ORGALIME

ORGALIME Position

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Proposal for a Directive of the European Parliament and the Council on the approximation of the laws of the Member States relating to electromagnetic compatibility – EMC

COM(2002)759 Final of 24/12/2002

Introduction

Orgalime represents the mechanical, electrical, electronic engineering and metal working industries of 21 European countries. Its 32 member federations represent over 130 000 companies of all sizes. With production valued at 1200 billion euros in 2002, and employing 7.3 million people, the engineering industry is the largest industrial sector in Europe.

It is also our industry, as manufacturer of equipment, which is primarily affected by the draft Directive.

The existing 89/336/EEC Directive on electromagnetic compatibility (EMC) led users to experience problems with its interpretation and practical application. In 1997 a "Guide to the application of Directive 89/336/EEC" which is based on the experience gained by industry, the Commission, Member States and others involved parties in implementing the Directive.

If the Guide is a significant step forward and is still broadly supported by involved parties, it does however have the weakness of not having legal force. In practice, all parties act in line with the Guide. Nevertheless, Orgalime believes that the Commission proposal for revising the existing EMC Directive will bring more legal certainty to the engineering industry in Europe, since its provisions will be transposed into national legislation. Moreover, this draft Directive reflects the experience gained by all parties on the ground and therefore removes unnecessary requirements in the existing Directive.

This proposal COM(2002)759 Final of 24/12/2002 has been discussed at length between the Commission, Member States and stakeholders, including our industry. ORGALIME believes that the new draft is a well-balanced document, which is broadly supported by our industry. Especially improvement on conformity assessment and fixed installations are very helpful. Nevertheless, ORGALIME has some comments and is of the opinion that the formulation of some issues could be improved, in order to make them clearer to users of the future Directive. These are specified hereafter (and numbered from ① to ⑨).

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Conformity assessment procedure for apparatus

① Amendment suggested by ORGALIME
Article 7, Paragraph 2, Indent 2

Commission Proposal	Proposed Amendment
1. The manufacturer or his authorised representative established within the Community shall draw up technical documentation which provides evidence of the conformity of the apparatus with the essential requirements of this Directive.	1. (no change)
2. The technical documentation may include a report from the notified body referred to in Article 11 confirming the compliance of the apparatus with the relevant essential requirements set out in Annex I. The manufacturer may determine the subject and depth of the assessment to be carried out.	**2. The manufacturer has the choice either to include his own report confirming the compliance of the apparatus with the relevant essential requirements set out in Annex I, or to include a report from a notified body referred to in Article 11 for this purpose. When such a report is included the manufacturer may determine the subject and depth of the assessment to be carried out by the notified body.**
3. The technical documentation shall be held at the disposal of the competent authorities for a period of at least ten years after the date on which such apparatus was last manufactured.	3. (no change)

Justification

The current wording of Article 7, Paragraph 2, indent 2 of the draft Directive may be interpreted as giving preference to a report from a notified body, which is not the spirit of the New Approach to technical harmonisation. The choice should be left open for the manufacturer to decide which conformity assessment procedure to choose: either his own report or the report he requested from a notified body. Therefore ORGALIME suggests the above amendment in order to avoid possible misunderstanding.

CE-marking

② Amendment suggested by ORGALIME
Article 8, Paragraph 1, Second Sentence

Commission Proposal	Proposed Amendment
1. Apparatus whose compliance with this Directive has been established by the procedure laid down in Article 7 shall bear the CE marking which attests to that fact. The affixing of the CE marking shall be the responsibility of the manufacturer **or** his authorised representative established within the Community.	1. Apparatus whose compliance with this Directive has been established by the procedure laid down in Article 7 shall bear the CE marking which attests to that fact. The affixing of the CE marking shall be the responsibility of the manufacturer, ~~**or**~~ his authorised representative established in the Community**, or the person who places the apparatus on the Community market**.

