eu/2/doc/Atletell_Project-overview.pdf



1 Why this document – Energy label and Ecodesign related market surveillance system

The Framework Directive 92/75/EEC on Energy Labelling of Household Appliances has been in place between 1992 and 2010, when the Directive 2010/30/EU of 19 May 2010 “on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products” was adapted, reflecting the Lisbon treaty requirements.

On 21 October 2009, the EU adopted the Directive 2009/125/EC on Ecodesign, “establishing a framework for the setting of ecodesign requirements for energy-related products”. Ecodesign aims at reducing the environmental impact of products, including the energy consumption throughout their entire life cycle.

As of 2014, 15 energy labelling and 25 ecodesign product category specific regulations were prepared and entered force, with at least ten more being under preparation and twelve more being under study.

This specific legislation is automatically valid at the EU level, involving all individual EU member states. The values declared on the energy labels and all the other information provided by suppliers and retailers is based on the manufacturer self declarations. It is the responsibility of individual EU member states to designate specialised market surveillance authorities, tasked to verify these claims.

The ATLETE and ATLETE II projects have been among the first European initiatives, organised with the support of the European Commission, to undertake a large scale product testing activity, to verify the energy label (refrigerating appliances and washing machines) and Ecodesign (washing machines) claims. These two projects are very unique, among other things, in the fact that they publish all outcomes of the projects – from the list of models selected for testing, to the full results, including the individual laboratory test report.

Within the ATLETE and ATLETE II projects, two in depth reviews and questionnaires on the national level market surveillance legislation and activities have been undertaken, the first one in 2010, the second one in 2013 (see list of literature). In addition, the ATLETE II team has also conducted a detailed MSA questionnaire on the model and country specific results of its tests.

Except of the ATLETE and ATLETE II projects, several other initiatives and projects have been conducted recently, to monitor, collect, and evaluate the legal system, competences, and level of activities undertaken by individual Market Surveillance Authorities in individual countries (all EU MS, or selected countries).



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Within the elaboration of this document, authors took into account all relevant documents and projects, to collect and evaluate the recent developments in energy label and Ecodesign related market surveillance activities around the EU.

1.1 Main summary

This document is based on the analysis and evaluation of market surveillance activities undertaken within the ATLETE, ATLETE II, ECOPLIANT and Come On Labels project, as well as the EU Energy label evaluation project.

In 2012, the ATLETE II project has undertaken a detailed evaluation of the national implementation of the market surveillance activities on the national level – by interviewing the individual national MSAs. In 2014, towards the end of the ATLETE II project, the team has focused its activities on the evaluation of the impacts of ATLETE II test results and the recommendations made by various relevant projects in this sphere.

The purpose of this document is to provide a summary overview of the related recent activities and recommendations made.

Within this document, the following main projects are documents are taken into consideration:

Project / activity	Area	Main content
ATLETE	Methodology review, 2010	Identification of main obstacles Summary of recommendations defined
ATLETE II	MSA questionnaire, 2013	Review of the national legislation and activities undertaken by individual MSAs Identification of main obstacles Summary of recommendations defined
Come On Labels	National legislation review	Identification of main obstacles Summary of recommendations defined
Ecopliant	Best practice guidelines, 2014	Specification of the type of MSAs active in individual member states List of recommendations provided
Energy label evaluation	Literature review, 2013	Summary review of activities undertaken by individual MSAs Identification of main obstacles



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2 Energy label and Ecodesign related market surveillance – how is it being done and how it can be improved

2.1.1 National system of market surveillance

In 2012, ADEME has undertaken a questionnaire within the ATLETE II project (1, 2013) with some 180 questions or information requests, sent to all 27 EU member state representatives, with only one member state not providing any information.

The main findings and conclusions resulting from this questionnaire, published in May 2013, are as follows:

- The transposition of ELD was carried mostly (9 MS) under national Energy Laws. Spain (ES) was the only MS identified to have chosen Environmental Law to transpose the ELD. A comparison with ATLETE findings reveals that in total, 14 countries transposed the new ELD (2010/30/EU) under the same legislative framework as the previous ELD 92/75/EEC.
- The transposition of the Ecodesign Directive was mostly (10 MS) undertaken under the Energy Laws. Overall, ministries are in charge of transposing the Ecodesign Directive into national legislation. The new Ecodesign Directive was transposed under the same legislative framework as previously for sixteen countries as presented in the findings of ATLETE.
- The provisions for conformity assessment in the Member State's national legislation have been modified in 14 countries following the implementation of the new Energy Labelling Directive and in 12 countries following the implementation of Ecodesign Directive. Whereas 10 countries have not modified the conformity assessment provisions.

Concerning the structure of the MSAs in individual EU member states, **Ecopliant** (8, 2014) has summarised the structure (primarily concerning the Ecodesign related legislation) the following way:

- Some Member States have delegated market surveillance responsibilities for a number of product related Directives and Regulations at one or a few national market surveillance authorities.
- Some Member States, on the other hand, have chosen the same Authority to be in charge of both ecodesign market surveillance and ecodesign and energy policy development.



