



ORGALIME POSITION PAPER¹

On

A Draft Proposal for a Directive of the European Parliament and of the Council on establishing a framework for Eco-design of End Use Equipment²

Brussels, 18 December 2002

Orgalime speaks for 32 trade federations representing some 100,000 companies in the mechanical, electrical, electronic and metalworking industries of 21 European countries. These industries employ some 7.5 million people and account for 1200 billion Euro 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.

Given the short time frame for consultation Orgalime considers the detailed comments included in this paper to be **preliminary in nature** and wishes to discuss the subject further before the Commission proceeds with its proposal.

Executive Summary

While our industries **recognize the need and share the overall objective** of integrating environmental aspects into product design in general, we consider it essential to respect the following principles for the new draft proposal for a framework directive on eco design of end use equipment:

- Orgalime urges legislators to ensure a **coherent approach** in environmental product policy, in particular with respect to the interdependencies in EUE, IPP and possible energy efficiency requirements under IPPC BREFs. We prefer a holistic, as simple as possible an approach in order to leave room for flexibility and innovation in finding practicable solutions.
- Existing and still to be developed **voluntary measures must be taken into consideration** before adopting any implementing measure. Whenever market forces prove to be effective in achieving environmental goals, no implementing measure should be laid down. This intention should explicitly be mentioned in the recitals of the draft EUE framework directive.
- In line with the Commission's Better Regulation Package, **relevant stakeholders must be involved at the most appropriate level**, i.e. both for defining the categories of EUE to be covered by any implementing measure and for setting the level of the requirements.
- Orgalime welcomes the **reference to article 95 of the Treaty** in order to ensure the proper functioning of the internal market through harmonised European legislation.

¹ This position paper is supported by CECIMO, COCIR and EECA-ESIA.

² Please note that the Commission's internally created shortcut abbreviation "EUE" used for the draft proposal does not reflect the objective of the draft proposal to establish a regulatory framework for *eco design* of such equipment. The abbreviation might be misleading in the sense that other aspects concerning end use equipment apart from eco design (such as health and safety aspects) would be covered by the framework directive as well.

- To our mind, the application of **all criteria listed in article 14** concerning the adoption of implementing measures **should be mandatory** and should be assessed in the **impact assessment**, which we believe must be carried out prior to proposing any implementing measure.
- The provisions and parameters listed in **annex I** should be used **for guidance only**. The requirements should be kept on an overall level leaving the manufacturer the flexibility of balancing the various factors.
- **Practical tools** are necessary to ensure that the intentions can be fulfilled without creating insurmountable obstacles, especially to SMEs. In certain cases, standards, commonly accepted databases, checklists etc. should be developed for this purpose.

1. Vision of environmental product policy

Europe has a strong environmental awareness in the general public as well as in industry. Various instruments concerning product related sustainability are successfully applied on a voluntary basis within engineering industries, including among others management and labelling schemes, energy saving programmes and waste treatment. There is, however, *a need to develop a common view* between the different EU regulatory bodies, Member States and other stakeholders on how to integrate environmental requirements into products.

It is essential to ensure a *coherent approach* in environmental legislation and between regulators both at a European and a national level, so as to achieve common European regulation, which will avoid fragmentation of the internal market.

The vision of environmental product policy should aim to achieve the continuous improvement of the environmental performance of products taking their whole life cycle into account. At the same time, such a policy must enhance innovation and the ability of European industry to compete in a global market and must not create new barriers to trade.

A common strategy should use existing strengths in order to reach these overall objectives. One of the strengths of European industry lies in its network of large, medium and small companies. Creativeness, innovation and entrepreneurship must continuously be enhanced to ensure growth and competitiveness.

The diverse nature of challenges when integrating environmental requirements into products necessitates the use of an adequate, flexible and balanced mix of measures. This is done by *according manufacturers the maximum of flexibility in fulfilling regulatory goals*. All stakeholders, not only industry, should be encouraged and motivated to take voluntary measures and enter self-commitments to reach such goals.

The development of measures must be created through a dialogue between policy makers and stakeholders. Furthermore, industry driven initiatives must be taken into account in the future development of measures.

As to the Commission's initiatives to further develop the area of product related environmental policy, we share the thinking behind the new draft framework directive to create a holistic framework, integrating specific environmental policy objectives without compromising other aspects, such as product safety and economic realities.

However, much product related environmental legislation already exists and therefore constrains manufacturers (e.g. IPPC, WEEE, RoHS and CFC regulation). In this context, for many products the room for flexibility is already rather, if not too, limited.

