



**Proposal for a Directive of the European Parliament and of the Council
on establishing a framework for the setting of Eco-design requirements for Energy Using
Products and amending Council Directive 92/42/EEC
COM (2003) 453 final**

ORGALIME POSITION PAPER

Brussels, 5 December 2003

Orgalime speaks for 34 trade federations representing some 130,000 companies in the mechanical, electrical, electronic and metalworking industries of 23 European countries. These industries employ some 7.3 million people and account for 1200 billion euros of annual output, which is a quarter of the EU's output of manufactured products and a third of the manufactured exports of the European Union. The engineering industry, which manufactures both consumer products and capital goods is clearly the industry which will be most affected by the EUP proposal.

1. Introduction

In addressing itself to *product design*, this draft directive addresses a *manufacturer's core competence*; this is therefore an extremely sensitive issue for our industry, and indeed is one of the most sensitive issues on which we have been challenged by the Commission in recent years.

Orgalime believes that *our industries are already heavily regulated*, such as by a number of product and process safety oriented directives, and we are presently faced with too much regulation within the environmental area. This high volume of European and national legislation is widely held to lack coherence and an overall political objective.

Our industry finds it difficult to agree the necessity for this new measure aimed at manufacturers, particularly those operating within the EU. Our industry is driven by market forces: a consumer demand for even better environmental performance would be the greatest stimulus, and we believe the Commission should better address itself to consumers, who are not presently demanding or noticeably keen to pay higher prices for such products. Therefore, the framework directive should clearly state that no implementing measure will be developed where market based mechanisms or existing legislation already operate successfully.

Should this measure diminish the need seen by members states and/or other parts of the Commission to continue to bring forward new initiatives in the field now to be covered by the present proposal, while at the same time ensuring that environmental legislation does not discriminate against manufacturers operating in the EU, then we can perceive that this measure could have value. Used in this way, the proposal for a framework directive on eco-design (EUP) might help create *better coherence, and safeguard free movement of goods*.

Given the broad range of products potentially to be addressed, we believe that *sufficient flexibility* should be encompassed in the framework directive with regard to selection of implementing measures. This would allow the widest range of options to be available for an implementing measure concerning a specific product. The choice among these options must be made with full participation of the industry sector concerned.

We consider it essential to enshrine the following key principles in the future legislation:

- **Priority must be given to voluntary measures**, i.e. no implementing measures should be developed, if market forces are functioning or if there is no cost-effective way to arrive at improvements through regulation.
- **Reference to article 95 of the EC Treaty as legal base**, in order to ensure a level playing field and avoid a further fragmentation of the internal market.
- **Proper involvement of industry** from the very start of the process of considering implementing measures (The point also requires further clarification in the proposal)
- **Flexible approach to use of generic or specific eco-design requirements** depending on the different needs and specific character of different product categories.
- Manufacturer's declaration - i.e. **no third party certification** in connection with conformity assessment
- Recognition of factors impacting on **international trade**
- **No mandatory Life Cycle Assessment (LCA)**

We urge decision makers to address the following issues which are not clearly enough or sufficiently addressed in the present text:

- **Methodology for selecting product categories** to be addressed by an implementing directive
- **Extended impact assessment** in terms of a technical, economic and environmental analysis of any implementing measure
- How to ensure **proper involvement of industry** (the need for an Advisory Committee)
- How to ensure **effective market surveillance**
- Use of **harmonised standards** as tools for presumption of conformity

Orgalime is also concerned about the impacts on companies, in particular our SMEs, that will arise from any implementing measure and therefore underlines the importance of developing appropriate practical tools, such as checklists, commonly accepted databases, standards, training and consumer information campaigns.

2. Orgalime detailed comments

2.1 Industry's voluntary initiatives and market forces

Our industry welcomes the priority accorded to alternative courses, such as *self-regulation* by industry, as stated in recital 8. We firmly believe that no implementing measure should be necessary whenever market forces prove to be effective in achieving environmental goals. This principle should be clearly stated in article 12.

This principle also means that sectors potentially targeted for implementing measures must be given the option of developing voluntary measures prior to considering the adoption of regulation.

It must also be stressed that all stakeholders have a responsibility for developing the demand for products respecting environmental considerations and for using products in an environmental friendly manner.

2.2 Article 95 of the EC Treaty as legal base

Proper functioning of the internal market is vital for industry. The creation of the internal market is one of the major successes of the EU and needs to be reinforced in order to ensure that EU manufacturers can, through having a well-developed home market, defend their position in world markets. A well functioning internal market is also an advantage for consumers. When mandatory requirements are deemed necessary, harmonised legislation is, in our opinion, the only way to ensure

equal requirements on producers and the free movement of goods, including also imported products and thereby create a level playing field.

The way the proposal is currently written it is not clear if free movement is ensured only for EUP subject to one or more implementing measures. This needs to be clarified.

2.3 Proper involvement and consultation of industry

Given that product design is the very competence of business, it is a must that industry is involved from the outset in the whole process of implementing measures, both in the identification of a product to be covered by an implementing measure, and when the content of any eco-design requirement is to be defined.

Such proper consultation and involvement of industry is a precondition for ensuring that the *potential of improvement* is assessed in a realistic way *in balance with technical, functional and economic considerations* and *without entailing excessive costs* (criteria under article 12, 1.a).

To better reflect business reality and to come to proper decisions on the highly complex and technical issue of product design, we believe that continuous industry representation would be useful in the future process. Therefore, we believe that the framework directive should provide for an obligation of the Commission to set up an **advisory committee** for directly integrating industry's technical expertise and experience in the field of eco- design. Furthermore involved industries should be given the possibility of participating with their expertise to the studies that shall be developed in order to evaluate peculiar product categories. These obligations should be mentioned in article 14.

