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# EPEE Advisory Note on conformity assessment methods for products under Regulation (EU) 813/2013

## Executive Summary

A strong supporter of market surveillance, EPEE, representing the heating, cooling and refrigeration industry in Europe, shares with this Advisory Note its thoughts about existing different conformity assessment methods (self-declaration and third-party conformity assessment) related to Ecodesign Regulation (EU) 813/2013, highlighting the following key priorities:

- The importance of building on the new market surveillance regulation once it is formally adopted in order to improve market surveillance and product compliance, independent of the conformity assessment method chosen;
- Regarding third-party conformity assessment (TPCA), there is the need to define to which type of products it shall apply, and which conformity assessment modules shall be used, as well as the need for sufficient time for the market to adapt. A thorough impact assessment should be carried out in case this option is pursued.
- Progress in this area must emphasize the importance of improving cooperation and mutual trust between industry and market surveillance authorities and ensuring the same levels of market surveillance in each Member State of the European Union.

## 1. Introduction and Purpose

EPEE, representing the heating, cooling and refrigeration industry in Europe, has been a strong supporter of market surveillance for many years. In 2015, EPEE published a [joint industry call for action](#) advocating for a strengthened pan-EU cooperation in market surveillance, intensified cooperation among national market surveillance authorities (MSAs) and the added value of industry's involvement in market surveillance activities.

EPEE strongly endorses reasonable, practical and technically defensible steps to improve market surveillance. Therefore, it welcomes the concept of the new Regulation on Compliance, Enforcement and Market Surveillance. The latter appears to include tangible solutions to improve market surveillance across Europe, such as the introduction of a single liaison office for market surveillance by Member State, an EU compliance network, and Union testing facilities to enhance laboratory capacity for MSAs. As an industry, we are committed to cooperating closely with Member States and market surveillance authorities to put new regulation into practice. Well-functioning market surveillance helps avoid distortions of the market, protects consumers from non-compliant products, and ensures that policy goals such as climate and energy efficiency objectives can be met.

The new regulation on market surveillance is a “horizontal” regulation which applies to all harmonised, non-food products. It sets out obligations for Member States and MSAs to support enforcement and,

ultimately, to ensure product compliance. However, this is only one part of the process. Manufacturers have the obligation to assess the conformity of their products – where Community harmonisation legislation requires them to do so – before placing them on the market.

Ecodesign implementing measures are an important example for this, where, in most of the cases, the principle of self-declaration by manufacturers is applied. One exception to this rule is Ecodesign Regulation (EU) 813/2013 on space heaters and combination heaters. In this case, modules involving verification by a notified body (third party) apply for fuel fired boilers.

(EU) 813/2013 is currently being revised and the Commission is required, as part of the revision, to investigate the appropriateness of such third party conformity assessment (TPCA) for all products in its scope. This has triggered the present discussion about the efficacy of different conformity assessment methods for Ecodesign measures to provide consumers with products that have been proven to the efficiency levels asserted.

EPEE's Advisory Note does not take a position in favour or against a specific conformity assessment method but rather, highlights the priorities to be considered in order to ensure product compliance and to avoid free-riders. Whichever conformity method will be specified, well-functioning market surveillance will always be a key part of the puzzle. It emphasizes that without vigorous market surveillance in every Member State, neither self-declared nor third party assessed conformity will be duly verified. The new market surveillance regulation is a true opportunity in that sense and will help to improve the situation.

This Advisory Note shares EPEE's thoughts about the existing method (self-declaration) and about TPCA related to Ecodesign Regulation (EU) 813/2013 – bearing in mind that whichever method is chosen, it has always been and will always remain a top priority for EPEE members to provide compliant products. Our industry sector makes a significant contribution to reduce energy consumption and CO<sub>2</sub> emissions in Europe, supporting energy security and the 2050 decarbonisation agenda. We want to fully tap this huge energy efficiency potential – and product compliance is certainly where it all starts.

## 2. Conformity assessment by self-declaration

### **EPEE recommendation if the status quo (self-declaration) is maintained:**

Build on the new market surveillance regulation, by making full use of all opportunities it provides to improve market surveillance and cooperation with manufacturers in order to address the shortcomings of the current situation.

Commission decision No 768/2008/EC lays out the different available modules for manufacturers to assess the conformity of their products. Until now the standard procedure for Ecodesign regulations has been self-declaration by manufacturers (module A).

In addition to this conformity assessment procedure, industry had previously developed private product certification programmes. These additional “control mechanisms” complement MSAs' activities which have so far been considered to be insufficient to address all product groups regulated under Ecodesign. These private certification programmes are voluntary programmes, involve a certain cost for manufacturers and can add complexity to the market as there are several of them (depending

on country and product type). MSAs do not officially recognise private programmes when carrying out market surveillance. At best, MSAs currently consider them as one criterion among others for compliance. Aside from product compliance and market surveillance, private certification programmes can also be credible and important marketing tools for manufacturers. In some cases, they are a pre-condition to apply for subsidies for specific technologies (for example for heat pumps) in certain Member States.

For industry, the current situation, as explained in the following notes is not satisfactory. On the one hand, market surveillance activities fall short of expectations, particularly in the case of B2B products; on the other hand, private certification programmes as currently viewed by the authorities do not fill this gap. The new market surveillance regulation provides several ways to significantly improve the situation, for example by: setting out requirements to improve cross-border cooperation and mutual recognition of MSAs and their activities; introducing a Union product compliance network; financing Union testing facilities; and requiring a better cooperation between manufacturers and MSAs.

Time should be given for the new regulation to take effect and provide first results. We hope that this new Package will effectively increase market surveillance and reduce the number of non-compliant products present on the EU market. Otherwise, and if non-compliant products on the EU market will not be properly addressed, the risk would be that industry's credibility would be at stake despite its excellent track record and all efforts made in the past.