We draw the attention of the regulators to the polarity that exists between, on the one hand, specific threshold oriented requirements for certain environmental aspects, and, on the other hand, life cycle thinking, which seeks to balance different aspects in an optimal way. If too many aspects are regulated with fixed limits and targets, there will be a straightjacket for manufacturers which will not only hinder the efforts to reach the environmental goals but will also hamper Europe's competitiveness in the global market. Any product oriented environmental policy should be flexible enough to accommodate a policy of continuous improvement.

2. General remarks on the draft framework proposal on eco-design of EUE

Orgalime welcomes the efforts made by DG ENTR and DG TREN to cooperate in an area where we feel that the Commission's policy is lacking coherence (see our letters addressed to President Prodi and Commissioners Liikanen, de Palacio and Wallström in June 2002).

However, Orgalime **recalls the importance of clarifying the link between the various legislative initiatives**, such as

- IPP
- WEEE
- RoHS
- the future BREF on generic energy efficiency requirements under the IPPC directive
- the energy efficiency of buildings directive
- possible legislative measures concerning EMF

with the draft EUE framework directive.

The aim of the former draft EEE initiative was to initiate a "cultural" change, a change that is still needed with the new draft framework directive. In this context it is important to note that the state of the art of eco-design differs considerably from one Member State to the other and from one company to the other. There is a long way to go to reach a common understanding of eco-design and assessment of the environmental aspects.

Consequently, it is important that great efforts are vested in organising support activities. *A generally accepted environmental database is needed to establish a commonly used reference for the assessments of environmental effects from products.* Furthermore, the elaboration of relevant supporting guidance should be enhanced and, especially to meet the needs of SMEs, training courses and sector-specific easy to use tools should be developed.

3. Implementing measures (article 14)

At the stakeholder meeting on 18 November 2002, the Commission clearly stated that implementing measures are not intended to be introduced in areas where market forces are already functioning and voluntary measures are proving to be effective. In order to maintain industry's drive for continuous improvement through voluntary measures and for entering possible self-commitments, Orgalime asks to explicitly mention this intention in the recitals to the draft EUE framework directive.

In the light of the great importance for industry and the need for technical insight when setting possible specific design requirements, it should also be clearly stated in the draft framework directive that industry will participate in both the evaluation process of EUE categories that should be subject to an implementing measure and in setting the level of requirements for any equipment or category of equipment.

As for the criteria to be applied for adopting the implementing measures it should be clearly stated that *all* the criteria mentioned in article 14.3 should be fulfilled before taking a decision to come up with an implementing measure. This should be clearly analysed and documented in the impact assessment, which we believe must precede any proposal for adopting an implementing measure.

We would also suggest that the criteria of article 14.3 are grouped in two different sections: one related with the mandating of an implementing measure (i.e. if at all there should be one), including 3.1, 3.2, 3.4 and 3.5. The other section concerns the impact of the measure and should then include 3.3, 3.6, 3.7, 3.8 and 3.9.

Another criterion, which should be applied rigorously is "cost-effectiveness", to be understood as a condition that requirements should only be adopted for aspects, which would *substantially contribute* to the achievement of the environmental objectives when compared to other possible impacts.

We have understood that it is also envisaged to have the option of eco-design requirements on the basis of Annex I *without* specific eco-design requirements.

Consequently, we suggest that the wording "and/or" is supplemented by:

"2) The implementing measures will introduce *either a)or b).....or a combination of a) and b).*"

4. Conformity assessment and presumption of conformity (articles 6 and 7)

Orgalime supports the preference given to manufacturer's declaration as the preferred option. In fact, we do not see which direct risk would justify requiring third party certification, which is costly for manufacturers and thus for society as a whole and often does not add any value.

ORGALIME welcomes that different instruments can be used for conformity assessment.

Concerning the structure of the section, we believe that the second and third paragraph of article 6.2 belong to article 7 on the presumption of conformity.

However, as for the use of environmental management systems we suggest to insert the following phrase into paragraph 3 of article 6.2:

"Environmental management systems for which provisions have been applied in accordance with harmonised standards *and which include the design function*, the reference numbers..., ... shall be presumed to conform...".

Considering that industry's goal is to facilitate *global* trade, it is appropriate – when reference is made to Eco-label schemes and European standards – to give presumption of conformity not only to European but also to *similar international* schemes and standards in so far as they cover the requirements set in the framework directive.