Justification

Article 7, clause 4 requires in the case when neither the manufacturer nor his authorised representative is established in the Community, the person who places the apparatus on the Community market has the obligation to hold the EC Declaration of conformity at the disposal of the competent authorities. In order to make the requirements on the CE marking consistent with the declaration of conformity, ORGALIME proposes the above amendment to the 2nd sentence of Article 8, Paragraph 1.

Fixed installations

The existing Directive requires an EC-declaration of conformity and the affixing of the CE-marking. Each time an installation is changed, the EMC profile may no longer match the original situation when the installation was put into service. Consequently, a new assessment should be performed before a new EC-declaration of conformity could be drawn up. In practice, it would make the application of the existing Directive impossible. For this reason, the 1997 Guide provided a pragmatic approach to the problem that is supported by all parties concerned. Industry is content that this solution given in the Guide is now included into the new Directive proposal.

③ Amendment suggested by ORGALIME
Article 12, paragraph 1, second indent

Commission Proposal	Proposed Amendment
1. Apparatus which has been placed on the market and which may be incorporated into a fixed installation is subject to all relevant provisions for apparatus set out in this Directive.	(no change)
However, the provisions of Articles 5, 7 and 8 shall not be compulsory in the case of apparatus which is specifically designed for incorporation into a **given** fixed installation **and is otherwise not commercially available.** In such cases, the accompanying documentation shall **name the site of the fixed installation and** indicate the precautions to be taken for the incorporation of the apparatus into the fixed installation in order not to compromise the conformity of the **specified** installation. It shall furthermore include the information referred to in Point 4(a) and (b) of Annex I.	However, the provisions of Articles 5, 7 and 8 **and Annexes I, II and III** shall not be compulsory in the case of apparatus which is specially designed for incorporation into a ~~**given**~~ fixed installation ~~**and is otherwise not commercially available.**~~ In such cases, the accompanying documentation shall ~~**name the site of the fixed installation and**~~ indicate the precautions to be taken for the incorporation of the apparatus into the fixed installation in order not to compromise the conformity of the ~~**specified**~~ installation. It shall furthermore include the information referred to in Point 4(a) and (b) of Annex I.

Justification

Article 12, clause 1 requires that for an apparatus, which "*is otherwise commercially not available*", "*the accompanying documentation shall name the site of the fixed installation*". Market surveillance authorities could hardly check these requirements. In some cases, a series of these apparatus is specially manufactured beforehand for several fixed installations, large machines or networks, which are installed in various places. In those cases, it is sufficient to indicate that the apparatus is meant to be built into a fixed installation, large machine or network. It is impossible to check lists of places where these apparatus are going to be built into a fixed installation.

Neither the existing Directive nor the EMC Directive Guide does require it. ORGALIME is not aware that these incorporated apparatus have ever led to difficulties. In conclusion, we believe that the sentences on fixed installations constitute a superfluous "red tape" and propose to delete them.

Annex I - Essential requirements

④ Amendment suggested by ORGALIME
Annex I, Clause 1, first indent

Commission Proposal	Proposed Amendment
1. Equipment shall be so designed and manufactured, **having regard to the state of the art,** as to ensure that:	1. Equipment shall be so designed and manufactured, ~~**having regard to the state of the art,**~~ as to ensure that:
(…)	(…)

Justification

Compared to the existing Directive the phrase "*having regard to the state of the art*" has been added. In our view this phrase is superfluous: If an apparatus is manufactured with old techniques, and complies with the requirements under (a) and (b), the phrase is meaningless. Therefore ORGALIME proposes to delete the phrase.

