ORGALIME

Position Paper

Brussels, 29 September 2015

Orgalime comments on the Commission Proposal for a New Energy Labelling Framework[1]

On 15 July 2015, the European Commission tabled its proposal for a new framework for the labelling of energy efficient products[2]. The affected industry represented in its entirety by ORGALIME comments this proposal as follows:

EXECUTIVE SUMMARY

Orgalime supports an EU wide framework for the energy efficiency labelling of products and also supports improving the existing shortcomings of energy labelling of products. The past and present success of the Energy Labelling Framework is primarily due to its simplicity. We acknowledge the present proposal for a new Energy Labelling Framework, but draw attention to the need for a better design in several critical areas to preserve the success and credibility of the existing Energy Labelling Framework for both consumers and affected European product manufacturers.

The proposal is motivated to further exploit the potential of energy efficiency for the moderation of energy demand and consequent reduction of energy dependency of the EU. Orgalime is a supporter of the new 2030 Energy and Climate Change Framework and the increased energy efficiency target in particular. We would even like to see a 30% target to be set in place earlier than later. This is because the sector agrees that main energy efficiency savings potentials throughout different market segments remain untapped today. However, the new energy efficiency target can in our view not be realised at the level of standalone appliances but requires a systems approach, such as via the Energy Efficiency or Energy Performance of Buildings Directives. The Energy labelling and ecodesign frameworks appear less suited for tapping these further system potentials.

Second, improving market surveillance and its effectiveness and securing fair competition is indeed necessary, though it is not an issue specific to energy labelling: a horizontal solution is needed. In particular, a product registration database will in our view, not solve the identified shortcomings of market surveillance, including the lack of human resources and physical checks, nor the estimated loss of 10% of energy savings. Real improvements and better market surveillance results depend primarily on carrying out physical checks to spot and sanction free-riders and cheats. The issue therefore appears much more an issue of pooling (limited) resources and better coordinating Member States enforcement activities to increase efficiencies, save costs and secure energy savings.

[1] http://ec.europa.eu/energy/sites/ener/files/documents/1_EN_ACT_part1_v6.pdf

[2] http://europa.eu/rapid/press-release_IP-15-5358_en.htm

Orgalime, the European Engineering Industries Association, speaks for 43 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.3 million people in the EU and in 2014 accounted for more than €1,825 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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Orgalime´s key recommendations for the new Framework include the following:

- Support giving the framework the status of a Regulation instead of a Directive.
- In its nature of a product policy measure, base the proposal on article 114 of the EU Treaty instead of, or at least in addition to, article 194(2), to secure full harmonisation of energy labelling requirements throughout the EU.
- Ensure full consistency with the New Legislative Framework, notably concerning definitions and market surveillance provisions.
- Exclude Business-to Business products (B2B) from the scope of the Directive, since the energy label is not a promising instrument for successful information of professional business partners.
- Make the rescaling procedure much more flexible, allowing for the adoption of optimal case by case implementing measures for each targeted product group, depending on the studies of the potential for future technical evolution and in synchronisation with the relevant, product specific ecodesign requirements. Reclassifications should happen only for products where the top classes of the scale are saturated and in combination with appropriate timelines, incentives for best performers and a thorough communication to ensure that the consumer fully understands that products are not less efficient than before and so that industry´s energy efficiency investments are not upset.
- Provide for a maximum of regulatory stability with appropriate timelines worked out on a product by product basis to keep administrative and cost burden of rescaling on manufacturers and dealers proportionate and to minimise confusion of consumers.
- Better recognise the (sometimes considerable) differences that exist between the vast variety of different products falling under the scope of the Directive; stick with general principles in a framework fit for all products in scope, rather than prescribing too detailed criteria that cannot suit all products in scope.
- A product registration database cannot solve market surveillance problems while it adds to administrative burden and costs that in the end will fall on consumers. We stress the need for verifying the quality and correctness of the fed-in data, which will require substantial human resources but should not lead to withdrawing already scarce Member States human resources from physical checks to verifying data entries. Instead, improve the coordination of market surveillance activities of Member States, dedicate sufficient human resources to physical checks and do carry them out on the grounds.
- Support the competitiveness, world leadership of European manufacturing through innovation and skills by protecting Intellectual Property Rights and confidential business information.
- Do not overburden and risk the success of the label with requirements on “supplementary information”.