2.4 Flexibility for manufacturers

Design and marketing of a product are the very core competence of business. Therefore the eco-design process itself must remain under the manufacturer's full control.

The diverse nature of challenges when integrating environmental requirements into products necessitates the maximum of flexibility for manufacturers in fulfilling regulatory goals and finding the practical design solutions, in order to balance the functional, technical and social parameters in an economically feasible way. If too many aspects are regulated by the imposition of fixed limits and targets, there will be a straightjacket for manufacturers in the EU which will not only hinder the efforts to reach the environmental goals, but will also hamper Europe's capacity for innovation and competitiveness in the global market.

To allow for a maximum of proportionality, taking into account the whole life cycle of the product, it should be stressed that the setting of any target should be done in close involvement with the product sector concerned.

2.5 Conformity assessment procedures: No mandatory third party certification

The preference given to manufacturer's declaration as the preferred option in Annex VII.5 and further explained in the Explanatory Memorandum (section 10 on page 20) is of high importance to industry. In fact, we do not see which direct risk would justify requiring mandatory third party certification. A possible mandatory system (as mentioned in Annex VII.5) is costly for manufacturers and thus for society as a whole, and usually does not add any value. It should be up to companies to decide on a voluntary basis whether their organisation can benefit from a certified approach.

We propose that the possible use of a module different from Module A is deleted (Article 7.2 and Annex VII. 5).

2.6 Recognition of factors impacting on international trade

The reference to international standards to be used for the conformity assessment wherever appropriate (cf. recitals 3 and 13 and Explanatory Memorandum, section 14, page 25), is of great

importance for global trade and for meeting obligations under the WTO-TBT agreement. Orgalime welcomes this.

2.7 No mandatory LCA

As stated in the Explanatory Memorandum (section 12, pages 21 and 22) it should *not be obligatory* to make a life cycle analysis (LCA) according to relevant international standards; such an obligation could create a disproportionate financial and human resources burden on enterprises, in particular SMEs. Furthermore, the concept of applying a life cycle analysis is not yet fully mature and the results of such an analysis is not always easy to interpret.

It is important that this understanding is fully accepted by market surveillance authorities in all Member States in order to have a level playing field.

2.8 Implementing measures and methodology for choosing product categories

In view of the importance of the design process for business we consider article 12 and the annexes linked to article 12 to be the heart of the proposal. We believe that clarification is needed in order to ensure a common understanding of the procedure and criteria to be used for setting up implementing measures.

We have taken note of the statements in the Commission Communication on Integrated Product Policy that as yet there is no analytically-based consensus on which products have the greatest environmental impact, nor therefore on those which have the greatest potential for environmental improvement (Section 6.2 of IPP Communication). In order to ensure legal certainty and transparency as regards the identification of the EUP to be subject for an implementing measure, however, we believe that there is a need to develop and apply a given method when identifying EUP for implementing measures before any implementing measures are adopted. We therefore propose that the Commission should be given the task to develop and adopt such a methodology assuring full involvement of the relevant stakeholders and that the requirement to apply the methodology is integrated into article 12 of the EUP proposal.

Consensus is needed to increase acceptance of measures or alternatively demonstrate to the sectors identified by the Commission the need to develop and implement voluntary measures. It is essential that all the criteria (in 12.1-a) be fulfilled. We therefore propose a specific reference to prior involvement of industry before adoption of implementing measures be introduced into article 12.1.

In addition, prior to the adoption of each implementing measure a **specific impact assessment** is to be carried out which shall include consideration of the impact on manufacturers, in terms of competitiveness, innovation, market access and costs.

2.9 Market surveillance

We stress the importance of *efficient and effective market surveillance* as a key issue - especially with a view to imports from third countries. Therefore, we welcome article 11 concerning administrative cooperation and exchange of information. In order to ensure equal treatment across the internal market we invite Institutions to be coherent with New Approach principles when working on the EUP proposal.

2.10. Further remarks

- ***Life Cycle Cost Analysis***

The method of calculating the life cycle costs might be a useful tool for a specific product in a given environment. We, however, believe that describing the method with a specific discount rate of 5% (re Annex II.1) is too detailed for a framework directive, and may even lead to wrong

conclusions. The methods to be used should be adapted to the concrete case and should be negotiated in consultation with the sector in question.

- ***Parts/components***

The responsibility and obligations of the component manufacturer would be transferred to the equipment manufacturer/importer who has to declare CE marking conformity also to any component implementing directive. Therefore, Orgalime finds it essential to have components and subassemblies covered by the framework directive *in so far as it is a matter of providing information to the next partner in the production chain.*

Care must be taken, that LCT-requirements are the same as for components and sub-assemblies manufactured outside the EU for components and sub-assemblies manufactured inside the EU. Standardised data requirements must be defined, especially for components and sub-assemblies, in order to establish a level playing field for domestic and imported products alike.

This could be a mandate for standardisation bodies to further specify minimum requirements for meaningful data for Life Cycle Inventories e.g. in the context of the ISO 14041 norm. Alternatively a consultative committee with adequate industry representation could also define these data requirements.

- ***Practical tools***

Orgalime is concerned about the impacts on companies, in particular SMEs, that will arise from any implementing measure under this framework directive and therefore underlines the importance of developing appropriate practical tools, such as checklists, commonly accepted databases and simplified methods for integrating environmental aspects into product design as well as training and education measures and consumer information campaigns.

Orgalime is at present working on detailed wording for some articles and annexes, which it hopes to submit to regulators shortly.