



EEB position on Commission proposal for a draft Directive on establishing a framework for Eco-design of End use Equipment

20th January 2003

The EEB appreciates the invitation by the European Commission to provide their views regarding a draft Directive on establishing a framework for Eco-design of End use Equipment. However, taking into account that the Commission proposal of 4 November, and the feedback given at the stakeholder meeting of November 19, is absent of so many fundamental principles we do not see that it is useful for us to comment in great detail. Therefore, we have limited our input to the fundamental criteria we feel are essential to making this proposal environmentally relevant and a non-exhaustive selection of related comments on the proposed text.

In order to become a credible framework for Eco-design in End use Equipment the directive should incorporate the following basic principles and mechanisms :

- be legally based on **providing a high level of environmental protection** through improving the environmental performance of products, if necessary through separate initiatives based on Art. 95 and Art. 175,
- lay down a **binding framework of environmental objectives in the directive**, based on the elaboration of the Sixth Environmental Action Program priorities, quantified and with timeframes (see worked example in annex)
- provide for opportunities for national regulatory innovation on eco-design requirements, wherever no quantitative European performance levels are fixed and hence no high level of protection is ensured. Similarly **national innovation should be encouraged** to go beyond EU performance levels through non-regulatory measures
- **ensure balanced stakeholder participation** within the procedures foreseen in the directive and in the standardization process and ensure that environmental ministry representatives preside over any comitology decision related to performance levels.
- restrict itself to a **single track procedure with reference to eco-design requirements** – the setting of specific eco-design requirements **should be limited to the procedure foreseen under article 14.1b and in Annexes II and VII**
- provide a concrete **annexed list of equipment** which will be covered by the directive

The EEB recommends that the proposal be re-drafted to incorporate fully the above principles and elements or be withdrawn and de-merged.

Some detailed (non-exhaustive) comments with reference to the above principles

Article 1. Objectives and scope.

Strategically the proposed EuE directive from November 2002 should be set clearly within the scope of Integrated Product Policy process as one of the tools that this policy foresees. At the same time it should also be explicit in its role as one of the mechanisms of the European Climate Change Program.

As regards the objectives, the EEB finds the **complete absence of environmental objectives in the Commission's EuE proposal unacceptable and counterproductive**. The previous Commission proposal in February 2001 for a directive on impact on the environment of electrical and electronic equipment stated that the objective was *to harmonise requirements concerning the design of electrical and electronic equipment and to achieve a high level of environmental protection compatible with sustainable development*.

As it stands the November 2002 proposal prioritizes the free movement of goods on the internal market above and in exclusion to the protection of environmental and health objectives. The internal market is a means to an end and not an end in itself, it must respect and protect basic ecological limits. In this spirit Article 95 of the Treaty asks for "a high level of environmental protection" this should be explicit in the objectives of the proposal and evident in the content (for example through a common overarching **Framework of Environmental Objectives** – see below).

For more on the legal basis see comments on Article 14 below.

Article 2. Definitions

"EuE" - the product scope of the directive is confusing but would appear to go well beyond the original EEE directive to industrial and service equipment. This definition requires further specification and clarification. A detailed annexed list of equipment or sectors that will be actually the target of the directive is necessary.

"specific eco-design requirements" The introduction of specific eco-design requirements are a positive element and can be a good solution for setting the minimum performance levels in future product policy. However without an environmental framework clearly laying down the environmental objectives and timeframes it will be impossible to set any requirements. If we don't know what we are trying to achieve it is difficult to know what level of requirements we need, whether we are likely to achieve them and indeed to evaluate progress..

Article 5. Free movement

The directive can only be seen as a harmonisation measure as far as it implements politically set performance levels. Other instruments suggested in the directive should not be considered, like a harmonised standard (presumption of conformity) based on EMSs.

Article 5.1 effectively prevents Member States from going beyond the 'eco-design' requirements of the 'implementing measures' by imposing stricter national requirements, even in cases, where no performance levels are set. In this respect Art. 5.1 will contain national ecodesign innovations. The development of national product policies in the past was an effective driver for the rapid adoption of harmonized EU product standards, where they did not exist previously. This mechanism for ecodesign innovation should by no means be hampered by the new directive.

At the same time, to ensure this vital element of product evolution, national innovation should be actively encouraged to go beyond EU performance levels through non-regulatory measures such as financial and or fiscal incentives and pro-active public procurement policies.

Article 6. Conformity assessment

As the EEB has stressed above and in previous positions on EEE, environmental management standards and schemes do not provide credible and comparable information and are therefore not fit to provide objective information about the environmental performance of the products in question. The provision that the "design function is provided within the scope" does not in any way change this fundamental flaw.

Article 7. Presumption of conformity

In principle the EEB recognises and supports the relevance and importance of presuming conformity of products awarded the EU eco-label. This however presumes that the Eco-label criteria development process would and should incorporate the environmental framework of objectives which should be adopted within the EuE directive. We see no reason why it would not follow this approach however.

