

**Common position of ANEC, BEUC and EEB on  
"Draft proposal for a Directive of the European Parliament and of the Council on the  
impact on the environment of electrical and electronic equipment (EEE)"  
May 2001**

ANEC, BEUC and EEB appreciate the invitation by the European Commission to provide their views regarding a possible directive in the field of environmental performance of electrical and electronic equipment.

### **Packaging disaster**

The first experiment to make use of the principles of the "New Approach" in the field of environment regarding packaging and packaging waste was a complete disaster. The standards produced by CEN TC 261 must be considered as alibi papers without any substance. Their actual impact on the environment will be negligible as these papers are written in such a way that it is almost impossible not to comply with them.

These aspects are further detailed in the ANEC review: "CEN standards in the field of packaging and the environment – an inadequate complement to the Packaging Directive" and in the EEB analysis: "CEN at work: How the requirement of the European packaging and packaging waste directive (94/62) are bypassed by CEN standards".

The ANEC and EEB criticism is essentially shared by the Commission services as stated at the March 2001 meeting of the 98/34 Committee (Standards and Technical Regulations).

A proper evaluation of the unpleasant results as well as of the reasons for the failure in the field of packaging must be performed before any further attempt is made to go ahead with the New Approach concept in the environmental field. Otherwise we are very likely to be faced with a similar situation in the future. The failure of the packaging standards does not only reflect the ambiguity of the directive and the mandate, they also reflect structural deficits of the standardisation process as such, in properly incorporating the environmental dimension.

### **Structural deficits of the "New Approach"**

In a huge number of technical committees industry representatives dominate the procedures and steer the process. Representatives of the public interest (authorities, consumer and environmental organisations) constitute a small minority. Public authorities, if they participate, are formally treated like any other stakeholder. Therefore the standards primarily reflect industrial needs.

In the field of consumer safety there is a strong incentive for manufacturers to maintain a certain level of protection as a result of product liability legislation. This holds true at least in cases where a clear and direct relation between a faulty product, an accident and an injury exists. There is nothing comparable in the environmental field.

Failure in delivering product safety creates an immediate consequence. Cause-effect relationship is often easy to establish and the reputation of the producer is endangered. Whenever this immediate feed-back exists there is an inherent producer interest in product safety.

This inherent producer interest cannot be generally expected in environmental issues. Risks are controversial, cause-effect relationships are difficult to get established, delays between cause and effect may be considerable – in short: immediate feed-back of environmentally unsafe products cannot be expected, but for highly politicised issues. The inherent producers' interest, with the

exception of market niche products, is much weaker to ensure a high level of environmental performance.

## **Reform of the “New Approach”**

A substantial reform of the “New Approach” is needed. Even in the field of safety standards are often not adequate. This structural reform must aim at a better balance in European standardisation, counterbalancing measures where imbalances exist, safeguards, clearly described dispute settlement procedures, a better monitoring of mandated work within and outside the standards bodies, involvement of consumer and environmental organisations in the drafting of mandates, clear and unambiguous provisions in the mandates, compulsory involvement of consumer and environmental organisations in certain areas of mandated work, documentary evidence of this, obligation to seek consensus with all stakeholders, timely interventions when things are going wrong in the standard bodies, clearly described sanctions when inadequate standards are delivered, alternatives to standards when the standards bodies do not deliver acceptable specifications, involvement of consumers in the 98/34 Committee and so forth.

These arguments are outlined in detail in the ANEC position paper on the Council resolution on standardisation in Europe (ANEC 2001/GA/7). Until such changes as above mentioned have taken place ANEC, BEUC and EEB recommend not to make use of the "New Approach" in the environmental field.

## **General criticism on the draft directive on Electric and Electronic Equipment (EEE)**

In principle, ANEC, BEUC and EEB support the idea to complement the WEEE directive with environment related requirements for new products. However, the proposal by DG Enterprise is seen as an inadequate instrument because it is left entirely to the discretion of the manufacturers to determine the level of environmental performance themselves based on assessments of the environmental impact of their products throughout the lifecycle.

In fact, it provides a framework for an environmental product management system. However, management systems should not be confused with product specifications. The fact that a company subscribes to a quality management system (ISO 9000) does by no means mean that it produces high quality products. The implementation of an environmental management system (EMAS, ISO 14001) does not mean good environmental performance (neither of the company nor of its products). It is worth to mention that the EMAS regulation contains clear provisions not to misuse the logo in advertising suggesting a high level of environmental performance of the products.

The EEE working document is advocating a flexible environmental policy instrument – but it fails to ensure a high level of environmental protection, as required by Art. 95 of the EU Treaty. Therefore the double objective of this proposal, to ensure environmental protection and the internal market at the same time, will not be achievable. The European Commission and the European Court of Justice (ECJ) have stated on several occasions the level of protection provided by a harmonisation measure at EU level is to be considered as insufficient. This might become the case, if the management system approach suggested by the EEE proposal will be accepted.

Moreover, the ambivalent language that is used in the current working draft would make it entirely impossible to interpret and to enforce it. The general provision in annex 2 dealing with the essential requirements illustrates this dilemma: “The manufacturer shall make use of this assessment to select the design solution for the product which represents an optimal balance between environmental factors and other appropriate considerations, such as technical and economic aspects, while complying with all relevant legislation”. Such statement allows presumably for thousands of different interpretations and will not survive an ECJ decision as a credible harmonisation measure, based upon Art. 95.

