ORGALIME

Guidance paper on the Impact Assessment of the LVD Update

ORGALIME position – 15/02/2005

In 2001 the Low Voltage Directive Working Party decided to start up an update process on the Low Voltage Directive (LVD). The driving reason for this decision was to enhance the traceability of the manufacturer. Further reasons, amongst others, were to enlarge the scope to products below the lower voltage limits and to align the Directive with the New Approach, including a structure for Essential Health and Safety Requirements (EHSR). All Member States were convinced that the conformity assessment procedures were not subject to discussion.

This decision was taken by the Commission's administration in response to administrative concerns under the drive of some Member states' administrations. However, in its Communication on impact assessment (COM(2002) 276 final of 5.6.2002), the European Commission states that "Impact Assessment is an aid to decision-making, not a substitute for political judgement". Therefore, ORGALIME calls on the Commission to carefully follow the methodology of a detailed impact assessment, as set out in various documents[1]. The Commission shall in particular justify in its detailed impact assessment report "the chosen policy option, after having examined alternatives".

ORGALIME has contributed actively in the LVD ad hoc working group, to help the Commission and Member States to express their preferred policy option, i.e. the "update" of the Low Voltage Directive, and has always stressed the need to consider practical solutions rather than a systematic approach to challenge the legal certainty of the single market by revising legislation and adding administrative burdens without clearly demonstrating the corresponding benefits.

In 2004 the Commission launched a business impact assessment (BIA), which will be performed in the coming year and should demonstrate the potential costs and benefits of the proposed changes. In particular we believe that the consultant performing the BIA and the Commission DG (Enterprise) in charge of the detailed impact assessment should take into account the policy objectives of Council Directive 73/23/EEC, i.e.:

- safety in the use of electrical equipment, and/or
- free movement of electrical equipment,

In addition, in the context of the Lisbon objectives, we believe that the impact assessment should consider whether the envisaged modification of the legal framework conditions will not place European industry in a more detrimental position on the single market than manufacturers of imported products.

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[1] Key documents for a "new integrated method for impact assessment, as was agreed at the Göteborg and Laeken European Councils": http://europa.eu.int/comm/secretariat_general/impact/key.htm
and especially, ***internal guidelines on the new impact assessment procedure developed for the commission services*** (http://europa.eu.int/comm/governance/docs/comm_impact_en.pdf)

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This will be examined carefully in the light of "good market surveillance practices": if the Members of the European Union do not have the financial and human resources for carrying out their control duties as stated in the envisaged LVD update, will it still ensure free trade in level-playing field conditions?

ORGALIME Position

In conclusion, further to its general comments on the Commission draft specifications for an extended impact assessment of the LVD[2], ORGALIME suggests assessing the impact of <u>all</u> the envisaged changes in the LVD against the three policy objectives: health & safety, free movement of goods, and competitiveness of the EU industry. Before a decision is taken to revise the directive, each supportive argument for the update of the LVD shall be compared to other policy instruments as highlighted, for instance, in the enclosed table.

[2] Document "LVD_04_I_24.doc" tabled at the LVD Working Party in February 2004 – Cf our position: http://www.orgalime.org/pdf/LVDUpd5.pdf.