⑤ Amendment suggested by ORGALIME
Annex I, Clause 2, Paragraph 3

Commission Proposal	Proposed Amendment
2. Electromagnetic compatibility assessment:	2. Electromagnetic compatibility assessment:
The manufacturer shall perform an electromagnetic compatibility assessment of the apparatus, based on the relevant phenomena, with a view to meeting the protection requirements set out in Point 1.	(no change)
The electromagnetic compatibility assessment shall take into account all normal intended operating conditions.	(no change)
In cases where the apparatus can take different configurations, the electromagnetic compatibility assessment shall confirm that the apparatus meets the protection requirements set out in Point 1 in **all** possible configurations identified by the manufacturer as representative of normal use in its intended application.	In cases where the apparatus can take different configurations, the electromagnetic compatibility assessment shall confirm that the apparatus meets the protection requirements set out in Point 1 in ~~**all**~~ **the** ~~**possible**~~ configurations identified by the manufacturer as representative of normal use in its intended applications.

Justification

This paragraph requires that the compatibility assessment must confirm that the equipment meets the protection requirements in all possible configurations. This is impracticable for some equipment, such as programmable logic controllers, where there are millions of combinations. It is only practicable and cost effective to test and assess a number of representative configurations. Further the Recital 17 takes this into account. Therefore, our suggestion is to align the paragraph with Recital 17.

⑥ Amendment suggested by ORGALIME
Clause 2.4, sub-clause (b)

Commission Proposal	Proposed Amendment
2. Information requirements:	2. Information requirements:
(a) …	(a) …
(b) Each apparatus shall be accompanied by the name and address of the manufacturer **and, if** he is not established within the Community, the name and address of his authorised representative or the person established within the Community responsible for placing the apparatus on the Community market;	(b) Each apparatus shall be accompanied by the name and address of the manufacturer ~~**and,**~~**. If** he is not established within the Community, **each apparatus shall be accompanied by** the name and address of his authorised representative or the person established within the Community responsible for placing the apparatus on the Community market;

Justification

Annex I "Essential requirements" under clause 4 "Information requirements" are included in order to improve the traceability of the manufacturer or his authorised representative in the EU. In clause 4 under (b) the name and address of the manufacturer is required and, if the manufacturer is not established within the Community, the name and address of his authorised representative within the Community. Industry is of the opinion that there is no reason to mention two names and addresses, i.e. the manufacturer outside the Community and the authorised representative within the Community. For traceability purposes only the person established within the Community responsible for the placing the apparatus on the market is sufficient. The name and address of the manufacturer does not add any sensible information to trace the product.

When a manufacturer moves his head office, the accompanying address becomes outdated. Moreover, there are many products, which do not require any instructions for use or packaging and where the name and address cannot be affixed practically to the product. Finally, there are countries, whose authorities make no use of the accompanying address. They have a fine-tuned system where all manufacturers of products are traceable. For those countries, these information requirements are superfluous.

Therefore, ORGALIME believes that it would be better to generalise at EU level these best practices of market surveillance, and consequently delete the information requirements in the EMC Directive. Besides, industry believes that the cost of these information requirements outweighs by far the added value for market surveillance in practice.

⑦ Amendment suggested by ORGALIME
Annex I, Clause 2.4, sub-clause (d)

Commission Proposal	Proposed Amendment
2. Information requirements:	2. Information requirements:
(…)	
(d) Apparatus for which compliance with the protection requirements is not ensured in residential areas shall be accompanied by a clear indication of this restriction of use.	**(deleted)**

Justification

This clause has no practical value, because for residential areas there is neither a definition in this Directive, nor are there specific essential requirements.

