

**Brussels, 31 January 2012**

## **Comments on CSES Draft Final Study Report: Evaluation of the Eco Design Directive 2009/125/EC**

### **EXECUTIVE SUMMARY**

Following the recent release of the CSES draft final report on the abovementioned study and the related stakeholder consultation meeting, Orgalime would like to add several remarks to its earlier contributions, especially on new elements that arise from the draft final report in comparison to its earlier version:

- The CSES study recommendations should be fully based on **evidence**. This is in our view not the case for the recommendations which have now been amended to make them more positive regarding an extension of the scope beyond energy related products; this now clearly is in conflict with the evident risks of such an extension - creation of legal uncertainty, disruption of the ongoing implementation, weakened credibility of the instrument, higher non compliance or significant additional costs for industry. The previous CSES recommendation should therefore in our view be maintained.  
**Changes to the scope, the MEERp methodology and subsequent procedures, including bodies involved in the preparation of implementing measures, should not be recommended - and certainly not be introduced- before the effectiveness and efficiency of the Directive and its implementing measures have been fully evaluated.**
- Anybody involved in the **preparatory process of implementing measures** needs to take into account important criteria, such as securing a transparent and inclusive process, involving industry experts throughout the process, demonstrating their expertise in eco design and the targeted products and being able to ensure confidentiality of sensitive data.
- Orgalime is concerned with several parts of the study discussing “**non energy in use**” **parameters** for the future implementation. The final report should state that for legal certainty any further implementation activity has to respect all criteria and procedural elements of the Directive (notably article 15 and the criterion of “significant environmental improvement potential”) as well as take into account all existing study findings of already targeted product groups. It should also be recommended that no overlap with other legislation should be created and that enforcement must be possible.
- We support **strengthening enforcement through better cooperation and exchange of information, notably in the ADCO**. However, the recommendation to **create national registers** should be removed: this option is in contradiction with regulators’ decisions taken during the legislative process, is too burdensome and costly and is also inappropriate in the area of fully harmonised European product policy, which cannot be compared with the purpose and function of the Waste Electrical and Electronic Equipment Directive.
- CSES should however recommend that the **Eco Design Directive should go more in the direction of New Approach Directives and strive for a better use of standards**, not only test and measurement standards, especially if generic requirements were considered for the future.
- Finally, we welcome CSES’ assessment of the instrument of voluntary agreements, which should be kept as an option for the future.

*Our detailed comments are provided hereafter:*

*Orgalime, the European Engineering Industries Association, speaks for 34 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 9.7 million people in the EU and in 2010 accounted for some €1,510 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.*

## 1. RELEVANCE OF THE ECO DESIGN DIRECTIVE

- Orgalime agrees that the Eco Design Directive is well placed as a policy instrument within the context defined by the Action Plan Sustainable Industrial Policy/Sustainable Consumption and Production. However, it is more than that: the recently launched EU Resource Efficiency Roadmap identifies energy efficiency as an important aspect. Therefore, the report should highlight that the current implementing measures already provide a substantial contribution to the EU's Resource Efficiency policy.
- Orgalime also agrees that the main purpose of the Directive of removing the worst performing products from the market is appropriate. However, determining and setting limits requires carefulness and thorough assessment to avoid negative consequences in the targeted industry sector.
- However, if the focus of implementing measures under the Directive has to large extent been on energy efficiency issues since 2005, this arises not only from the focus of policy and the choice of products analysed and, on the basis of this, selected, but also because other environmental impacts are either not significant following the life cycle assessment and/or dealt with under other legislation, notably the WEEE and RoHS Directives. This should be added to the draft report.
- Moreover, contrary to what is stated in the draft report, given the fact that the Commission has for each implementing measure carried out a thorough analysis, we have clear doubts that other improvements beyond those covered in the ongoing implementing measures and other EU legislation applying on the same products (in particular WEEE and RoHS) would qualify for further measures under the criteria of article 15 of the Eco Design Directive. In particular, we doubt that a significant environmental improvement potential can be demonstrated for other parameters for the existing product scope (see [Orgalime position paper of 16 January 2012](#)).