STATUS AND LEGAL BASE

EU Product Policy requires full harmonisation to ensure the functioning of the EU internal market. We believe that moving up the framework from the present status of a Directive to a Regulation will be beneficial in this respect.

At the same time, the proposal to change the existing legal base of article 114 of the EU Treaty to the new article 194(2) on energy would reduce the level of harmonisation achieved by the existing framework and risk fragmentation. This is a serious issue for companies, big and small alike.

We recommend basing the proposal on article 114 of the EU Treaty instead of, or at least in addition to, article 194(2), to secure full harmonisation of energy labelling requirements throughout the EU.

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SCOPE OF THE REGULATION (ARTICLE 1)

Professional users have different information needs than what the energy label is designed for, or able to give. We therefore suggest excluding Business-to-Business products (B2B) from the scope of the new framework.

DEFINITION "ENERGY RELATED PRODUCT" (ARTICLE 2)

We notice slight divergences of the definition of "energy related product" included in the present proposal and the existing Ecodesign and Energy Labelling Frameworks.

For the sake of consistency, we recommend to stick with the definition of the existing Ecodesign Directive.

CONSISTENCY WITH THE NEW LEGISLATIVE FRAMEWORK (ARTICLES 2, 5, 6 AND 9)

The proposal needs to be verified according to the New Legislative Framework (NLF), to ensure that all definitions provided in article 2 are indeed fully consistent with the NLF. This especially applies to the definition of terms such as 'customer', 'supplier' and 'putting into service'.
Articles 5, 6, and 9 in our view correspond with the NLF and should be supported.

RESCALING (ARTICLE 7)

(Too) frequent downgradings are confusing for the industry, trade and consumers, while representing a considerable workload and cost for industry that will in the end fall back on consumers. Also, each rescaling is putting at stake industry´s energy efficiency investments as well as the overall success and credibility of the existing energy labelling framework. The wording of this new article is crucial and in our view requires substantial shaping to set in place a sufficiently flexible and workable procedure with least confusion of the consumer and maximum stability for the industry and continued incentives for top performers. Overall, the framework needs to be sufficiently flexible and generic to be fit for all products in scope that, no doubt, have different energy labelling histories, different product characteristics and different potentials for further energy efficiency improvements. This is also essential to allow for an appropriate product by product specific implementation.

Article 7.2

The provision to no longer show the energy classes D,E,F or G on the label when, for a given product group, no models are belonging to these classes, is confusing. It should be deleted.

Synchronisation with ecodesign requirements is essential and supported. A uniform, clearly understandable label that doesn´t change layout from case to case, but always shows the new scale to be agreed appears indispensable to us.

When labels are rescaled it is important to avoid confusion for consumers between the 'old' and 'new' label. Therefore the 'old' and 'new' label should be clearly different. For example, when in one shop the old label is still in place, while in another shop they already made the change. It should be easy to explain that one is an old and the other a new label, possibly by having different layout designs.

To improve consumer understanding and to keep incentives for top performers, it would, in our view, also be important that consumers have the means to clearly understand into which new class

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the top performers of the old class are falling after the rescaling. Good communication in the transition period is also essential in this respect.

Article 7.3

In general, Art. 7(3) should only prescribe very general conditions, as it applies to the labelling and rescaling of all products in scope, which are very different in respect to their technology or potential for further efficiency improvements. The phrase "*the estimated time within which a majority of models falls into those classes shall be at least ten years later"* can in our view help regulatory stability and avoid too rapid overpopulation for a product group that has just been rescaled. We recommend supporting it.

The new energy labelling scheme needs to provide sufficiently strong incentives for best performers in the short and long term, while providing sufficient stability. We therefore generally support that top classes should be appropriately populated depending on the specific case to allow and incentivise for further technological advancement. Art. 7(3), however, is in our view too stringent by generically requiring that *"no products can fall in the A or B class when the label is rescaled*" for all product groups. This wording would not allow for recognising the differences between product groups, including in terms of technology or further improvement potential, for the many different products falling in the scope of this framework. We propose to delete this entry. The phrase "*the estimated time within which a majority of models falls into those classes shall be at least ten years later"* is sufficient and should be maintained.