We are aware of the Commission's position that only European schemes and standards of which the contents are under full European control can give presumption of conformity. However, we must bring to mind the EU's support for the WTO TBT Agreement in which international standards are mentioned as the preferred reference in technical regulation.

It is important that Europe should not create barriers to trade, but rather fulfil its obligations under the TBT Agreement.

5. Marking and declaration of conformity (article 10, annexes III and VI)

We believe that, though the draft EUE framework directive is not a clear cut New Approach directive, it would make matters simpler and more coherent if it were in line with other directives applying the CE-marking, in particular concerning market surveillance, CE-marking, conformity assessment and declaration of conformity.

Thus the operating instructions should not form part of the declaration of conformity, as required in Annex VI. The same goes for results of measurements on the eco-design requirements, which belong to the technical file, and not to the declaration of conformity.

According to article 10, Member States are allowed to require the information concerning the design aspects in their official language. Orgalime suggests that the information shall be provided in the same language as the user manual. This ensures a coherent approach and facilitates the administrative burdens.

Annex III requires that the CE-marking must also appear on the sales packaging. Once more, Orgalime asks the requirements of the various legislative initiatives to be coherent. Marking of sales packaging introduces additional administrative burden for manufacturers and is not justified by a real need.

6. Parts (article 2a) and components/ sub-assemblies (articles 2b and 11)

Orgalime does not believe that parts included in the definition of end use equipment under article 2a should fall under the scope of the directive and therefore be addressed separately by any implementing measure. This would cause unnecessary complexity.

In addition, Orgalime finds it essential to have components and sub-assemblies covered by the framework directive *only* in so far as it is a matter of providing information to the next partner in the production chain. In order to avoid unnecessary interferences in business-to-business transactions, which give rise to superfluous paper, we suggest that the information should be supplied on the manufacturer's request only.

It is difficult to see how Member States could ensure appropriate transfer of documents in a business-to-business relationship. We believe that it is not a matter for market surveillance authorities to control, but for the end manufacturer, who, in any case, needs the information for his technical file.

7. Provisions for eco-design requirements (annex I)

The Commission has clearly stated that it is not the intention to introduce a mandatory LCA (Life Cycle Assessment). Orgalime welcomes this.

To avoid any possible misunderstanding and possibly differing interpretation in individual Member States, we suggest clearly stressing that *the aspects listed in annex I shall only be considered in so far as they can be influenced through the product design and only if the manufacturer has the power to influence the aspect in question.*

Furthermore it should be stated that inputs and outputs are not to be reported on all phases for each product. *The manufacturer shall identify aspects of significant environmental impact for specific products or product categories and focus environmental improvements on the areas that he can influence.*

The word "shall" in the existing text (Annex I.2) must accordingly be changed to "may".

Similarly, it should be clearly expressed that the aspects and parameters of annex I mentioned to be assessed/used for each phase are listed for guidance only, so that the manufacturer can concentrate on aspects and eco parameters, which are significant for the specific product or product category in question.

Orgalime has previously stressed the importance of keeping the procedures and requirements at a level where even small companies can meet the challenges.

Respecting the advantages and incentives of life cycle thinking, Orgalime stresses the importance of keeping the requirements at an overall level, *leaving the manufacturer the flexibility of balancing the various factors*. This will allow a maximum of creativity and innovation to be put into the design process.

8. Provisions for specific eco design requirements (annex II, VII)

To avoid misunderstanding, the wording of the text should clarify that annex II concerns the method for the Commission to set the specific design requirements.

We believe that an **extended business impact assessment** must be carried out prior to proposing any implementing measure and we suggest considering the use of case studies to examine the necessity and feasibility of such a measure in comparison to its environmental benefits.

To our mind, the setting up of an implementing measure should be subject to negotiation and evaluation in each single case, including appropriate involvement of possibly affected industry sectors.

Orgalime believes that the use of the LLCC method as described in annex II might lead to unrealistic and even unreliable conclusions, which might propose solutions that could even damage industry's competitiveness.

9. Conclusions

Orgalime welcomes the Commission consulting stakeholders at the early stage of the development of this new draft framework proposal. While we believe that a number of the remarks that industry has made in the past concerning various aspects have been included in the draft framework directive for eco design of end use equipment, we believe that in order to make this a valid framework for a future holistic approach to product related environmental legislation, more work needs to be done to clarify the concepts and define the requirements manufacturers would have to follow.

To our mind, it is essential that the Commission should arrive at a coherent and well-structured proposal after discussing it in detail with the stakeholders who will in the end ensure the success or the failure of this approach, namely industry.