The opportunity comes with the new market surveillance regulation which offers a true window to significantly improve the situation without a radical change of the current approach. The main challenge here is the smooth and uniform implementation and enforcement of all facets of this new regulation across Europe once it will be formally adopted.

### 3. Conformity assessment by a third party (TPCA)

#### **EPEE recommendation if third-party conformity assessment (TPCA) is introduced:**

Clearly define the scope of products to which TPCA should apply and the modules according to Regulation (EC) 765/2008 which should be used in order to ensure a level playing field between EU and non-EU manufacturers, large companies and SMEs, and to avoid unintended consequences. Grant sufficient time to allow for the market to adapt to the new situation and fully tap the potential of the new market surveillance regulation to provide/finance adequate infrastructures and improve market surveillance.

Under Ecodesign Regulation (EU) 813/2013, two different methods apply for conformity assessment according to Regulation (EC) 765/2008. For historical reasons (in the context of the Gas Appliance Directive and to address safety concerns), modules related to TPCA (B, C, D, E) involving a notified body (third party) apply to fuel fired boilers whereas self-declaration (module A) applies to heat pumps. The on-going revision of (EU) 813/2013 addresses both methods in view of their suitability to ensure compliance of all products in scope of (EU) 813/2013. However, a more detailed assessment than the one which has been carried out so far will be required to be able to recommend an option.

The introduction of TPCA for all products in scope of (EU) 813/2013 would provide a level playing field for all product types (heat pumps and boilers) in the context of this product lot, and the same type of conformity assessment would apply to all products under this specific regulation, in all countries across

Europe. The new market surveillance regulation could potentially help address the sometimes-mentioned lack of notified bodies and test facilities as it foresees financial investment into Union testing facilities. To avoid major disruption in the market, private certification bodies (and others) could apply to become conformity assessment bodies (notified bodies) accredited pursuant to Regulation (EC) 765/2008 where market surveillance authorities shall take due account of such reports or certificates.

Risks would include for example a potential lack of competent notified bodies and test laboratories, delays in placing new products on the EU market, an increase of the cost involved and a co-existence of private certification programmes and TPCA leading to even higher cost and confusion in the market.

For these reasons and to contain such risks to the extent possible were TPCA to be chosen as the preferred method for (EU) 813/2013, we recommend the application of the following criteria which, in our view, are essential to avoid unintended and/or negative consequences of TPCA:

- **Scope:** Applying TPCA to Regulation (EU) 813/2013 on space heaters and combination heaters should not lead to a “default” application to other product groups. The introduction of TPCA should be assessed on a case by case basis after a thorough impact assessment, considering the particularities of each product category (mass produced products, customised products), production volumes of equipment, etc.
- **Modules:** TPCA can be carried out based on a number of different modules according to Regulation (EC) 765/2008. Whereas at first sight it would be preferable to leave a free choice of modules to the manufacturer in order to overcome lack of laboratories and a negative impact on SMEs, this could also lead to a fragmented approach where some manufacturers would opt for modules involving product tests on each unit whilst others would base their conformity assessment on other modules focussing for example on type testing via quality assurance procedures. Therefore, if TPCA were the method to be chosen, the relevant modules should be specified and, to further support market surveillance authorities and product compliance, these modules should involve product tests at some point.
- **Time:** Were TPCA chosen as the conformity assessment method under Regulation (EU) 813/2013, sufficient time would need to be granted to allow the market to adapt to this new method, meaning for example that the required infrastructure in terms of notified bodies and test laboratories would need to be available and that manufacturers would need to be able to change their internal processes accordingly.
- **Market Surveillance:** TPCA cannot replace market surveillance and should never be assumed to be a replacement for MSAs activities which are the only way to ensure a level playing field on the market.
- **Level playing field among manufacturers:** Were TPCA chosen, a level playing field among EU and non-EU manufacturers would need to be ensured and should not lead to barriers for placing products on the EU market. Therefore, EU based, and non-EU based notified bodies should be allowed to perform the required tests.
- **Recognition:** Were TPCA introduced, it should be mandatory for Member States to recognise the TPCA results within their national EPB and subsidy programmes as otherwise,

manufacturers could end up with the obligation of applying both, TPCA and private certification programmes.

#### 4. Conclusions

Independent of the conformity assessment method chosen, EPEE calls for closer cooperation between industry and market surveillance authorities, mutual trust and full implementation of the new market surveillance regulation once it will be formally adopted, for the sake of the European consumers and the EU's climate and energy goals.

EPEE believes it is essential that cooperation and mutual trust between MSAs and industry are improved. We consider that the new regulation can provide an excellent framework to progress in that direction. For example, if manufacturers invest significant amounts of money into private certification programmes, these programmes should be taken into account by MSAs and not be discounted based on the sole argument that they are industry financed. If they fulfil stringent criteria such as using accredited labs, independent test bodies, etc., private programmes could be used as an instrument to demonstrate compliance and at the very least they could be part of the market screening criteria to be considered by MSAs. Likewise, if notified bodies carry out third party conformity assessment, the results of these assessments should not be automatically questioned by MSAs, even if the tests themselves are financed by industry.

As a strong supporter of Ecodesign since it was introduced, the heating, cooling and refrigeration industry in Europe has gone to great lengths to play its part and provide compliant, energy efficient products to the European consumers who, ultimately, would pay the bill in case of fraudulent products and practices.

EPEE is ready and fully committed to work closely with European authorities, MSAs and other relevant bodies to further support the enforcement of Ecodesign measures, and calls on authorities to cooperate with us for the benefit of the European consumers and the EU's climate and energy goals.

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