Preferred EC policy option: update of the LVD *(incl. points referred to in "LVD Update.5")*	***Policy objective 1: Health & Safety (H&S)***	***Policy objective 2: Free movement of goods***	***Policy objective 3: Competitiveness of European industry***	***Alternative policy instruments to meet the policy objectives***
1. Deletion of the lower voltage limits (50VAC – 75V DC). **(27)** This item will include many extra-low voltage (ELV) electrical products, which are not covered in the existing LVD and which might not present risks.	Do statistics of accidents likely to have been caused by ELV products show a need to be incorporated into the scope of the LVD? (*Note: The impact assessment should establish whether or not the removal of the lower limits will improve the health and safety of workers above the requirements of this Directive*).	How will it enhance the free movement of ELV products?	What is the impact on the manufacturer of new ELV products? Are the conformity assessment costs for ELV products compensated by marketing benefits? Will market surveillance cope with a drastic increase in the number of goods placed on the market under the LVD?	Can other policy tools or existing legislation serve an equal goal? (E.g. GPSD for consumer products; social legislation for professional electrical tools. *Note: the impact assessment should establish the pros and cons for professional goods separately, since there is already protection in place for workers, such as the Directive on provision and use of work equipment).*
2. Inclusion of health aspects (e.g. EMF, Ergonomics) **(3, 41, 43, 164, 167)**	Are accidents statistics demonstrating that the health and safety of users of electrical equipment is not sufficiently ensured in practice? If yes, for which product cluster(s) is there a specific health and safety concern? Are they not already in the scope of other existing EU legislation (MSD, GPSD?)	What is the impact on the free movement of goods? In particular, what will the interface with social legislation be on the protection of workers exposed to various risks arising from the use of the electrical and electronic equipment?	What is the impact on electrical equipment?	Are there other policy instruments to improve public health and safety for the identified product clusters (if any), such as negotiated agreements from manufacturers, public or targeted information campaigns, improved instructions for use accompanying the product?
3. Inclusion of risk assessment **(92, 93, 94)**	Will the new requirements for risk assessment ensure a better protection of the H&S of users of electrical and electronic products? Will it not be disproportionate, especially for ELV products?	Will it be easier for manufacturers to comply, especially when no standards are available? Will it not delay the time-to-availability of new standards more than necessary?	What is the impact on competitiveness? What will be the cost for industry for input into the standardisation process to amend all LVD related standards that are already in use (e.g. ergonomics)?	Status quo: Since the current directive already covers all electrical risks, are the identified "*new risks that were not foreseen at the time of adoption of the directive*" not sufficiently bridged by good engineering practices in safety matters available and new harmonised standards?

Preferred EC policy option: update of the LVD *(incl. points referred to in "LVD Update.5")*	***Policy objective 1: Health & Safety (H&S)***	***Policy objective 2: Free movement of goods***	***Policy objective 3: Competitiveness of European industry***	***Alternative policy instruments to meet the policy objectives***
4. Improvement of traceability of electrical and electronic products (171)	Are the control instruments of market surveillance sufficient to meet the expectations of society? Do the new information requirements improve the H&S of users of EE?	Free movement of goods? Are there still remaining trade barriers?	What is the cost of the new traceability requirements for placing a LVD product on the internal market compensated by improved condition of competition? Are the surveillance instruments sufficient to ensure that the level playing field conditions for competition will be guaranteed, and will they, thanks to the new traceability requirements, adequately prevent the placing on the market of unsafe and counterfeited products?	- Enlarge the responsibility for placing a product on the EU market (for the first time) to importers and distributors of non-branded products? Give the importer the responsibilities of the manufacturer. - Use the entire supply chain for traceability of non-compliant or counterfeited products? - Generalise the application of Council Regulation (EEC) No 339/93 of 8 February 1993 on checks for conformity with the rules on product safety in the case of products imported from third countries[3]
5. More detailed list of essential health and safety requirements (Annex I)	Does the inclusion of more details improve the health and safety of users?	Does inclusion of more details improve the free movement of goods? Will it not delay the time-to-availability of new standards more than necessary?	Will it not become a "wild card" to careless and rogue importers who could argue that their products comply without using the harmonised standards? Will the market surveillance be able to check products against all the detailed ERs (and not only against the most obvious causes of hazards), thereby contributing to establish a level-playing field competition?	Use an equal abstraction level as in the existing LVD. (*Note: The impact assessment should establish in particular whether or not the inclusion of specific requirements such as for people with special needs, for the resistance to an external source of fire, will improve the health and safety of users*).
6. Role of harmonised standards (33)	Would the deletion of a reference to national standards, when no harmonised standards are available improve the H&S?	Would the deletion of a reference to national standards significantly improve the free movement of goods?	Would the deletion of national standards improve the competitiveness? Would the publication of a harmonised standard not be delayed if the Commission does not accept it?	Status quo?

[3] ***Official Journal L 040 , 17/02/1993 P. 0001 – 0004,*** *Finnish special edition: Chapter 15 Volume 12 P. 0081, Swedish special edition: Chapter 15 Volume 12 P. 0081*