Compliance – who cares?

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Mark Ellis & Associates
2008 Compliance Conference

• Is there a compliance problem?
• What exactly is the problem?
  • Legal powers, market surveillance, staff expertise, etc.
• How large is the problem?
  • energy/greenhouse
Conclusions

• We don’t know answers to many of these important questions!

• Why not?
  • Very little published data
  • Too few assessments made by programs (and made publicly available)
  • Some snapshots but nothing systematic and consistent across countries/regions
  • Even when we know compliance rates, doesn’t = lost energy savings
How good are we at ensuring compliance?

- CLASP Survey
  - Survey of S&L programs in G20 countries (+Tunisia & Chile) – total of 30 programmes spanning 14 countries
  - Comparable with surveys of EU Member States – Fraunhofer & ATLETE
  - Designed to assess the strengths and weaknesses of the compliance infrastructure and capacity in Governments
Deterrence theory

“Deterrence theory...maintains that there must be:
- a credible likelihood of detecting violations;
- swift, certain, and appropriate sanctions upon detection;
- and a perception among the regulated firms that these detection and sanction elements are present”
## Scope of CLASP Survey

<table>
<thead>
<tr>
<th>Country</th>
<th>ISO Abbreviations</th>
<th>MEPS</th>
<th>Mandatory Labelling</th>
<th>Voluntary Labelling</th>
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<td>✓</td>
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</table>
Framework

• Most programs appear to have adequate legal basis
  • need to ensure that definitions remain relevant to current markets

• Most programs also have appropriate MV&E processes
  • although some enforcement procedures appear unwieldy

• All respondents were able to clearly identify the entity or entities responsible for MV&E

• MV&E may be the responsibility of separate organizations
  • may be justified to avoid the potential for conflicts of interest
  • issues of co-ordination that need addressing
## Resources

<table>
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<th>Country</th>
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<th>JP</th>
<th>IN</th>
<th>MX</th>
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<td>M&amp;L</td>
<td>TR &amp; VL</td>
<td>ML &amp; VL</td>
<td>M&amp;L</td>
<td>M&amp;L, VL</td>
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<td>&gt;4</td>
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- 50% programs can say how much is spent on compliance per annum
  - *In these, the amounts vary*
  - *Few have defined budget allocations and forward plans for MV&E activities*
- Fewer programs gave staff numbers. MV&E often forms part of staff’s functions
  - *Need to ensure activities are coordinated and recorded; and clear lines of responsibility established*
Market Surveillance Activities

- Most programs undertake some market surveillance
- But few have readily available records on the extent of MV&E surveillance and verification activities

![Market Surveillance Activities Diagram](image-url)
Market Surveillance in EU

- Large variation in the number of stores monitored
- Online selling - a major new challenge
Verification Testing

- 80% programs undertake product testing

![Bar chart showing percentage of programs testing product samples.]

- 50% could give figures on numbers tested

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<td>142</td>
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</table>
Expenditure on off-the-shelf testing

- Only 35% programs able to provide expenditure information
- Expenditure on testing increasing
- Large variation in testing costs
  - different product types
  - varied national cost structures
Enforcement Activities

• Very few were able to provide figures for enforcement actions
  • Labelling and similar offences found in market surveillance

The number of each type of enforcement actions taken in 2006-2008

- 0% 20% 40% 60% 80% 100%
  - DATA SUPPLIED
  - NO
  - NOT KNOWN

• Performance verification tests

The number of each type of enforcement actions taken in 2006-2008

- 0% 20% 40% 60% 80% 100%
  - DATA SUPPLIED
  - NONE RECORDED
  - NOT AVAILABLE
  - NOT KNOWN
Public disclosure

• Public disclosure

Do you make publicly available information about the number of tests conducted, including pass / failure rates?

Do you publicly identify individual products that have failed verification testing?

Compliance assessment

• Compliance assessment

Do you assess overall compliance rates for this program?

Are overall compliance rates increasing or decreasing?
Summary of conclusions

• Findings very consistent with EU studies
• Programs are aware they need to address compliance
• The basic structures are usually in place
• A few programs have a well developed and systematic approach to MVE
• Significant number of programs appear to lack planning, implementation, record keeping and reporting
  • Although several are revising compliance regimes
• Considerable variation in MV&E structures used
  • Opportunities to transfer experiences and approaches between programs
• But, no common language! Different terminology used – impairs dialogue and understanding
What can be done?

• MV&E regimes need sustained investment to plan, establish processes and upskill staff

• Most programs need to plan their approach to MV&E better, and more resources to organise and implement MV&E

• At the same time, there are major opportunities to do compliance smarter!

• Dialogue with participating industry often reveals better ways to integrate MV&E.

• Programs are always changing – lots of opportunities to do things better!
Thank you

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What are we talking about?

• All S&L programs have ‘rules’
  • Mandatory and voluntary programs
  • Contained in legislation or administrative guidelines

• “Compliance” means adherence to these sets of rules

• Obligations may apply to different stakeholders
  • suppliers, importers, retailers, wholesalers, on-line suppliers, etc

• The rules adopted by different programs vary according to many factors:
  • Existing legislation, political ambition, national governance issues, resources (in-house and external), stakeholder attitudes, etc

• But all programs have processes & systems to check compliance – the “compliance regime”
In most markets........

“20% of the regulated population will automatically comply with any regulation
5% will attempt to evade it
and the remaining 75% will comply as long as they think that the 5% will be caught and punished.”
“Deterrence theory........maintains that there must be a credible likelihood of detecting violations, swift, certain, and appropriate sanctions upon detection; and a perception among the regulated firms that these detection and sanction elements are present”