- Some countries have organised the ecodesign market surveillance at regional level, with one common national coordinator.
- In a number of EU countries, the responsibility for ecodesign market surveillance is divided between two different MSAs, typically one for consumer products and one for industrial products.

The level of activities within market surveillance concerning retailers and product testing have been summarised by ATLETE II (1, 2013) the following way:

- In order to control the provision of the new energy label, inspectors accomplish visits to shops. Visits may be systematic or random but 8 MS (of 23 that responded to the questionnaire) chose to systematically visit shops. A systematic visit is one based on risk principle (selected by half of 8 MS who conducted systematic visits to shops) for instance. Shops that have previously committed offences or that were targeted by NGOs complaints are chosen to be controlled.
- Almost half (11 MS out of 23 MS who responded) of the MS currently control the compliance of catalogues. Control of catalogues will further increase regardless of the fact that their use is not widely spread among consumers in some MS such as Finland and Greece.
- More than half (13 MS out of 21 MS who responded) of the MS currently control the compliance of internet sales. Control of internet offers will further increase in coming years as 5 out of the 8 MS who do not perform a control on internet offers at present, intend to do it in future.
- The number of MS that control the provision of the product fiche varies from one MS to another. In 2012, 13 MS reported that they verify the provision of the product fiche.
- Product testing does not occur in every Member State. Around 50% of Member States reported that they performed verification tests. Commonly MS that do not test products mention high costs as an issue. This is the case for six Member States. Additionally, two other MS stated lack of resources as the issue as the MSA has too many other subjects to deal with. Half of the Member States that do not undertake compliance verification testing confirmed that they expect to start verification testing depending on budgetary constraints.

Concerning washing machines, which is the primary focus of the **ATLETE II** project, the following findings (2, 2014) has been made:

- Majority of MSA (6 MS out of the 7 MS who provided feedback on product compliance level) estimate that the current compliance rates for energy labelling and Ecodesign requirements of washing machines are approximately similar as other products.



Within the **Evaluation of the EU Energy Labelling** scheme (9, 2013), the following summary of staff resources and activities in individual countries has been elaborated (in December 2013). This review compiles the ATLETE and ATLETE II findings with all other publicly available similar sources of information and reviews and is therefore the most comprehensive review of activities:

Country Source	Staff resources dedicated	Product testing activities	Number of shop visits
Austria	Declared confidential	No testing, or not published	Around 70 shops per year
Belgium	Up to 100 field inspectors	25 lamps in 2010 (22 noncompliant) 12 fridges in 2010-2011 (1 noncompliant) 5 dishwashers in 2011	202 in 2011, typically 100 – 250, sporadically more than 1000
Bulgaria	Up to 134 market surveillance inspectors	No testing	No / 100 – 250
Cyprus	2 part time at ministry level	No testing	20 – 50
Czech Republic	2 part time at authority level, number of inspectors not known	No testing, only 6 refrigerators in 2011 (all compliant)	4 in 2010 18 in 2011, Ca. 300 in 2012
Denmark	5-6 part time at authority level	Yes, 60 per year + 150 technical declarations and CE marks in 2012	50 – 100 shops inspected, plus catalogues, internet shops, advertising
Estonia	2 part time at authority level	Yes, 2 per year	100 – 250
Finland	1 full time and 1 part time at authority level, 3 field inspectors	Yes, 5 -10 per year	250 up to 1000 inspected



France	Part 1 part time at ministry level 1 part time at energy agency	No testing	No (only 2005 study)
Germany	Regional government responsibility, 1 part time at ministry	Yes, varies from year to year, not centrally reported	Unknown, not reported centrally
Greece	5 part time at authority level	No testing	7 in 2012
Hungary	30 part time authority level	Yes, 200 per year	20-50
Italy	Not available	Yes, numbers or results not known	Ca 10-50, not reported
Latvia	1 full time and 2 part time, plus 30 enforcement authority level	No testing	No / 50-100 (different sources)
Lithuania	11 part time	No testing	No / 50-100 (different sources)
Luxembourg	Not available	0 – 5 per year	20 – 50
Malta	4 on market surveillance	No testing	20 in 2012 and 20 planned in 2013
Netherlands	4 full time and 1 part time at energy agency	Yes, 70 – 100 per year	700 shops inspected, 250 – 1000
Poland	Not available	No testing	No, sporadically 20 – 50
Portugal	Not available, but 350 market surveillance staff	No testing	No in 2011 and 2012
Romania	40 inspectors	No testing	No / More then 1000 (different sources)
Slovakia	10 part time at authority level	No testing	At random or non-compliant
Slovenia	Not available	No testing	Not available
Spain	1 full time (energy agency) and regional government	About 40 by IDEA in 2008 – 2012 About 75 by	In 10 regions, 450 appliances and 350 CFLs in 2011



	responsibility	Regional Governments in 2011 – 2012 About 20-30 by manufacturers in 2010-2012	
Sweden	3 full time	Yes, varies from year to year. Approximately 100 products per year.	100 - 250
United Kingdom	6 full time, including ecodesign	Yes, between 20 – 100. EST (Energy Saving Trust) 15 in 2010/2011 and 9 in 2011/2012.	188 in 2012, 50 – 100, not reported centrally.