Instead, Art. 7(3) should be more flexible, allowing for case by case decisions through each subsequent implementing measure for each product category on the appropriate level of population of the top classes depending on the product group in question and its potential for future efficiency improvement. Indeed, it is the purpose of Art. 12 to label or rescale via the adoption of Delegated Acts. As such, rescaling should be judged on a case-by-case basis for each product category, taking into account also the different tiers for the minimum requirements of the product set by possible ecodesign implementing measures. For some products, such as TVs, it might be fitting to leave the top classes empty at the time of introduction as they are fast moving technologies with frequent advancements. For other product groups, however, such as boilers or lighting and heating equipment, innovation happens at a slower pace, and the top classes are almost empty. For these products, a sufficient number of classes needs to be maintained to allow for differentiation and creation of the proper incentive to further innovate, to provide clear information to consumers and to realise the envisaged energy savings. The label scale should be defined in a way that significantly differentiates products both in terms of energy efficiency and its other key functionalities.

Certain labels are only introduced after the entry into force of the new labelling regulation, or just before that period. For those labels a review within 5 years after the entry into force is not necessary and change the label within that review will only create more confusion.

Article 7.4

To stipulate that "*labels shall be re-scaled periodically*" undermines the necessary regulatory stability for industry and is inconsistent with article 7.3 that refers to a ten year period. We suggest to clarify that "*The labels shall be reviewed periodically".*

For products, which are regulated under the Ecodesign Directive, too, rescaling should be clearly synchronised with ecodesign implementation.

In general, re-scaling and downgrading should be kept to a minimum, since it causes confusion to all involved parties and therefore discourages both, consumers to buy "green" and industry to further innovate.

Frequent re-scaling also risks generating negative publicity for policy makers, as consumers will get the impression that the legislation has not been sufficiently thought through.

Article 7.6

Any revision must not result in a requirement to re-label products that have already been legally placed on the market. Indeed, re-scaling must happen in accordance with the standing New Legislative Framework (NLF) principles and not apply retroactively.

Labels under Directive 2010/30/EU should be considered as compliant with the Regulation in place at the moment of the placing on the market of the product. Art. 7(6) of the proposal seems to indicate this. Nevertheless, this should be further clarified.

Suppliers should be required to provide "only" one label for each product sent to dealers, including during the replacement period. Requiring producers to provide all products with two labels, especially if in the product box as indicated in the Explanatory memorandum, would not be useful. The consumer would not be able to read them before purchasing the product while resources would be wasted.

Furthermore, we are concerned that indeed the right label will be displayed by retailers for each product. As, for example, the TVCompliant project has shown, labels are indeed wrongly displayed today. We therefore question the resources that would be dedicated to check the correct dispelling of labels in retail shops. The suggested product database cannot solve this issue.

PRODUCT DATABASE (ARTICLE 8)

Art. 8 of the proposal suggests establishing a product database, which is to be run and maintained by the Commission[3] but filled by manufacturers. Orgalime rejects this proposal for the following reasons:

- First, a product database is no replacement for actual, physical market surveillance checks of products on the market. Assessing products in an appropriate testing facility is the only real way to know whether it is compliant with the requirements or not. the market surveillance have already alternative tools to a database in place, such as ADCO group meetings, where different topics, such as interpretation of harmonised standards and conformity of different products are evaluated and then applied throughout all EU Member States.
- Second, contrary to the Commission's assessment[4], non-compliance (estimated at 20%) cannot be resolved by granting national authorities access to technical documentation in the proposed database. Indeed, the database will only contain information from 'good players' who actually provide (correct) information, while those who either cheat or fail to provide information will not be assessed. On the contrary, we fear that capacity committed by the authority to verify entries into the database will be withdrawn from work on physical checks. Authorities cannot be sure that data entries are consistent with the actual product properties, therefore they will be obliged to check the data entry. The envisaged objective of improving market surveillance would not be strengthened but weakened.

[3] It is to contain the information listed in Annex I.

