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Towards A new Energy Labelling Framework: Priorities for Triologue Negotiations

1. MAIN MESSAGES

Under the headline “*Transforming Europe’s energy system*” and as part of the *Energy Union Strategy*, the Commission presented in summer 2015 its proposal for a new Energy Labelling Framework. “Energy Efficiency First” has been considered a central principle of the Energy Union strategy, because it is such an effective way to cut emissions, bring savings to consumers, and reduce the EU's fossil fuel import dependency.

Orgalime believes in “Energy Efficiency First” and Consumer Empowerment, including through reliable, simple and easy to understand energy efficiency information. Energy Labelling is one essential pillar in the EU’s energy policy acquis that no doubt delivered convincing results and where more Europe translated into added value for its citizens as much as for its Orgalime and the environment.

This success and today’s European companies’ global energy efficiency technology leadership should be continued, which is essential for our industry to continue to develop in the EU and provide new jobs as we are doing today. Therefore, we call on the European Institutions to take into account the following **industry priorities in the triologue negotiations**:

- **Rescaling** should happen when justified by technological progress and population of the top classes. It should retain consumer confidence, sufficient incentives for top performers, sufficient stability and room for case by case implementation.
- **Data security of any database and protection of the Intellectual Property Rights of European companies is a must. The significant negative impacts and risks placed on EU technology leaders by the proposal for a product database should be resolved before accepting any such proposal.** These risks include the loss of IPR, confidential data and know how, the lack of sufficient resources and commitment to verify the quality and soundness of the data in the database, or liability and image damage issues that arise for the industry and the Commission in case of technical or similar failures of the database, to name but a few.

We appreciate the efforts and thank regulators for the improvement suggestions made during the legislative process to address these concerns. However, these remain far behind the needs of European industries to be sufficiently protected against unscrupulous market players. No region in the world centralises its energy efficiency intelligence so widely in one central place. The envisioned database will become a top target for illegal access by hackers and other interested parties if it contains confidential competition-relevant information.

Orgalime, the European Engineering Industries Association, speaks for 41 trade federations representing the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.9 million people in the EU and in 2015 accounted for more than €1,900 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union.

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We call on the European institutions to take the necessary time and resources needed to identify the best way forward in consideration of all different options in an open minded manner and with the stated overall objective in mind, namely to find solutions **to improve market surveillance**. Orgalime is committed to contribute constructively to such a debate. **We do however not see the present database proposal as one, which industry can support.**

- A **simple, swift and comprehensible label** should be established that is not overburdened by “supplementary information” requirements but remains focused according to the title of this Regulation: “Setting a framework for Energy Labelling”.

2. DETAILED RECOMMENDATIONS

Article 1: Subject matter and scope

Orgalime recommends to follow the Council's general approach and support the Commission's initial proposal.

Article 2: Definitions

Definition of “Energy Related Product”:

Energy labelling is a good tool to provide information regarding the energy efficiency of standalone consumer products in a clear and reliable manner. It allows consumers to easily compare products. However, the label is less suited for systems and services as these are more complicated and vary a lot, especially in the business-to-business (B2B) area.

Orgalime recommends to support amendment 24 of the EP first reading report.

Definition of “Supplementary Information”

The suggested legal base of 194(2) of the EU Treaty is inconsistent with the proposal for adding “supplementary information” to the energy label. Overburdening the energy label with supplementary information risks compromising today's success of the label: it is simple, swift and comprehensible. The label should focus on energy efficiency and support supplementary information only as specified by the relevant delegated act and as far as measurable and verifiable.

Orgalime recommends supporting amendment 30 of the EP first reading report.

Definition of “Label”

Orgalime supports amendment 25 of the EP first reading report, since it is future oriented and open to labels in electronic form.

Definition of “Energy Efficiency”

The definition of “Energy efficiency” is today provided in the EU's horizontal Energy Efficiency Directive, for which the Commission announces a review in the autumn.

This definition should remain to be set in this horizontal energy legislation, to secure a consistent and coherent application throughout the EU's energy policy acquis.

Definition of “Smart appliance”

The EP suggests to add a definition of “smart appliances” to the Commission proposal. As for the definition of “energy efficiency”, Orgalime believes that the Energy Labelling Framework is not the appropriate place.

We therefore recommend developing this definition under horizontal EU legislation in line with the ongoing Ecodesign work on smart appliances.

The European Engineering Industries Association

Definition of “Product Database”

The EP suggests to add such a definition to the Commission proposal. We refer to our comments regarding the database hereafter.

In the absence of sufficient safeguards for European industry to be protected against unfair competition, *we recommend rejecting amendment 31 of the EP first reading report.*

Article 3: Obligations of suppliers and dealers

Rescaling is a costly and burdensome process for manufacturers and too frequent downgradings confuse consumers, trade and industry. We call for setting in place a sufficiently flexible and workable procedure, which gives rise to the least confusion of the consumer, maximum stability for the industry and continued incentives for top performers.

To avoid unnecessary rescaling when labels are still fit for purpose, we support amendments that allow for rescaling when it is duly justified and the top class is saturated.

Orgalime prefers the Council’s general approach on article 3 over the EP first reading report and the initial Commission proposal.

Article 4: Obligations of Member States

The reference to “delegated acts” is essential, since legal product requirements are established therein but not in the present framework regulation.