2.1.2 Main obstacles and barriers identified

Besides the legal transposition, the **ATLETE II** questionnaire (1,2013) findings also commented on main problems, obstacles and issues related to market surveillance at national level:

- There is a lack of financial resources allocated to market surveillance activities from national governments as reported by six of the eight MS who do not conduct testing of products.
- With the transposition of the new Directives, some (8 MS) market surveillance authorities faced human resources constraints. These constraints are primarily associated to the new work associated with these legislations. This is because although 11 MS accepted impact on their activities however only 3 of them had a corresponding change in their staff.
- Testing facilities/laboratories are insufficient at MS level and EU-wide. Majority of MSA consider the current testing costs to be expensive (6 out of 8 MS who do not perform tests reported costs as a barrier), and may be time intensive (5 out of 6 MS who provided feedback on testing period commented that it can last up to few months).



The **energy label evaluation** project (9, 2013) has identified, by conducting an in-depth literature review, the following obstacles in the market surveillance field:

- **Resources:** As resources are often scarce, resources for energy efficiency related compliance are not a priority in most countries and national authorities lack resources for higher level of compliance verification activities. In general, market surveillance also receives industry support, when industry associations confirm to understand that safety related compliance is more straightforward to perform, but specifically support that environmental and energy related compliance activities should also take place. One reason for lack of resources invested into surveillance is the lack of information on benefits which this activity brings to the society. Therefore a calculation of effectiveness of investments into compliance verification in terms of preventing losses to the society in higher energy consumption could be made.
- **Staff constraints:** Several countries do not have dedicated energy label and Ecodesign compliance staff, but have inspectors also following other issues. One of the constraints relates to the growing family of product groups covered by the legislation, requiring more technical expertise and experience. Common best practice, guidelines and manuals, as well as common projects could make the involvement easier, in terms of the national authorities' interest.
- **Laboratories and costs of tests:** Some countries argue that the lack of national accredited laboratories is preventing them from undertaking surveillance tasks, as well as adding to the cost of product testing. Individual examples show, however, that it is possible to use foreign laboratories and, potentially an even more useful approach, to accept results of tests from other foreign laboratories, if undertaken by surveillance authorities.

See both the Literature review and the Final Technical Report of the Energy Label Evaluation project (see Literature section) for all issues identified and recommendations made concerning market surveillance.

ATLETE (4, 2010) also highlights a general problem, the lack of details in the European legislation text on surveillance policies and requested level of specific actions to be undertaken in case of non compliance. Even though this was motivated by the respect of the subsidiarity principle, it has led to a certain disparity in means and methodologies used among Member States. Energy labelling conformity assessment is thus not considered as an imperative topic in several EU Member States.

The project suggested that improvements on these issues can only come from the revision of the Directive on Energy Labelling (adding for example; concrete specifications on actions to be undertaken for market surveillance, a European coordination of information exchange between Member States) and the specific product regulations within the Ecodesign Directive process (usage of the tolerance margins, how the energy consumption is to be calculated to better reflect consumer use, better positioning of the label's scale).



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Reasons for not conducting product testing for energy label compliance, as summarised by the **ATLETE** (3, 2010) project (Note that ecodesign requirements were not really reflected in the survey as of 2010) we as follows:

- The main reason for not conducting tests is that these procedures are considered too expensive (Belgium, Bulgaria, Czech Republic, Malta, Portugal and Slovenia).
- In Cyprus, Romania and Slovakia, tests are not undertaken because finding an appropriate laboratory or independent company to proceed to the tests is rather difficult. Belgium also underlined that existing laboratories would have to upgrade their facilities in order to be accredited on energy labelling tests related to household appliances.
- Lithuania, Luxembourg and Poland report that tests are not carried out mainly because the controlling institution has too many other subjects to deal with, in particular related to safety issues.
- Cyprus, France, Lithuania, Luxembourg and Portugal indicate that the only surveillance carried out is focused on retailers' compliance. Yet, the controllers have many other issues to check: product safety, prices, fair competition, etc.

The **Come On Labels** (6, 2013) project has formulated the following main barriers:

- Different priorities, lack of financial resources
- Lack of human capacities
- In some cases, it is also a declaration of a lack of national accredited laboratories.

2.1.3 Main recommendations and opportunities

In the following section we list some of the main recommendations made by the key recent and ongoing European projects concerning energy label and/or Ecodesign market surveillance.

The **ATLETE II** project (1, 2013) has summarised its first key recommendations, based on findings of a survey among most EU market surveillance authorities, the following way:

- More cooperation among member states (MS) and coordination of MV&E activities at EU level will quickly and effectively promote the adoption of best practices on carrying out market surveillance activities. At present only a little more than half of MS (10 MS out of 17 MS who provided feedback) in EU confirmed their participation in know-how and experience



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sharing through the Administrative Co-operation Working Group (ADCO) and a total of 10 member states also participate in the ECOPLIANT project.