[4] Explanatory notes, section 5.2.2, *Improving enforcement by creating a database of products covered by energy labelling obligations*, page 9

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- Third, the database has negative impacts in terms of Intellectual Property Rights (IPR). Technical files contain confidential business information and trade secrets, which should never be made public. The confidentiality of the data to be provided cannot be guaranteed. Despite being divided into a 'public' and 'confidential' part, a company can never be sure who gets access to their information, possibly leading to irreversible revenue and/or goodwill losses.
  Indeed, the Commission itself refers to "*risks related to the functioning of the product registration database relate mainly to IT-related problems, such as a possible breakdown of the system and confidentiality issues*"[5].
  Therefore, we insist that the approach from the New Legislative Framework Directives is respected. It is also a principle of the NLF for market surveillance to take place after a product has been placed on the market to avoid interference with product development. In the case of the database, the documents have to be uploaded before the product has been placed on the market. That is why the NLF prescribes that technical files are only to be provided upon request by a national authority when there is a doubt about a product's compliance. This allows for a dialogue between the parties, and permits the manufacturer to know when his technical information is being assessed and by whom. Subsequently, we request that the technical file be deleted from Annex I 2(a) and (b) of the proposal. There are cases, in particular in the B2B sector, where even the declaration of conformity is too data-sensitive to be made publicly available, as it may contain relevant information for competitors. For product groups, where single unit production occurs, a case by case analysis must examine what type of information can be uploaded to a database.
- Fourth, we would like clarification concerning the cost estimates for the proposal. The costs for setting up the database are estimated to be 1.500.000 EUR in 2016 plus 150.000 EUR in yearly maintenance and 300.000 EUR per year from 2017 for studies on consumer understanding. In addition to this, costs for manufacturers are "estimated at 50 million Euros over a period of ten years"[6], plus "administrative costs for registering products" which supposedly are "1.5 million Euros per year for the entire industry: about 0.5 eurocent per product sold". We would like more information about how these estimates come about.
- In this regard, we wish to stress what a considerable economy burden the database is for industry, especially for SMEs. In order to feed the database with information, companies will likely have to commit more staff members. Added to this comes the IT-systems changes necessary to give data to the Commission's database. Different elements of a technical file do not exist in a harmonised electronic format; installing a suitable IT interface can be burdensome and costly, especially for SMEs. We find this highly counterproductive in terms of the Better Regulation agenda, especially considering the lack of practical benefits from having a database, as mentioned above.
- It is also argued that costs for manufacturers would reduce to zero, since the technical file would no longer have to be kept. This is a wrong assumption, since the technical file is not only established for the purpose of compliance with the Energy Labelling framework but for all regulatory requirements. For compliance with these other regulations, the technical would nevertheless have to be kept. The argued cost reduction for manufacturers is therefore erroneous.
- Moreover, it is also a false assumption to claim that costs on manufacturers would be insignificant because the data in question would already have to be provided for compliance control anyway. In fact, technical files are very complex documents that are compiled according to the specific request of an authority in a specific case. The database however would require all the data for all the products with subsequent higher costs and administrative burden.

[5] Legislative financial statement (Management Measures), section 2.2.1, *risk(s) identified,* page 29

[6] COM(2015) 341 final, page 7

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- There are examples of product databases from Australia and the United States. However, these only require limited information, and are thus less burdensome for industry as the one from the Commission proposal. In addition, these databases come in an entirely different setting of product policy than in the EU.
- Finally, further examples from the EU include the Outdoor Noise Directive 2000/14/EC, where setting up a similar database has in no way proven beneficial for market surveillance authorities.

In conclusion, setting up a product database will in our view neither address the current shortcomings in terms of non-compliance or loss of energy savings, nor will it facilitate Member States' market surveillance efforts, as physical checks are nevertheless still needed. Industry absolutely opposes making available confidential information and infringing Intellectual Property Rights. We are committed to making technical files and test reports available to market surveillance authorities upon request.

WORKING PLAN (ARTICLE 11)

The new provision regarding the Working Plan and its improved coordination with the implementation of the Ecodesign Directive (article 11) should be supported.

SUPPLEMENTARY INFORMATION (ARTICLE 2.20, ARTICLE 12.2.m and third last paragraph)

On the one hand, the Commission argues that the change of legal base is motivated to allow member States to regulate on other product information requirements than energy performance. On the other hand, the proposal suggests to include "supplementary information beyond energy performance.

We recall our request for basing this product policy proposal on article 114 of the EU Treaty, while not overburden the energy label with supplementary information, which risks undermining its success.

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