



Raising standards for consumers

The Consumer Voice in Europe

Tolerance abuse in Ecodesign Implementing Measures needs to be urgently addressed

Comments on the European Commission working document
on tolerances used in Ecodesign and Energy Labelling
Implementing Measures and the Consultation Forum
meeting outcome

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Summary

Since 2008 ANEC/BEUC as well as other stakeholders have repeatedly raised the topic and have requested legal action on the issue that some manufacturers are using tolerances to achieve higher energy labelling classes or to meet the Eco-design requirements by adding the value of tolerances on top of the measured values.

In response to new evidence from market surveillance authorities, the European Commission organized on 20 November 2012 a Consultation Forum meeting where the European Commission working document on tolerances used in Ecodesign and Energy Labelling Implementing measures was discussed with the aim of ensuring a consistent approach in the forthcoming new regulations.

In this paper we welcome the proposal of the European Commission and we focus on the following main points of interest for consumers:

- The legal format of the measures;
- The tolerance abuse of different measurable parameters;
- The forms of immediate action that can be taken;
- The possibility of an unintentional product ban;
- The modification of the compliance test methodology.

Consumer relevant issues:

We strongly support the Commission's proposals to tackle this important issue for consumers as they are being misled and lose significant sums of money where tolerances are being exploited on purpose. We also welcome and support those market surveillance authorities who have gathered evidence to support this case. However, we have identified some areas that need to be further discussed:

A. Legal format of measures

At the Consultation Forum on 20 November it has been discussed whether the new rules should be adopted as a stand-alone measure or could be mentioned in the product specific implementing measure which will be adopted next.

Recommendation: We support an “omnibus act” which modifies all existing implementing measures as we consider it crucial that action is taken quickly and applies to all products that are the subject of implementing measures.

B. Tackle tolerance abuse of all measurable parameters

The Commission's background document focuses mainly on the tolerance abuse in the area of energy consumption. However, there are other measurable parameters which are important for consumers and where a systematic exploitation of the tolerances would cause consumer detriment, e.g. with regard to water consumption.

Recommendation: We request tolerances not to be used on purpose on any of the technical specifications and to cover all measurable parameters for which Eco-design requirements are set such as for example water and spinning efficiency in washing machines in order to tackle the issue in a coherent and holistic way.

C. Immediate distribution of guidance

ANEC/BEUC support the adoption of binding measures to tackle the issue of tolerance abuse the soonest possible. However, until the adoption of such measures and as the vast majority of member states and stakeholders recognise that tolerance abuse is an unfair commercial practice which must and can be addressed based on the existing legislation, we suggest some measures which can be taken immediately and facilitate the correction procedure.

Recommendation: The European Commission should distribute guidance

- to market surveillance authorities clarifying that when tolerance abuse happens, it is illegal.
- to industry stressing that products must achieve the Eco-design requirements and that exceeding tolerances is not acceptable. Therefore they should provide proof in the product information file that the product is able to reach the thresholds without having exploited the tolerances. The measurements need to be reproducible by third parties.

D. Information request on the risk of unintentional product ban

The European Light Companies Federation claims that *"introducing a prohibition to use tolerances when a manufacturer verifies a product would mean that certain product categories would not reach the thresholds imposed by the regulation...as these thresholds have historically been set based on the available values..."*

While there should not be an unintended ban of lighting products which would limit consumer's choice considerably, we emphasise that all manufacturers which are subject to ecodesign implementing measures must comply with legislation.

Request: We call on the European Light Companies Federation to make available any data and additional information to explain which products could possibly be banned by measures taken to tackle tolerance abuse. Based on this data the members of the Consultation Forum should discuss if any measures that are specific to lighting products would be needed and justified.

E. Compliance test to include the original unit

Market surveillance authorities take samples of products and subject them to compliance checks. When the product fails the check, another three units are tested for conformity and compliance is assessed on the total of these 3 units.

Recommendation: We ask to modify the formulation of the compliance test methodology in order for the original unit that fails the test to be counted in the sum of tested articles in order to assess compliance.

END.