Article 8. Harmonized standards

All the previous arguments on ENGO access to influence on CEN and the New Approach are still valid. These arguments are outlined in the ANEC/BEUC/EEB joint position on the EEE proposal of May 2001.

Despite the recent creation of the European Citizens Organization for Standardization (ECOS), its ability to make a real difference is dependent on certain requirements being met. It will depend especially on the willingness of CENELEC to grant ECOS unrestricted access to its technical board, technical committees and working groups as it does with other co-operating European federations. Any discrimination of ECOS would mean that one of the preconditions of the New Approach - the free access of all stakeholders to the European standardisation process - would not be met.

Furthermore, the complexity of the work potentially launched by this proposal cannot be managed merely within the ECOS budget and capacities. The EuE directive must ensure, via national procedural and financial requirements, ENGO participation at the national standardisation bodies and in national delegations which decide upon the European standards.

Finally, the quality of standardization work is ultimately dependent on the quality of the mandate and therefore once more the environmental objectives and mechanisms defined in the directive.

Article 9. Restrictions to market

Article 9 places a large burden of verification of non-compliance on Member States. The authorities should have the possibility to simplify the procedure foreseen through immediate sanctions on non-compliance.

Article 13. Co-operation and Enforcement

In order to enable enforcement EU and National Statistics and Survey programs are needed to support the specific information exchange. Whilst random choice testing through independent initiatives and name and shame campaigns are important we cannot rely solely on this mechanism.

Where co-operation is concerned, it is very important that Member States exchange information about the state of the art and new developments that would allow for increased innovative and pro-active elements of product design. However without the obligation and the resources to do so it is unlikely to be coordinated and effective. It would be useful to foresee the creation of a centralized product benchmarking and product data collection institution or alternatively a centrally funded network of such institutions with the principal of public and freely available data.

Additionally, we suggest to strengthen the role of 'watchdogs' such as independent environmental/consumer testing, Öko-Test etc. with their strategy of random sampling which is not predictable for companies. Successful examples are washing agents and cosmetics. Two key aspects should be pursued: 1) An effective ENGO/Consumer watchdog network should be established and funded in order to improve communication, co-operation and enforcement within the European Community and 2) legal strengthening of such testing activities to reduce their risk of being prosecuted by companies whose products come out as poor performers.

The missing article (s) / Annex - The Framework of Environmental Objectives

Article 14 and the corresponding Annexes I, II and VII define the procedure for setting eco-design requirements. However this **entire procedure is working in a vacuum if there is no previous agreement and definition of what the requirements are trying to achieve**. All stakeholders appear to be calling for some form of common vision or objectives towards which all regulative and non-regulative efforts can be orientated. This common vision should be the politically agreed concrete environmental objectives in the form of an environmental framework.

Thus the directive should incorporate, in the legal text and not merely, as suggested at the stakeholder meeting of 19 November, in the recitals or explanatory memorandum, a clear description of its **Framework of Environmental Objectives**. The framework of environmental objectives should identify the key environmental areas the directive will address and the level of ambition. This should build on the themes of the Sixth

Environmental Action Program and include timetables and general quantitative performance targets such as those in the worked example annexed below.

Article 14. Implementing measures and Annexes I, II and VII

The implementing measures are effectively the elaboration of the secondary level – going the next step from the principles set in the environmental framework towards action. This action should foresee a number of steps, namely:

- Screening of the most relevant environmental aspects of different groups of equipment to establish priorities for improvement
- Specification of minimum performance levels to be achieved and identification of key issues to be addressed (e.g. energy efficiency - an obligatory switch off function – in addition to stand-by)
- **Modelling if the defined performance levels will enable meeting the general reduction targets of the Environmental Framework**

It also should establish requirements to make use of innovation drivers, such as:

- Benchmarking with best practice and state of the art,
- Establishing grades (or classes) of performance

Many of the above depend on the availability of comparable data on product performance. Similarly, proper availability of comparable data on products will feed all the parallel mechanisms beyond the minimum legal performance requirements that encourage innovation in product design – namely eco-labelling, product LCI databases and comprehensive information for watchdog organizations such as eco-test magazines among others.

Therefore, we propose that, procedures to collect and collate comparable information on products should be developed separately but in parallel to minimum requirements mechanism. Ultimately provision of product data should work towards the goal of *no data, no market*. This may not be immediately feasible due to data availability and lack of standardisation of data provision, therefore intermediate measures should be established.

With reference to the above we feel that the procedure currently proposed under article 14 and corresponding annexes has the following deficiencies and raises the following questions:

- 1) This procedure is a political responsibility and should in no way be delegated to standardisation bodies or merely limited to representatives of member states. It must be part of a democratic decision-making process with balanced stakeholder participation. Currently there is no stakeholder participation in the comitology process foreseen and no rules for their participation. Other directives, such as the EU Ecolabel or EMAS provide for mixed stakeholder and comitology stakeholder participation. Rules for balanced participation and a clear description of how this principle will be carried out should be foreseen, including resources to carry this out. A model for this should be stakeholder participation within air pollution policies.