Ready-made connecting devices

⑧ Amendment suggested by ORGALIME
Annex I, Clause 5

Commission Proposal	Proposed Amendment
5. Ready-made connecting **devices**:	5. Ready-made connecting **leads ~~devices~~**:
(a) The requirements for apparatus set out in Points 2, 3, 4(c) and (d) shall not apply to ready-made connecting **devices**;	(a) The requirements for apparatus set out in Points 2, 3, 4(c) and (d) shall not apply to ready-made connecting **leads ~~devices~~**;
(b) Ready-made connecting **devices** shall be designed and manufactured in such a way that, when connected to the apparatus for which they are intended, following any specific precautions as described below, compliance with the protection requirements set out in Point 1 is ensured;	(b) Ready-made connecting **leads ~~devices~~** shall be designed and manufactured in such a way that, when connected to the apparatus for which they are intended, following any specific precautions as described below, compliance with the protection requirements set out in Point 1 is ensured;
(c) Ready-made connecting **devices** shall be accompanied by an indication of the technical characteristics of the apparatus to which they are intended to be connected, and information on any specific precautions that need to be taken regarding the connection to such apparatus with a view to meeting the protection requirements set out in Point 1.	(c) Ready-made connecting **leads ~~devices~~** shall be accompanied by an indication of the technical characteristics of the apparatus to which they are intended to be connected, and information on any specific precautions that need to be taken regarding the connection to such apparatus with a view to meeting the protection requirements set out in Point 1.

Justification

The inclusion of "ready-made connecting devices" is the result of a laborious compromise with the view to avoid possible future national legislation. However, it would unnecessarily add disproportionate costs without clear added value for the following reasons:

A. The scope of the Directive includes besides the fixed installations only apparatus. The definition in Article 2 under (b) defines finished appliances, which are likely to generate electromagnetic disturbance etc. In ORGALIME's view ready-made connecting devices are not able to generate disturbance by themselves, because this fully depends on the apparatus they could be connected to. In the sense of the definition of "apparatus" (b) ready made connecting devices (Article 2 under 2(b)) are not covered by the definition of "equipment". Therefore, the Directive does not cover "ready-made connecting devices", which is very confusing.

B. The third paragraph under item 3 in Annex I provides special requirements for "Connecting devices, such as plugs and cables", which overlaps to a great extend with "read-made connecting devices". This is also confusing.

C. The terms "Ready made connecting devices" are not clear in several language versions of the draft Directive such as the Dutch, French and English versions. The discussion within the EMC SLIM Working Group called for a definition of "a cable with connectors at both ends" that must be manufactured for a predefined purpose. Examples are a connecting cable between a TV-set and a video recorder, or a connecting cable between a printer and a computer. Unfortunately:
   - The Dutch and English versions could include a single connector (without cable) and the French version reads "*Dispositifs de raccordement indépendants*", which means connection between two independent apparatus.
   - The English terms "ready made connecting leads" and the Dutch terms "gebruiksklare verbindingsleidingen" would be clearer than the current language versions.

Due to the fact that this issue could give rise to many varying interpretations, ORGALIME suggests to replace the expression "devices" by "leads" in Clause 5.

Application of harmonised standards

⑨ Amendments suggested by ORGALIME
Article 6, Clause 2

Commission Proposal	Proposed Amendment
(…)	
2. The modalities for the application of harmonised standards are set out in Annex V.	**(deleted)**

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Annex V

Commission Proposal	Proposed Amendment
1. The correct application of all the relevant harmonised standards whose references have been published in the *Official Journal of the European Communities* shall be equivalent to the carrying out of the electromagnetic compatibility assessment referred to in Point 2 of Annex I. 2. Compliance with a harmonised standard means conformity with its provisions (e.g. limits) and demonstration thereof by the methods the harmonised standard describes or refers to. 3. Presumption of conformity via application of harmonised standard(s) is limited to the scope of the harmonised standard(s) applied and the relevant essential requirements covered by such harmonised standard(s). 4. Harmonised standards are to be selected and used in accordance with the provisions of the relevant standardisation documents. The reference to those documents shall be published in the *Official Journal of the European Communities*.	**(deleted)**

Justification

It is the experience of industry that publication in the Official Journal inevitably entails a time lag. In industry's view the Commission should not wait until a list of several standards could be published in the official (paper) version of the Official Journal. In order to save time, the Commission should add newly adopted harmonised standards to the list of EMC Directive standards published on Commission's Web site, as soon as possible after delivery by the European Standardisation Organisation.

All requirements concerning the application of harmonised standards are adequately formulated in article 6, Clause 1 and Annex I of the Directive. Therefore, article 6, clause 2 and Annex V are superfluous and could be deleted.

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