## 2. COHERENCE

- Orgalime supports the recommendation of the draft report to safeguard the coordination of the Eco Design Directive with the Energy Labelling Directive. It has been demonstrated that the Energy Label can also be used for providing product information on multiple aspects, including for example water use. This useful tool should not be compromised, especially not by a possible environment footprint methodology or subsequent product information requirements, which are currently under discussion in the context of the EU's Resource Efficiency Roadmap.
- A better coordination with the Green Public Procurement policy and the Eco Label scheme would be welcome.
- We welcome the recommendation that the Commission should consider the development of a guidance document on the interface with other EU regulations, and the WEEE and RoHS Directives in particular. However, we feel that such guidance should also encompass the REACH Regulation and IED Directive.

During the recent recasts of the WEEE and RoHS Directives, some clarification has been introduced, which we feel should be noted in the draft report for inclusion of any future guidance document:

- Article 4 of the WEEE Directive has been reworded and now primarily focuses on implementation aspects of implementing measures adopted under the Eco Design Directive itself. It is therefore evident that regulatory eco design requirements should now solely be established under the Eco Design Directive, while applying all its criteria and procedural elements.
- Recital (13) of Directive 2011/65/EC (Recast RoHS Directive) states that eco design requirements may also be implemented via this Directive. At the same time, the recast RoHS Directive calls for consistence with REACH Regulation 1907/2006 (see recitals 16, 28 and article 6). Therefore, where assessments under the Eco

Design Directive have identified factors relating to substances falling under the RoHS Directive which are significant under the criteria of article 15 of the Directive, such aspects may give rise to restrictions applied under the RoHS Directive. Such restrictions would, however, need to be enacted in coherence with the REACH Regulation: indeed the latter remains the overarching tool for EU chemicals management, including substance restrictions.

### 3. EFFECTIVENESS OF THE DIRECTIVE

- As outlined in earlier Orgalime comments, we agree with the conclusion of the draft report that the limited data available at this stage and the fact that many requirements of implementing measures have just or are about to enter into force do not allow a conclusive assessment of the effect of the implementing measures.
- We also agree that the impact on costs for industry varies between different product groups and that there is no consistent picture in this respect. In some cases, costs have been considerable, in others less substantial. However, we believe one should add that, for the product groups covered to date, the market response towards more sustainable products has been somewhat limited; therefore the expected returns on industry's investment for these green technologies has often not been realised. If the objectives of the implementing measures are to be achieved, policymakers need to take measures to encourage a better uptake of such products in the market. Measures such as the proposal to strengthen the promotion of best available technologies, which we also support, should be added to the CSES recommendations.

### 4. EFFICIENCY OF THE DIRECTIVE

- Orgalime disagrees with the statement that there are no significant problems identified in relation to the criteria for the selection of products to be covered under the Eco Design Directive. Throughout the process, stakeholders, including Orgalime, have stressed that the criterion of "significant sales volume/ 200000 units" has been interpreted in a somewhat "flexible" way, especially for business to business products: mixing very different products into one group just to allow regulators to satisfy the volume criterion (e.g.: laboratory and industrial furnaces or machine tools for working metals and other machinery) just leads to poor and disproportionate regulation as well as subsequent difficulties in the implementation process. The report should recommend that this does not happen in the future.
- We support the CSES assessment that the MEEuP methodology has served its purpose in the identification of the significant environmental aspects (not only for energy during the use phase, but also for other aspects) and the relevant requirements to be set. We request the following addition to the draft report: the methodology should, for this reason, not be changed for the present scope of the directive. In particular, in the light of ongoing developments in the Joint Research Centre (JRC), we believe it is important not to introduce an unnecessary parallel track to the existing methodology: doing so would only undermine all the work done of existing findings of preparatory studies so far and end up jeopardizing the current implementation, legal certainty and credibility of the instrument.
- We strongly support CSES in its view that good quality research at an early stage, to produce working plans and preparatory studies can save time and expenses in subsequent stages.
- However, stating that the procedure for developing implementing measures as lengthy in general, is too general: in some cases, implementing measures were adopted very quickly (e.g.: standby and off mode losses), while others required more time for various reasons: for example, the quality of the preparatory study, consultants trying to favour one particular technical solution or simply the complexity of the issue under study. We advocate for an improved project management that would target only as many lots as

manageable under given resources and that would avoid cutting necessary compliance deadlines for industry where time delays occurred at earlier stages of preparing the implementing measure. This would help improving legal certainty and the relevance of concluded study findings for final implementing measures. This should be added to the draft final report.

