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Orgalime comments on the Discussion Paper “Ecodesign for energy related products integrated into other energy related products”

1. INTRODUCTION

Orgalime thanks the Commission for the possibility to comment on the Discussion Paper on “Ecodesign for energy related products integrated into other energy related products” as tabled for the horizontal Ecodesign Consultation Forum meeting on 29 April 2015.

We fully agree that this is an important issue meriting debate and would welcome the building up of a common understanding for the sake of providing legal certainty for manufacturers and market surveillance authorities, and for securing the credibility of this critical piece of legislation.

Moreover, we hope that the debate on this Discussion Paper can generate a more comprehensive understanding of the relationship between the various implementing measures, the appropriate design of the next Working Plan and the approach to pursue for the pending reviews of existing implementing measures.

Against this background, we would like to provide our comments on the Discussion Paper. These are twofold: first, we assess its conclusions based on the current situation created by the approach taken in the past for the existing Ecodesign implementing measures and, second, we compare the Paper to the standing New Legislative Framework (NLF) principles and provide recommendations for the way forward.

2. COMMENTS ON THE DISCUSSION PAPER IN THE LIGHT OF THE SITUATION STEMMING FROM EXISTING ECODSIGN IMPLEMENTING MEASURES

To date, the implementation of the Ecodesign Directive on some 50 product groups has targeted the products at two levels, the level of complete products (for example: washing machines or TVs) and the level of components even when these are integrated into other products (such as fans, motors, circulators or pumps). The Ecodesign implementing measures that specifically apply to products integrated into other products imply that these products should comply with Union harmonisation legislation even when they are never placed on the market independently as finished products.

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 24 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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This is an approach, which *per se*, is not in line with product legislation that follows the New Legislative Framework, namely that Union harmonisation legislation regulates the product when it is placed on the market as such and not as part of another product.”

While we understand the motivation for taking such an approach and share that the Discussion Paper provides a widely correct understanding in the light of this given legal situation today, such an approach clearly has drawbacks:

1. It results in manufacturers of complete products being faced with double requirements, impacting their innovation capacities.
2. Manufacturers who are producing both the motor and the final product into which the motor will be incorporated are obliged to assess the motor separately from the final product, issue a Declaration of Conformity (DoC) and affix the CE marking on it. The same situation applies to importers of final products incorporating other products falling under these implementing measures. This approach is also contrary to the provision of the New Legislative Framework, which obliges manufacturers to issue a single EU Declaration of Conformity for the product he places on the market (see Article 5 / Decision 768/2008/EC).

Also, conclusion 4 falsely states that “...imported final products...” are to be “...accompanied by the DoC”, which is not true, as article 5 of the Ecodesign Directive obliges manufacturers to issue a DoC, but not to accompany the product with it. We refer to the Annex to this paper for a full list of alternative wording suggestions for the current state of play.

Furthermore, there should be no discrepancies between information requirements placed on individual components depending on whether or not they are integrated into a final product. For example, the current draft of the revised Fan Regulation, which suggests that permanent magnets in motors integrated in fans should be labelled. This is inconsistent with the current Motor Regulation 640/2009, which places information requirements on integrated motors, but does not require the labelling of magnets. Therefore, we suggest applying a consistent approach between information requirements in both relevant implementing measures.

3. THE DISCUSSION PAPER DEPARTS FROM STANDING NLF PRINCIPLES – RECOMMENDATIONS FOR THE FUTURE

Today’s ecodesign practice of regulating fans and motors both when they are placed on the market as such and when they are integrated into another product clearly departs from the principle established in the 2008 New Legislative Framework that Union harmonisation legislation should only apply to products when they are independently placed on the market¹.

This approach is also less flexible than the one adopted for other pieces of legislation:

1. For instance, the Machinery Directive² (Art. 2), which covers in its scope only safety components that are “independently placed on the market” and “not necessary in order for the machinery to function”.
2. The guide of the Radio and Telecommunications Terminal Equipment Directive makes a clear exception from its obligations for “Additional apparatus for fixed installations”³.

This double-requirement approach would contribute to create legal uncertainty, add unnecessary administrative burden and limit the scope for innovative design for manufacturers of complete product.