- The lack of access to adequate testing laboratories infrastructure in certain MS is a major challenge but it should not discourage these member states from conducting product testing. This can be achieved by encouraging resource sharing within the MSA of different member states. For example, either by promoting the use of laboratories from other member states or endorsing the test results already performed in other countries within EU. The promotion of use of testing laboratories can be encouraged if each member state would publish the list of independent test laboratories in their country. Such a list would allow other MS, particularly with insufficient testing infrastructure in their home country, accessing to competitive product testing facilities in other member states. Given the diversity of languages spoken in EU, it is not surprising that endorsement of test results is not very common. However, the linguistic barriers can be overcome by facilitating translations of the results into official EU languages using standardised formats.

- Further increase in consumer awareness on the benefits of energy efficient products will pull the market further. As in many MS the compliance testing of products was carried out based on consumer complaints, an increase in level of awareness of consumers may positively impact the identification of likely non-compliant products via an increase in consumer complaints, thus positively influencing the overall MSA.

- Records of enforcement actions should be made publicly available. The document notes that it is surprising that majority of MS in EU do not give importance to publicising their activities by making the results of the product testing publically available². A few Member States (four: BG, CZ, DK and UK) already provide some information concerning compliance checks in shops but no testing results are reported. Such practices should also be followed by MSA of other countries in EU and should cover at least information on compliance checks in shops as a first step. The results of product testing can be made public as the next step highlighting both the compliant and non-compliant product models/companies. This would ensure greater

² We note that publishing specific test results may have disadvantages concerning the recognition of compliant products on the market, such as:

- The MSAs should avoid announcing that a specific model is compliant, since another sample of the same model (e.g. produced in a different batch) could be found noncompliant. If published, MSAs could state that ONE sample of the model has been tested and that this sample has shown no indications of non-compliance.
- A compliance to the Energy labelling or Ecodesign legislation requirements does not indicate product safety, or overall compliance to other legal requirements.
- Manufacturer could interpret and promote positive test results as “approved by the authorities” which is not the case and purpose of market surveillance.
- A number of non-compliant cases are solved by voluntary remedy actions (e.g. after Step 1) by the manufacturer. This often includes voluntary removal of the product from the market. In those cases, it is not proportionate to publish this product as non-compliant, endangering the goodwill of the manufacturer, if it has acted in a timely and sufficient manner after being confronted with the surveillance findings.
- However, if a manufacturer continues to place not compliant products on the market after being warned of the consequences, publishing the individual results could be considered.



visibility and transparency to the activities carried out by the MSA. It should likely push the market towards greater compliance levels due to the fear of transgression being punished.

- National governments should allocate more funds to MV&E activities as a significant number of MSA's reported that they are facing staffing constraints. Allocation of appropriate amount of funds should ensure that MSA have adequate resources to carry out their activities and to streamline the exchange of information between MSAs. The enhanced cooperation between different MSAs and better use of scarce resources such as well-targeted product testing should allow MSA to control enforcement of products to ELD and Ecodesign Directive.

In its final report and the survey on market surveillance, **ATLETE** project (3, 2010 and 4, 2011) has made the following recommendations:

- The ATLETE Project has shown, beyond any doubt, that market surveillance is essential to guarantee the compliance of the specific products with energy labelling legislation.
- The ATLETE Project has demonstrated that market surveillance is essential, technically possible and cost effective. Lack of market surveillance in the area of energy labelling and ecodesign of energy related products leads to unfair competition enabling “free-riders” to gain potentially considerable market advantage over the competitors, which in turn creates market distortion and undermines the possibility to achieve the demanding EU energy efficiency targets. Lack of market surveillance also undermines the trust of the consumers in the EU energy efficiency policies and makes their search for high energy efficient products somehow ineffective.
- The verification procedure followed in the ATLETE Project is based on the standard procedure applied in EU energy labelling and ecodesign legislation. Although it has been validated against the old energy labelling and in the specific case of refrigerators and freezers, it is fully applicable to the new delegated regulations. The procedure is based on a two-step approach: in Step 1 the check is performed on one sample of the model; in case of suspected non-compliance Step 2 is conducted, testing three additional samples of the same model. Depending on the parameter to be verified, a verification tolerance (to cover uncertainty in the laboratory measurements) is applied to both Steps.
- The ATLETE Project has proven that this two-step approach is necessary for the proper assessment of the product compliance. Almost 25% of the refrigerating appliance models suspected of non-compliance in Step 1 and tested in Step 2 ended up being fully compliant with energy labelling requirements.
- Cooperation of testing laboratories and the exchange of the experiences gained during the product testing foreseen within the procedure developed in the ATLETE project has proven to be helpful in achieving fully comparable test results. The four meetings with the testing laboratories, project partners and international experts have provided useful suggestions for the fine tuning of the verification procedure.