Orgalime recommends rejecting amendments 37 and 38 of the EP first reading report.

Orgalime recommends supporting amendments 40 and 41 of the EP report, which are widely identical with the Council’s general approach.

Article 5: Union Market Surveillance and control of ErPs entering the Union market

To support industry’s compliance efforts and combat free riding and unfair competition, regulation needs to be properly followed up by market surveillance and enforcement.

Orgalime recommends to support amendments 42, 43 and 44 of the EP report.

Article 6: Union Safeguard Procedure

Orgalime recommends supporting amendments 48, 50, 54.

While supporting persuasive corrective measures in case of non-compliance, amendment 96 of the EP, which calls for the customer’s right to return product free of charge and get full refund of original purchase price in case of non-compliance, could create cases of abuse. *It should not be adopted.*

Article 7: Labels and Rescaling

Article 7.3 of the Commission proposal suggests having no products in class A and B after a rescaling to avoid these classes being saturated shortly after rescaling. The EP and Council suggest to leave class A empty after rescaling. However, leaving the top class(es) empty is not the solution for all types of products. The speed of technical progress differs from product group to product group. For product groups for which technical progress is slow, leaving the top class(es) empty after rescaling would even reduce the incentive for consumers to buy energy efficient products.

Therefore, we would have preferred that the framework regulation would not require the top class(es) being empty for all product groups, but to allow this to be determined on a case by case basis in the individual product specific implementing measures.

Orgalime supports the proposal that rescaling should take place when justified by technological progress and population of the top classes. Orgalime supports that the label should be stable for at least 10 years after rescaling.

Orgalime generally prefers the Council's general approach to the initial Commission proposal and the EP report on article 7.

Article 8 and Annex I: Product Database

The proposal for a product database creates disproportionate risks and negative consequences for the affected EU industry, including the following:

- Compiling all European energy efficiency and other product intelligence in one central place makes European industry highly vulnerable and exposed to the risk of losing their Intellectual Property Rights, confidential data, excellence and know how through hacking and unfair practices by unscrupulous players.
Data security is our key concern, which must not be compromised. The envisioned database will become a top target for illegal access by hackers and other interested parties if it contains confidential competition relevant information. Examples of such information are complete test reports or technical construction files and other technical documentation revealing confidential product properties beyond the parameters required by EU energy efficiency legislation.
- The existing lack of market surveillance, resources and commitment to verify the completeness, quality and soundness of the data furthermore increases European technology leaders' risk of being exposed to unfair competition. Industry needs a guarantee of market surveillance in terms of completeness (i.e. all manufacturers enter all relevant products into the database) and correctness checks of any database entries (i.e. to prevent randomly generated data just to meet the requirement of uploading "some" data). Physical checks of products must continue to go hand in hand with the new obligations introduced on manufacturers.
- By entering incorrect data in the database, or not registering a product at all in the database, actors can avoid further product compliance controls. This damages the overall consumer trust in the label.
- European technology leaders as well as the Commission would face significant uncertainties concerning liability and image damage in case of technical or similar failures of the database. A possible malfunction of the database must under no circumstances hinder companies from bringing new products into the market.
- These risks and the inherent limitations for European market surveillance authorities to enforce EU legislation outside the EU discourages further product innovation in Europe.
- Considering these risks, the costs and additional administration burden on manufacturers, we consider the database proposal disproportionate in comparison to the benefits to be gained. No database can replace physical checks, which remain the real added value of market surveillance.

It is for these reasons that Orgalime to date does not support the proposal for a product database. We appreciate the efforts made by regulators to address these concerns and thank them for important improvement suggestions made, in particular the following:

- *EP amendments 83 and 84 (in comparison to the Commission proposal and Council General Approach).*
- *EP amendments 16 and 66 of the EP report on article 8 (in comparison the initial Commission proposal and the Council's General Approach).*

- *The Council's General Approach on annex I (in comparison to the initial Commission proposal and EP amendments 80 and 82).*

Nevertheless, these remain far behind what would be needed to effectively protect EU industry against unfair market players.

Therefore, we ask regulators to take the necessary time and resources to identify the best way forward. All different options and alternatives, notably focusing the database on the public interface, mandating the Commission to adopt the details of the database through a delegated act and in consultation of stakeholders, or launching a test database on a limited number of priority cases instead, should be discussed in an open minded manner and with the stated overall objective in mind, namely to find solutions to improve market surveillance. Orgalime is committed to contribute constructively to such a debate.

Article 9: Harmonised standards

Orgalime supports the Council's general approach on article 9.

Article 11: Working Plan

The new provision regarding the Working Plan and its improved coordination with the implementation of the Ecodesign Directive, as requested by the Commission, EP and Council, should be supported.

Articles 12, 13 and 14

Orgalime supports the Council's general approach.

3. CONCLUSIONS

The joint implementation of the existing Energy Labelling and Ecodesign Framework Directives are to realise almost half of the EU's 2020 energy efficiency target, thus energy savings of around 175 Mtoe by 2020, equalling a saving of €465 per year on household energy bills for consumers.

We call on the European Institutions to support European technology leaders through a final regulation that combines environmental with economic ambition, ensures data security and fair competition and thereby helps companies to withstand harsh global competition in an increasingly digital environment.

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