

THE EPEE EXPERIENCE WITH MARKET SURVEILLANCE ON HVAC EQUIPMENT IN EUROPE – March 2012

The European Partnership for Energy and the Environment (EPEE), the voice of the manufacturers of heating and cooling equipment in Europe, is committed to contributing to achieving Europe's climate and energy ambitions. Without proper enforcement, any new or existing EU legislation will not reach its full potential. Non-compliance distorts the market and comes at the expense of the environment, consumers and industry.

Falling under the competency of the Member States, the level and effectiveness of market surveillance varies widely among Member States. EPEE's experience with national market surveillance confirms that consistently applied market surveillance for all EU legislation must be a priority for the European Commission.

1. THE CURRENT REGULATORY CONTEXT: EU LAW SHOULD ENSURE MARKET SURVEILLANCE THROUGHOUT THE EU.

Market surveillance is intended to ensure that only products that comply with EU legislation (from safety requirements, to energy and environmental requirements) are placed on the market. Member States are responsible for the organisation and implementation of market surveillance activities within their own territories. These activities may vary and include different policies to deal with non-compliant products and manufacturers such as the withdrawal of products from the market or the imposition of fines etc.

Even if ultimately Member States are responsible for proper market surveillance, it is also part of the enforcement aspect of the [New Legislative Framework](#), which sets out general obligations for the national Market Surveillance Authorities, who must have the necessary powers, resources, knowledge and procedures. Regular updates of the market surveillance programmes and exchange of information between the Member States should enhance knowledge about the national activities.

However, in practice, there are great discrepancies in the level and efficiency of market surveillance throughout the EU.

2. THE EPEE EXPERIENCE: FRAGMENTATION OF MARKET SURVEILLANCE RISKS UNDERMINING EU-WIDE TARGETS.

The members of EPEE, who invest considerable amounts of time and money in complying with EU legislation, and who have a good track record as environmental stewards, are concerned with the scattered and uneven status of market surveillance throughout the EU. Since the beginning of 2011, EPEE has been undertaking an audit¹ to understand why these differences exist and how market surveillance is being addressed at the national level. This audit focuses on energy-related legislation and in particular on the Eco-design Directive and the Energy Labelling Directive for HVAC products covered by ErP Lot 10.

Troubling weaknesses in market surveillance capabilities among the Member States that lead to uneven and insufficient implementation of market surveillance throughout the EU include:

A. Differing administrative organisation:

¹ Based on meetings with Market Surveillance Authorities in several Member States and on meetings with the Eco-Design ADCO group

- Some Member States designate different Market Surveillance Authorities (MSAs) to focus on different types of legislation. For example, it may well be possible that one MSA deals with Energy Labelling, whereas another MSA is responsible for the Eco-Design Directive.
 - Member States can also designate MSAs according to their institutional organisation. For example, market surveillance can be organised at a regional level instead of a national level.
- ⇒ When manufacturers do not know whom to contact and by which national rules and organisations market surveillance is being conducted, this may result in, and even encourage, non-compliance.

B. Financial and human resources:

- Some Member States devote a substantial budget to surveillance of energy-related legislation, whereas others designate most financial and human resources to MSAs that deal with the safety of products.
 - Lack of funding by the relevant ministries (for example the Ministry of Economy) inevitably leads to fewer human resources in MSAs, which in turn leads to lower understanding of the complex products and issues that are regulated by European rules and that need compliance and control. In some Member States, this leads to a discrepancy between market surveillance on Eco-design for specific Lots and market surveillance for energy-labelling.
- ⇒ This leads to situations where Member States cannot even afford to send representatives to European meetings of the Administrative Co-operation Group (ADCO), which is one of the fundamental pillars on which the current EU market surveillance mechanism is based.

C. Case-by-case testing:

- MSAs can choose to verify compliance by testing specific products. The significant cost of products and testing has an influence on the scope of MSA's activities: they will be able to test affordable appliances (light bulbs, refrigerators), but control will be lacking for big appliances, such as the heating and cooling products in focus.
 - Some MSAs have developed methodologies to screen products for their compliance, but other MSAs are not aware of these methodologies.
 - Data on evaluated products (whether the test result was positive or negative) is not automatically shared among Member States, which has an impact on the effectiveness of market surveillance and may lead to multiple checks of the same product in different Member States.
- ⇒ This leads to case-by-case testing of products, which makes it easier for free-riders to put non-compliant products on the market.

D. Voluntary private third party certification schemes:

- Many industry players voluntarily commit to third-party certification schemes to ensure a level playing field. Such schemes require significant resources from the manufacturers, without having any binding legal value.
- ⇒ MSAs are confronted with a number of voluntary certification schemes and do not know whether they can be trusted as a reliable tool to support their market surveillance activities.

Conclusion:

Even if Market Surveillance for all types of legislation has been acknowledged as a priority by Europe, in practice and in many Member States, market surveillance for energy-related legislation is far less organised and structured than surveillance on safety-related issues. This makes it difficult for MSAs to ensure proper market surveillance for energy-related products. EPEE calls for consistently applied, uniform and harmonised energy-related market surveillance mechanisms among Member States and is keen to cooperate with the European Commission and Member States to find solutions so that EU legislation can reach its ultimate objectives.

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