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- Market Surveillance should be conducted both at country level as well as at EU level. The exchange of experiences between the national Market Surveillance Authorities is also needed for a better planning and coordination of the national efforts.
- National Market Surveillance Authorities should guarantee that testing laboratories assure the lowest possible measurement uncertainty. This will in turn allow comparability of the verification results.
- Encourage or make mandatory the publication of tests' results at a European level, in order to generate a greater impact on manufacturers. The broadcast of tests results seems an efficient tool to improve compliance rates without carrying out tests on a large scale. Results can be broadcast to consumers, consumers' associations as well as to retailer chains.
- Stipulate that manufacturers should be charged with the cost of the testing procedure in case of non-compliance, in addition to the sanction applied. This can be another dissuasive factor as well as a mean of slightly reducing national monitoring costs.
- Make importers legally responsible for energy labels' accuracy in national legislations, or at least make them responsible for the presentation of the technical documentation proving the energy consumption declaration of the product they import.

The **Ecopliant** project (8, 2014) formulates the following recommendations in the main areas and procedures concerning the Ecodesign related market surveillance:

General recommendations

- *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 can consider whether proactive and preventing activities should be carried out, in order to inform manufacturers, their representatives and importers about the ecodesign requirements 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.*
- *Ecodesign MSAs should consider how to cooperate with national customs authorities in market surveillance.*
- *MSAs should consider being involved in national (and EU or even international) standardisation committees for the development of standards for harmonisation.*
- *MSAs should consider taking part in the formulation of a national position on proposed new legislation, especially regarding enforceability and mandates for standardisation.*



National inspection programmes recommendations

- *National inspection programmes should be designed and developed to effectively detect non-compliant products 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 product categories and specific products to select)*
 - *Ensure that there is methodology to develop content (what methods should be used: testing, document inspections, visual inspections.)*
 - *Ensure that there is a suitable disposal strategy in place.*

Coordination recommendations

- *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*

Product selection recommendations

- *Effective product targeting is especially important when legislation (e.g. Ecodesign of ErP) deals with a vast amount of product categories, which not all may be subject to recurrent market surveillance activities.*
- *Well-thought-out targeting techniques should be applied when selecting product categories as well as 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 Ecodesign MSA are:*
 - *High energy consumption and new legislation covering a product.*
 - *High market share and history of non-compliance for brands, along with their not frequently involvement in surveillance.*
 - *Other Member State or international complaints*
 - *Ambiguities in the technical documentation for a model.*
- *The product targeting must be justifiable on a range of grounds. In order to avoid criticism or bias, “guidelines” detailing the criteria used for targeting products for verification tests should be published by the MSAs.*



- *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 test. See also chapter 2.5.*
- *Complaints or reports about possible non-compliant products from outside parties can be an important targeting method.*
- *Screening tests can be a targeting tool for the selection of products with a higher probability of being non-compliant. Screening tests should however not be used to start any action against economic operators.*
- *The specific samples selected for testing need to be randomly chosen and picked-up. They should be representative of what is being supplied to the market. Thus if samples are obtained directly from the producer, MSA must see to that the samples chosen are indeed randomly selected and not “premium” units.*

EU (EEA) Model identification recommendations

- *MSAs should request information of equivalent models from the manufacturer or importer.*
- *MSAs should request information of products whose technical documentation is derived from the same “basic model” from the manufacturer or importer (when relevant).*
- *In order to identify the equivalent models and models whose technical documentation is derived from the same “basic model”, the following documents can be requested:*
 - *Identity declaration. To establish the appliances covered by the same technical file (equivalent models) and/or those derived by calculation from the same “basic model”.*
 - *Test reports. To identify the basic model.*
 - *Calculations. To justify the changes, if any, in the nominal values of some models with respect to the test report of the basic model.*

Document inspection recommendations

- *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 product does not meet the requirements of its corresponding ecodesign regulation, the product does not comply with the relevant implementing measure under the Ecodesign Directive.*
- *It can also be used as a very useful method to select products for further compliance verification through laboratory testing.*
- *It is essential to define harmonised rules for inspections, including document inspections, for all the MS. 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 it could be accepted only in some of them.

- *Before starting a document inspection, the minimum content of the documentation and the rated and measured values to be provided according to the relevant implementing regulation(s) need to be clarified.*
- *The technical documentation file should include a list of all equivalent models of all products covered by the same technical file (identity declaration) and of the products where the same basic model is used to derive compliance by calculation or interpolation.*
- *It is necessary to check that the manufacturer has not used measurement tolerances prescribed in the legislation for MSA to achieve a more favourable score or classification than the test reported in the documentation can justify.*

Laboratory testing recommendations

- *When selecting laboratories, consider accreditation, competence and reliability of test results.*
- *When selecting laboratories, the following practical considerations should also be made:*
 - *Clear objectives, including e.g. the applicable verification procedure/harmonised standard 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*
 - *Commercial incentives, e.g. when some laboratories require guarantees of work to ensure that acquiring accreditation is commercially viable*
 - *Mutual recognition of the test results by other MSAs in other Member States*