¹ Blue Guide, version 2014, section 2.1 page 16

² Directive 2006/42/EC on Machinery

³ Section 1.3.10 http://ec.europa.eu/enterprise/sectors/rtte/files/guide2009-04-20_en.pdf

Therefore, we call for a clarification in the Discussion Paper that the exposed double-requirement approach applies only to a very limited number of existing Ecodesign implementing measures to be indicated in a restricted list in the Discussion Paper.

Moreover, the discussion paper should make a distinction between

- products that may be integrated to another product at some stage but placed on the market without knowing by whom and when the product will be integrated, and
- products, such as the “integrated circulators”, sold exclusively - and not placed on the market - in order to be integrated by known final product manufacturers.

In any case, however, the solutions proposed by the Discussion Paper for the various situations of supplying products (“washing machine”) and products integrated into other products (“electric motors”) need to be brought into consistency with the NLF provisions concerning the placing on the market/making available of products on the market and the respective obligations placed on the various economic operators.

In particular, in the case of products covered by Ecodesign implementing measures and intended to be integrated into other products to be placed or put into service in the European Economic Area (EEA), the responsibility for compliance of the product with the relevant energy efficiency requirements rests with the manufacturer of the product supplying it to the manufacturer of the final product. Supply of the product is considered as “placing on the market”. The manufacturer of the final product integrating the supplied product (for example, the electric motor as a component) has the responsibility for conformity of the final product, which implies the responsibility to purchase compliant components as otherwise no conformity of the final product can be demonstrated. Demonstration of conformity of the integrated products needs to be part of the EU Declaration of conformity and the technical documentation drawn up for the final product.

In the case of products imported into the EEA, the responsibility for conformity always rests with the manufacturer placing these products on the market through import – not with the importer. The importer does have specific obligations tailored to his function in the distribution chain (see Article R4 / Decision 768/2008/EC), but does not bear the obligations of a manufacturer.

While Orgalime does not contest the approach taken for the past, we recommend *full consistency with NLF principles and no further deviation from the purpose of Ecodesign for the future. This should now be implemented for the set-up of the third working plan, any revision of existing implementing measures and any new measure to come.*

We expect the future Ecodesign implementation to allow for:

- Cost-efficient and effective market surveillance
- Sufficient freedom for manufacturers to innovate
- Legal certainty for manufacturers and enforcement authorities alike



In conclusion:

Orgalime sees many valuable clarifications in the document, notably mirrored in conclusions 3, 5 and 6, which we support and recommend to further pursue in the further implementation process of the Directive (see Annex I for a detailed overview).

However, where the Discussion Paper's conclusions and Ecodesign implementation result in creating inconsistencies with the NLF, we call for a re-alignment of the approach for the future in order to give manufacturers legal certainty for their compliance preparations and market surveillance authorities for their enforcement activities.

We advocate for the coherent application of the NLF throughout all policy areas without the continuation of any special rules for the Ecodesign Directive in the future. This should now be implemented for the setup of the third Working Plan, the ongoing revision of existing implementing measures and any new measure to come.

Conclusions 1, 2 and 4 would benefit from some further refinement to increase clarity. The revision of the implementing measures should take into consideration the fact that these significantly reduce the innovation capacity of European manufacturers and depart from well-established principles of the Union harmonisation legislation.

Overall, we recommend that the Ecodesign implementing measures should be designed in full consistency with the NLF and the Blue Guide. These are key references for internal market for products far beyond the Ecodesign Directive. Therefore, we consider that the manufacturer of the final product should be allowed to select the most suitable components to make up a product that achieves the Ecodesign goals.

In this framework, it is important not to proliferate the number of implementing measures for which conformity assessment procedures cannot be conducted in a meaningful manner. The ecodesign requirements of products that are going to be integrated in other products can only be assessed in relation to the product they will be integrated in. Therefore, the products to be integrated in other products should be treated as components and the implementing measures relevant for the final product should be sufficient to ensure that the goals of the Ecodesign Directive are met, as is the overall concept of the Ecodesign Framework Directive itself (Article 11).