- The proposal to better staff the Commission is understandable; however, it must be borne in mind that stakeholders, including industry, will not be able to follow such a development and may face difficulties in providing the requested input. Already now, stakeholders have regularly been faced with constraints arising from the requests to provide data under excessively tight deadlines.
- Furthermore, we do not only see a need for a better synchronisation between the development process of implementing measures and that of measurement and test standards, as CSES proposes; however, better use of standards and the New Approach principles in support to legislation as a whole would in our view be desirable (see [Orgalime position paper of 23 June 2008](#)) . Besides, this recommendation is conflicts with another CSES recommendation, namely to consider generic requirements for the future, where the setting of measurements and test standards would definitely be too narrow a focus.

- Market surveillance and enforcement are indeed an area of concern, posing a threat to the credibility of the legislative framework and undermining the efforts of industry. Most Member States have indeed not provided the necessary resources for effective action so as to mitigate the impact of free riding.

Strengthening enforcement is one of Orgalime's core requests, too. We support the CSES proposals for strengthening cooperation and information exchange between enforcement bodies and the sharing of best practices. The ADCO committee indeed is a valuable body in that respect.

However, among the recommendations proposed by CSES is that for a requirement for online registration of all new models in Member States. Such a recommendation is in our view not in line with the concept of European product policy legislation. It also runs counter the explicit decision of policymakers, since during the legislative process of adopting the framework directive the proposal for pre-market registration has been rejected. Module A (self-declaration) has been agreed concept instead. Finally, the purpose and instruments used under the Waste Electrical and Electronic Equipment Directive, and the national registers established there under in particular, are neither appropriate nor comparable with the purpose and required instruments to secure the functioning of the Eco Design Directive and its enforcement. The latter represents EU product legislation and is fully harmonised at European level. Besides, setting up registers is very costly and causing administrative burden for companies. We request a deletion of the recommendation from the draft report. Such a proposal would run counter to the drive for a simplification of the regulatory environment.

- Discussing to address the aspects of "land use", "raw materials production" or "input for production" and manufacturing processes themselves raises immediate enforcement concerns:
  - Member States enforcement powers are limited to the territory of their Member State and can consequently not be exercised outside the EU.
  - Incorporating these aspects into products placed on the European market may appear as a solution at first sight; however, this also raises implementation and enforcement problems: if companies have a certain influence on their supply chains, which is less the case for SMEs, they do not possess enforcement or control powers on other actors, neither in Europe nor outside. They mainly depend on the information and declarations they receive from their suppliers. Companies are committed to act in a responsible, sustainable manner in their supply chain management. However, legal constraints for enforcement need to be taken into account in any legislation.

- We welcome that CSES advocates for a stronger implementation of the cost effectiveness analysis of the Directive, which suggests a very high overall cost -benefit ratio. This will be particularly relevant when discussing the setting of further requirements in the context of the EU's Resource Efficiency Roadmap.
- Finally, CSES cautiously assesses the instrument of voluntary agreements under the Directive. Notwithstanding the fact that some elements may be subject to criticism, it should be more clearly stated that the option should be maintained.