Third party funding recommendations

- *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.*

Inspection results sharing 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, especially regarding non-compliant products.*
 - *The Ecoplant database should be used to share detailed data on all products inspected; compliant as well as non-compliant models.*
- *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.*

Enforcement 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 the way 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. If publishing, be clear about which parameters that have been inspected and which have not.*
 - *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.*
- Note: Legal requirements of the national legislation should always be fulfilled when handling non-compliant cases.*
- *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 foreign data and make a risk-assessment to evaluate if the results can be acted upon. 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.*
- *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 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.*
- *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 **Come On Labels** project (6, 2013) has made its recommendations both concerning product testing and shop visit strategies. Concerning product testing, its main aim was to contribute to the creation of an effective verification procedure for the EU legislation on energy-related products:

- set a clear, transparent and precise procedure, to be largely publicised to all market actors and thoroughly followed by national Market Surveillance Authorities. This should include (the list is not exhaustive):
 - the use of an appropriate measurement method and test conditions
 - the commitment to run the 2 Steps of the verification procedure as set by the relevant EU labelling/Ecodesign product specific measures
 - in case of failure of Step 1, the supplier should be given the possibility either to accept the results and go for an immediate remedy action or to ask for the development of the second Step.
 - the verification of all parameters requested by the legislation provisions (e.g. energy efficiency class, energy consumption, water consumption, capacity). All parameters have the same importance when product compliance is considered.



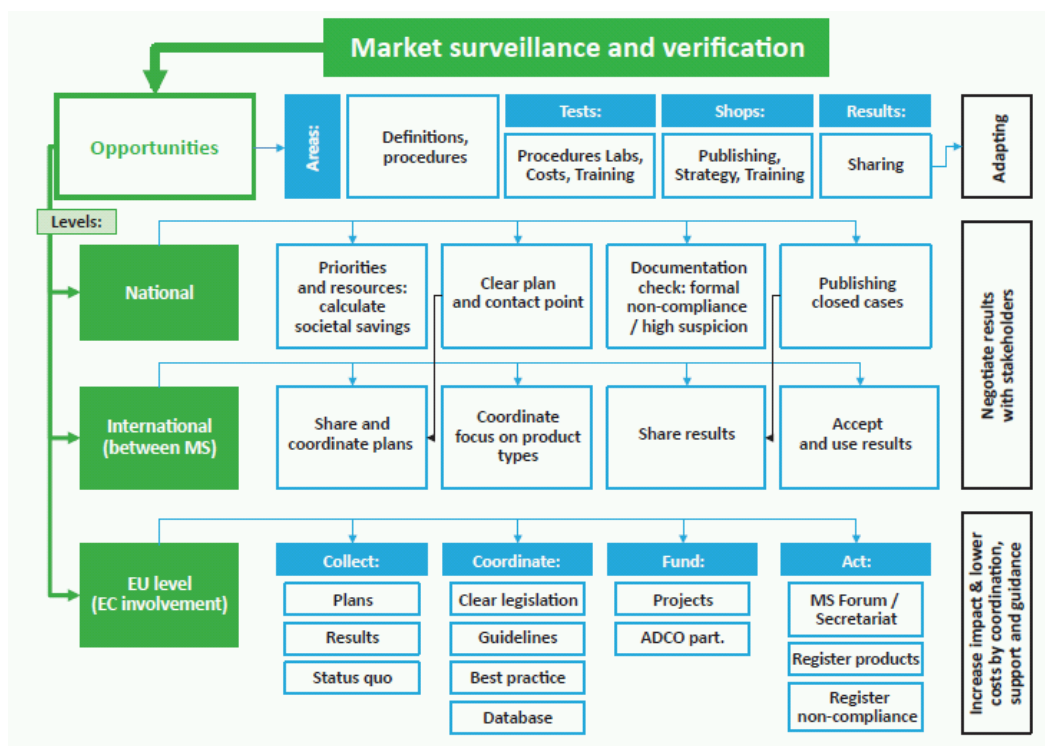
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- foresee and support the discussion with the supplier about the possible reasons for non-compliance: the understanding of the non-compliance causes is as important as the identification of non-compliant products;
- define staged and timely corrective actions to be applied by the national Market Surveillance Authority: such actions should always follow the identification of a non-compliant product and should possibly include an initial approach to the product supplier for the correction of the product declaration(s), followed by – if and when considered necessary – the application of penalties or sanctions (effective, proportionate and dissuasive) down to the obligation to remove the non-compliant product(s) from the market;
- set a “working plan” for the market verification, to be announced to all market actors, to publicise the concept that no products will be forgotten and that market verification is a routine action and not an exception.

In summary, the market surveillance opportunities have been outlined in the following chart by ADEME, SEVEn, SoWatt (5, 2014) the following way:

2.1.4 MSA views on the ATLETE II product testing activities





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Projects such as ATLETE, ATLETE II, but also ComplianTV, MarketWatch, and some others are testing product performance according to the energy label and/or the Ecodesign requirements. These testing activities take place with only partial involvement of the national market surveillance authorities – these are typically consulted on the processes and results, but not always being in charge of the individual activities.