- 2) Transparent and deliberated decision-making should be required (e.g. by fully documenting assessment of different options and justifications).
- 3) The **second-track procedure (article 14.2a)** through manufacture self-setting and self-regulation of eco-design requirements through the procedures foreseen in Annexes IV (Internal design control) and V (Environmental Management systems) is **not an efficient or credible methodology** for ensuring a high level of protection. At the same time it cannot be considered as a harmonisation measure, since the full discretion on performance levels remains with the producer. If internal market objectives (based on Article 95 of the Treaty), including a high level of environmental protection are to prevail, the **setting of requirements should be limited to the procedure foreseen under article 14.1b and in Annexes II and VII.**

In our opinion it would be more useful if the mechanisms foreseen under **article 14.2a** and Annex V (obliging producers to develop and document ecological profiles) were developed as a separate initiative. This initiative could require, on a separate and more appropriate legal basis (Art.175), the obligatory provision of product data files for all products covered by the proposed EuE directive. However, we recognise that criteria for such data provision would also need to be standardised in order to render it comparable and useful.

- 4) With reference to article 14.2.b and the methodology foreseen in annexes II and VII.

The methodology (annex II) foresees the use of a “technical-economic analysis” “taking into account economic and technical feasibility” to define the level of specific eco-design requirements. We do not see how the environmental benefits balance this process.

Furthermore annex II imposes the condition that the specific eco-design requirements must not have as a consequence that “a significant proportion of models currently produced are removed from the market” or that patented technology is used. This condition is conservative and the opposite of the claimed promotion of innovation. Assuming that these restrictions refer to new products, they effectively undermine the directive in terms of its capacity to change the majority of product design towards eco-designed products. The ‘without any cost to business as usual logic’ is not compatible with achieving high levels of environmental protection.

- 5) With reference to article 14.3 defining criteria for adopting “implementing measures”

Without the agreement on a framework of environmental objectives, such as the one proposed here, we fail to see how criteria such as 14.3.2, 14.3.4 and 14.3.5 can be evaluated and applied.

As regards criteria 14.3.9 we feel this is a biased wording of this aspect suggesting that product performance requirements are merely a negative impact on competitiveness – wording such as “the benefits and impacts “ would be more appropriate.

Finally, under this section, the proposal reads “ market distortions shall not be created among equipment performing the same function but using different energy resources”. This is counterproductive to the objective of the directive, which should

seek to actively promote renewable energy sources over non-renewable sources through product policy.

Evaluation and revision

As it stands the proposal lacks any mechanism for evaluation and revision. The evaluation of global progress towards the environmental objectives and if necessary revision is an essential element to ensure the continuous evolution of product design.

Annex

Recommendations for a Framework of Environmental objectives with targets and timetables for the proposed directive on eco-design of End use Equipment

Climate Change -

* Reduction in emission of Greenhouse gases (Total CO₂ and five other greenhouse gas emissions - CH₄, N₂O, HFCs, PFCs, SF₆) - 8% compared to 1990 levels by 2008¹

* Reduction in Energy intensity, quantity and type of energy (renewable/non renewable) - increase of energy efficiency 2-5%/ year² with 22% renewable energy³ sources by 2010

Loss of bio-diversity and of functioning of natural ecosystems & Health and Eco-toxic impacts of chemical pollutants -

* Reduction in air pollutants – 84% for SO₂, 55% for NO_x, 29% for NH₃ and 60% for VOC compared to 1990 levels by 2010⁴.

* Reduction in toxic chemical use – [50%] reduction in the presence of the OSPAR chemicals by 2010 compared to 1995 levels⁵

Waste Production and Excessive Resource Use⁶ -

* Reduction in intensity of primary material resource use, quantity and type of material – reduction by a factor of [4] of non-recycled virgin ferrous and non-ferrous-metals [steel, aluminium, zinc and copper, plastics and wood] by 2010.

* Reduction in waste production – [90%] recyclability by 2010, zero product waste to landfill and adoption of Extended Producer Responsibility modeled on the Waste form Electrical and Electronic Equipment directive

¹ KYOTO targets

² 5% increases in energy efficiency has been deemed achievable in a Study done by Steger, U., et al: Nachhaltige Entwicklung und Innovation im Energiebereich, Springer, Berlin, 2002.

³ Under the Directive on the promotion of electricity produced from renewable energy sources in the internal electricity market (COM/2000/0884 final) the target agreed was 22% of all electricity consumed

⁴ Air quality indicator based on national emission ceilings - EEB Position paper *Sustainable development: Making it happen*, March 2002

⁵ Chemicals indicator - EEB Position paper *Sustainable development: Making it happen*, March 2002

⁶ Material use indicator – "...factor 10 reduction within 30 years of primary, non-renewable material use, with material recycling and re-use above 95% resulting in zero landfill of untreated waste..." - EEB Position paper *Sustainable development: Making it happen*, March 2002