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ANNEX I

1. DISCUSSION PAPER CONCLUSIONS THAT ORGALIME SUPPORTS FOR THE EXISTING AND FUTURE ECODESIGN IMPLEMENTATION

- **We agree with Conclusion 3:** *“The final product manufacturer can rely on the DoC and CE mark of the integrated products in order to build the DoC and CE marking mark of the final product.”*
- **We agree with Conclusion 5⁴:** *“An additional consequence of a “placing on the market” that happens during the transaction between the original equipment manufacturer and the final product manufacturer is that the product has to comply with the requirements applicable at that point in time. New requirements coming into force before the final product is placed on the market (but after the transaction between OEM and final manufacturer has taken place) have no relevance.”*
- **We also agree with Conclusion 6:** *“If the final product is intended to be exported outside the EEA, the conclusions presented above do not apply.”*

These conclusions are fully consistent with the New Legislative Framework (NLF) approach insofar that the final product manufacturer is responsible for the final product meeting the Ecodesign requirement, and not the individual components. This should be supported for the further Ecodesign implementation.

However, we would like to point out that the term “Original Equipment Manufacturer (OEM)” as used in the discussion paper is confusing. We believe it is usually understood by Industry to be the entity that manufactures goods under the name or trademark of another manufacturer (provisions R1.3 and R6 of Decision 768/2008). This term should therefore be strictly used in this latter sense to avoid confusion.

2. DISCUSSION PAPER CONCLUSIONS THAT ORGALIME PARTIALLY SUPPORTS, BUT WOULD LIKE TO SEE REVISED OR APPLIED DIFFERENTLY IN THE FUTURE

Orgalime partially agrees with conclusions 1, 2 and 4, however, believe that they require refinement to correctly interpret the existing status of implementation:

Discussion Paper	Orgalime suggestion
<p><i>Conclusion 1: “When the product is transferred from the original equipment manufacturer to the final manufacturer in the EEA, it is being placed on the market. In consequence, it has to fulfil any legal requirement that might apply and bear the CE mark”.</i></p>	<p><i>Conclusion 1: <u>“The “Original Equipment Manufacturer (OEM)” is the entity that manufactures goods under the name or trademark of another manufacturer. Therefore, when the product to be integrated is transferred from an original equipment manufacturer to the manufacturer of the final product, it is not being placed on the market. However, when the product to be integrated is transferred from its manufacturer to the manufacturer of the final product in the EEA, it is being placed on the market. In consequence, it has to fulfil any legal requirements that might apply to it and bear the CE mark.”</u></i></p>

⁴ The term “original equipment manufacturer” in the Commission’s Discussion Paper refers to the manufacturer of the integrated product in general, and not to the entity who manufactures goods under the name or trademark of another manufacturer.

Regarding conclusion 2, we consider that it may be currently valid, but we feel it is necessary to broadly debate how the manufacturer of the final product would have more options in achieving compliance with Ecodesign through innovative combinations of products. For example:

Discussion Paper	Orgalime suggestion
<p><i>Conclusion 2: “When the final product is placed on the EEA market including the 'integrated product' (e.g. motor, fan), the final manufacturer is responsible for the legal compliance of the complete product, including integrated products, vis-à-vis market surveillance authorities.”</i></p>	<p><i>Conclusion 2: “When the final product is placed on the EEA market including the 'integrated product' (e.g. motor, fan), the final manufacturer is responsible for the legal compliance of the complete product, including integrated products, <u>according to the IM applicable to this complete product</u> vis-à-vis market surveillance authorities.”</i></p>

We consider that conclusion 4 may be correct in light of the current implementing measures, but it does not correctly cite the Blue Guide.

Discussion Paper	Orgalime suggestion
<p><i>Conclusion 4: “In the case of imported final products, the integrated products regulated under Ecodesign also need to comply with the minimum requirements, and be accompanied by the DoC and bear the CE mark.”</i></p>	<p><i>Conclusion 4: “In the case of imported final products, the integrated products regulated under Ecodesign also need to comply with the minimum requirements and bear the CE mark. <u>The DoC is to be made available upon request by the competent authorities.</u>”</i></p>

Although the bearing of the CE marking may be correct with regard to some Ecodesign implementing measures, we believe that it is neither meaningful nor appropriate to require integrated products to bear the CE marking in addition the final product which also needs to bear the CE marking. Like for other “health and safety related” CE legislation, it should be enough, for the final product to bear the CE marking, which indicates compliance with all relevant legislative acts, including those that apply to integrated products.