In the specific case of the ATLETE II project, one national market surveillance authority participated (STEM of Sweden) and was in charge, among other tasks, to disseminate the full testing information to all the national MSAs among the relevant national markets.

Within the **ATLETE II** project, the team has therefore also investigated the reactions and recommendations from the MSAs, concerning the project's specific test results. See the project's Deliverable 7.3 for full details (2, 2014), the main summary is as follow:

- MSAs in 23 EU member states have been informed about the product testing and the individual test results. All of these have been also invited to respond to a questionnaire survey searching for more information on the opinion of the MSAs on the ATLETE II type of activities, and searching for specific information about activities the individual MSAs may have undertaken based on the ATLETE II results.
- 13 individual MSAs, from 12 countries, have responded to the questionnaire, providing further insight on the activities undertaken and opinions on such international-level types of activities.
- In principle, the majority of the reactions received from MSAs were positive about the ATLETE II type of activities undertaken. Some of the feedback and reactions received include:
 - Necessity to provide fully professional and independent assessment of the product compliance.
 - Advantage of pre-negotiating the remedy actions with individual manufacturers.
 - Ability to share the testing activities among the MSAs in order to avoid any duplicity of activities.
 - Several MSAs confirmed that a national level surveillance action could be possible based on the ATLETE II activities, at least requesting a feedback from the respective economic operator.
 - The usefulness of covering a specifying product category was highlighted by MSAs which either would not cover this by their normal activities, or would not have sufficient national infrastructure in place such as the laboratory.
- A few MSAs have reacted in a neutral way to some of the questions posed:
 - Results of limited validity, as only products purchased on the national market could be taken into account for a specific MSA.



- Given that most results circulated have been positive (compliant cases), or anyway not detecting any technical noncompliance, no direct national activity was deemed necessary.
- In principle, only one MSA has expressed its concern about the ATLETE II type of projects with the following arguments:
 - Product testing should be first made available to the MSAs who should take the decision on next steps, not be first shared with the manufacturers.
 - Sharing of results should be even more up-to-date, not only after the batch of tests being concluded, in order to ensure the relevant product to be still available on the market.
 - Preference for the future projects of this type to be run by the MSAs themselves.
- There are diversifications between the MSAs regarding what specific conditions that has to be fulfilled in order for the MSAs to use test data for enforcement actions.
- The majority of the MSAs consider use of accredited test laboratories of outmost importance. In addition, most MSAs consider that the laboratories should also be accredited according to relevant test methods, if the data is to be used for enforcement actions.

Recommendations on how this specific action could be improved:

- Shorter time between laboratory test to notification to MSAs
- Use of accredited laboratories would enable more MSAs to be able to use test results directly since a number of MSA require that only accredited labs are used for market surveillance purposes
- Additional market surveillance authorities directly involved in the project



3 Annex: Sample of product testing procedure:

The ATLETE II project took care to fully follow the formal procedures and legislative and standardisation requests concerning product testing, so that the individual results of tests are fully comparable with the formal requirements, as if done by formal authorities.

The EU energy label legislation prescribes product testing procedure the following way:

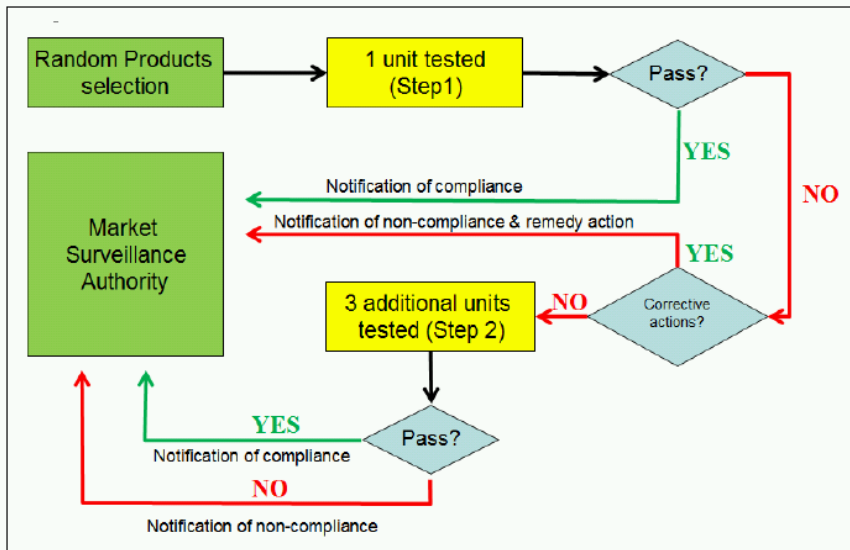
1. The MSA shall test one single unit per model.
2. The model shall be considered to comply with requirements if the values and classes on the label and in the product fiche correspond to the values in the technical documentation and if testing of the relevant model parameters shows (within allowed tolerances) compliance for all of those parameters.
3. If the result is not achieved, the MS authorities shall select three³ additional units of the same model for testing. Alternatively, the three additional units selected may be of one or more different models which have been listed as equivalent in the manufacturer's technical documentation.
4. In case of the additional unites being tested (so called "Step 2"), the arithmetic average of the values determined for these three additional units is calculated.
5. The model shall be considered to comply with the applicable requirements if testing of the relevant model parameters shows compliance for all of those parameters.
6. If the results are not achieved, the model and all equivalent models shall be considered not to comply with this Regulation.