## 5. EXTENSION OF THE SCOPE OF THE DIRECTIVE BEYOND ENERGY RELATED PRODUCTS

- Contrary to its earlier draft report, CSES now includes in its recommendations an extension of the Eco Design Directive to cover non energy related goods. This is deemed "necessary in principle to make available a very important instrument for sustainable development policy". Orgalime is surprised at this proposal given that neither the efficiency or effectiveness of the instrument in its current scope could be demonstrated at this stage, nor have new facts been evidenced that would justify such a change of recommendation. The draft report is even inconsistent as the executive summary says that "*the analysis does not support a decision for the extension of the Directive at this point*". Orgalime supports this latter conclusion, which should remain the core recommendation of the report, in particular considering the identified risks of such an extension of the scope.
- We fully agree with the risks identified for an extension of the scope at this point: these include the difference of theory and practice in terms of environmental improvement potentials, substantial additional costs for industry, higher risk of non-compliance, especially in the case of products with global supply chains, fragmented markets and the large share of SMEs. However, what remains the most important concern of Orgalime is the negative impact of an extension to the existing implementation under the existing product scope. :  
For all case studies carried out in the study, CSES concludes that a change of the existing MEErP methodology would be required in case of an extension, especially to incorporate further environmental parameters, such as toxicity, land use or raw material extraction. Such a change of the existing methodology risks seriously undermining the ongoing implementation and industry's investment to date. Moreover, this will give rise to legal uncertainty and jeopardise the credibility of the instrument in our sector, which to date is the only targeted industry. The existing MEErP methodology already provides for a full life cycle approach. Orgalime strongly recommends that the existing MEErP methodology should remain the sole relevant methodology for the existing scope of the directive and that all findings of existing studies remain valid for the future implementation.
- CSES acknowledges the fact that action under the Eco Design Directive should not duplicate legislation. It is therefore logical that CSES should conclude that means of transport should not fall under the scope of the directive. We, however, feel that the argument is equally valid for various other further aspects discussed in the study, for which CSES does not necessarily fully exclude the option of inclusion under the scope of the Directive at some stage. This is in our view the case for process/production oriented aspects that are addressed in the recently revised Industrial Emissions Directive (IED), toxicity aspects covered by the ambitious EU wide REACH Regulation or in sector specific legislation, such as the recast RoHS Directive. We therefore think that the draft report should be revisited in this respect.
- CSES also states that it is a political decision whether or not to extend the scope of the Directive. The study should therefore not pre-empt such a decision. Orgalime reminds policymakers that it is one main element of the EU's Better Regulation principles to base political decisions on scientific basis and evidence and therefore requests not to extend the scope of the Directive.

- Finally, CSES concludes that only a limited number of implementation measures (actually 12 out of 37, instead of CSES' figures of 9 out of 35) have been finalised and that first concluding the work already launched is considered appropriate by many stakeholders. Orgalime shares this view.

## 6. CREATING AN EXECUTIVE AGENCY (EXTENDED REMIT FOR THE JRC)

CSES recommends that an executive agency or extended remit for the JRC “to capture and embody the technical, market and institutional experience of particular implementing measures and to monitor market developments in order to support the development of future measures” should be considered.

We are critical of these recommendations:

Setting up an executive agency is in our view too costly.

Also, we believe that recommending changes in the preparation process of implementing measures while the effectiveness and efficiency of the directive has not yet been fully evaluated, is not appropriate. In any case, the preparatory process needs to continue to respect several criteria, such as:

- The body that is mandated to carry out preparatory studies needs to possess knowledge of the products to be studied as well as competence in eco design
- Industry has to be involved throughout the process of preparing implementing measures.
- Confidentiality of data needs to be ensured.
- Used data should be of good quality and consistent
- The preparatory study process is a technical, not political process

Furthermore, Orgalime is keen to ensure consistency between existing implementation and future implementation on product groups already targeted by the directive:

- The findings of existing preparatory studies need to remain valid for all further implementation activities as, otherwise, ongoing industry investments in implementation and legal certainty would be jeopardised.
- All further implementation activities, be they carried out under the existing bodies or others, need to fully apply all criteria of the Eco Design Directive, notably article 15 and the requirement for a “significant environmental improvement potential”. This is in Orgalime’s view not the case for the ongoing JRC study on the “Development of resource efficiency and waste management assessment methods to identify eco design requirements” (see [Orgalime position paper on JRC project](#) and [position paper on Resource Efficiency Roadmap of 16 January 2012](#)).

In conclusion, Orgalime thanks CSES for what has been a transparent conduct of the study and would like to ask CSES to take these additional remarks into account in its final report. In particular, we call upon CSES to abstain from adding the recommendations of an extension to the scope of the Directive in the absence of underlying evidence and facts. Doing this should remain a political decision, which should be equally guided by evidence, science and facts. The study and its recommendations should only provide conclusions on the results of the analysis, facts and evidence, which are clearly against an extension of the scope at this point.

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