The **ATLETE II** and the **CompliantTV** (7,2014) consortiums have adapted this procedure the following way for their own needs (the main difference being availability of Step 1 test results being given to individual manufacturers, negotiating possible remedy actions):

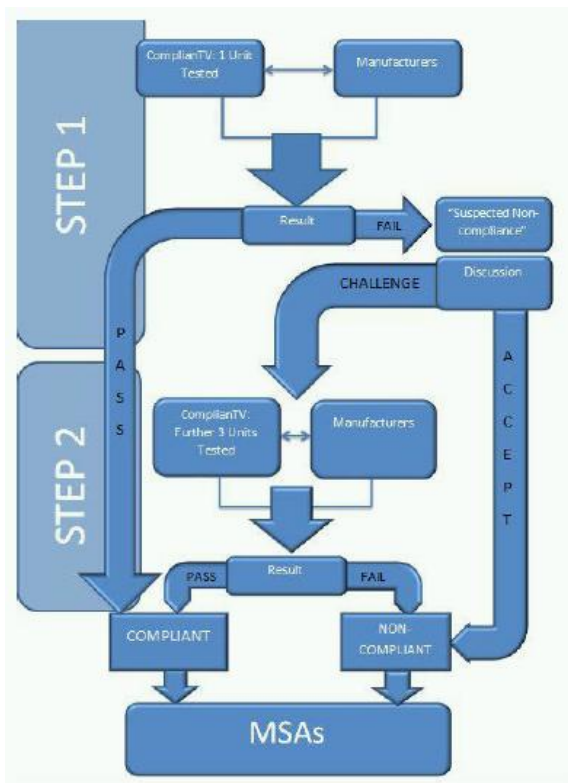
³ As an exception, sample number differ for electrical lamps and LED modules, where the authorities shall test a sample batch of a minimum of 20 lamps of the same model from the same manufacturer, where possible obtained in equal proportion from four randomly selected sources.



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ATLETEE II



ComplianTV



4 Literature review

The following literature sources have been taken into account when elaborating this report:

1. ATLETE II (ADEME, BIO IS): Implications of the new Energy Labelling Directive (2010/30/EU) and the Ecodesign of energy-related products (Ecodesign) Directive (2009/125/EC) on market surveillance activities, Deliverable 2.1., May 2013
<http://www.atlete.eu/2/doc/Report%20on%20implementation%20and%20national%20legislation>
2. ATLETE II (SEA, SEVEN): Final report on the MSA communication action and follow up, Deliverable 7.3., September 2014
<http://www.atlete.eu/2/doc/D7%203%20Final%20report%20on%20the%20communication%20and%20MSAs%20follow%20up>
3. ADEME (ADEME): Report on the national legislation regarding energy labelling, Deliverable 2.1.,
http://www.atlete.eu/index.php?option=com_docman&Itemid=111
4. ATLETE (ADEME): Overview of the methodology and the results achieved in the conformity assessment action at EU Member States and international level, Deliverable 2.2.,
http://www.atlete.eu/index.php?option=com_docman&Itemid=111
5. ADEME, SEVEN, SoWatt: Market surveillance of Energy Labelling and Ecodesign product requirements – Overview of challenges and opportunities, February 2014
<http://www.come-on-labels.eu/news/market-surveillance-of-energy-labelling-and-ecodesign-product-requirements>
6. Come On Labels: National legislation and its practical implementation related to energy labels on energy-related products, Deliverable 2.2, March 2013
<http://www.come-on-labels.eu/legislation/energy-labelling-legislation-in-the-project-countries>
7. CompliantTV: Schematic of the CompliantTV testing Process, May 2014
<http://www.compliantv.eu/eu/news/schematic-of-the-compliantv-testing-process>
8. Ecopliant: Best Practice Guidelines for Coordinated and Effective Market Surveillance, Deliverable 2.2., editions June 2013 and September 2014
<http://www.ecopliant.eu/wp-content/uploads/2013/10/Final-Draft-Best-Practice-Guidelines-Delivery-Sept-2014.pdf>



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9. Evaluation of the Energy Labelling Directive and specific aspects of the Ecodesign Directive: Background report I: Literature review, December 2013

[http://www.energylabevaluation.eu/tmce/Background_document_I -
_Literature_report.pdf](http://www.energylabevaluation.eu/tmce/Background_document_I_-_Literature_report.pdf)