The new version (February 2001) must be seen even as a step back compared to the last one. The basic requirements have been dropped even though this was one of the few positive elements – from our point of view - which could have been further developed. Instead, the manufacturer shall only follow some general and vague principles (e.g. strive (!) to prevent pollution, facilitate end-of-life management, and so forth). Who will ever be in the position to provide evidence that the manufacturer has not aimed “to achieve progress in improving the overall impact of successive generations of products” taking into account a “reasonable balance between environmental factors and other relevant (!) considerations”?

It seems to us that this draft EEE directive is the legal counterpart to the packaging standards in terms of substance and philosophy. Both let industry do whatever industry deems useful. But this is what industry does anyway. The hidden agenda behind this EEE proposal seems to be to contain national product policies related to electronics. We do not consider environmental policy containment as a legitimate policy goal.

ANEC, BEUC and EEB feel that proposals for EU directives should be prepared in a more professional way. In the first place it would be desirable to carry out some feasibility studies by competent experts in the environmental field to clarify whether and where meaningful specifications in this area can be established, in which form and with which goal.

This preparatory work is needed, to elaborate another layer of specification. The responsibility of the political level can not stop with formulating general principles. This layer of specification should clearly establish substantial requirements, such as:

- Minimum performance levels to be achieved
- Orientations for the dimension of improvement needed (e.g. energy efficiency targets)
- Priorities for improvement (e.g. hazardous substances beyond the ROHS directive, energy efficiency, water use) on the basis of the 6<sup>th</sup> Environmental Action Programme and a screening of the most relevant environmental aspects of different groups of electronics.
- Key issues to be addressed (e.g. an obligatory switch off function – in addition to stand-by)

It also should establish other requirements, such as:

- Benchmarking with best practice and state of the art,
- Establishing grades (or classes) of performance
- Imposing the burden of proof for compliance with minimisation objectives upon producers
- Transparent decision-making (e.g. by documenting assessment of different options and justification requirement, why not the best performing option has been chosen).
- A choice on which standards are needed

The elaboration of such a secondary level – going the next step from principles towards action – needs some preparatory time and many studies. This secondary level is a political responsibility and should in no way be delegated to CENELEC! It must be part of the directive and part of the democratic decision-making process. We therefore warn against proceeding too quickly with the draft EEE directive. Otherwise, we fear that the packaging story will repeat itself.

## EEE detailed criticism (incomplete)

### Preamble (2)

The EEE proposal claims that ***provisions are in force in some Member States specifying design requirements for electrical and electronic equipment in order to protect the environment which differ and are likely to affect the free movement of such products and constitute barriers to trade within the Community.***

It is most likely that these provisions will deal with restrictions of chemicals. This calls for a harmonisation of chemicals regulations and a better and more restrictive chemicals policy in Europe rather than a directive dealing with environmental design requirements for EEE. The first question must therefore be whether the existing national legislation is justified. If so, then the strategy can only be to expand this to Europe rather than forcing the leading countries to take back their advanced legislation. The Danish initiative towards HFC phase out might be a case in point.

### Scope – Article 1

The scope of the proposed EEE ***directive is 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 outlined above the draft in its current form can by no means live up to such claims. On the contrary, it rather blocks progress by preventing other legislation being implemented and by forcing more environmentally advanced countries to withdraw their existing legislation without any substitute.

### Article 8 – Presumption of conformity

Any ***reference to EMAS*** is entirely displaced in this context. This again shows a fundamental misunderstanding: that environmental management systems have anything to do with environmental performance of products (it is even questionable whether EMAS leads necessarily to a high level of environmental performance of the organisation). The provision that “the design function is included within the scope of the registration” does not change our strong reservation.

In principle we welcome the idea, that presumption of conformity can be obtained ***by ecolabelled products.*** However the reference to the Eco-label regulation is far from being clear: what does it mean that the awarded products shall be presumed to fulfil the essential requirements in so far as the Eco-label covers them? Again a wide range of interpretations are possible.

We have strong reservations to give a carte blanche to ***environmental agreements.*** Environmental agreements should fully meet the conditions defined the Commission Communication from 1996. Environmental agreements must be embedded in a wider legal framework – the present practice of gentlemen agreements is at the fringe of what the EU treaty allows the Commission to do. Unless those general issues on environmental agreements are not solved, a reference to environmental agreements is premature.

### Article 10 – Committee on impact of EEE

ANEC, BEUC and the EEB regret that the sectoral committee foreseen in the draft EEE directive to assist the Commission consists only of representatives of the Member States and does not include representatives of NGOs. We think that this is not acceptable. ANEC, BEUC and the EEB believe that NGO participation is vital, e.g. with respect to the development of mandates and the evaluation of standards produced under those mandates.

We advocate one single Committee, having full regulatory power, to address all issues, such as:

- Continuous quality check of standardisation process
- Amendments of Annexes
- Further elaboration and decision on Mandates
- Decisions on acceptance and rejection of standards.

### Article 11 – Specific measures

The provision that the European Commission can adopt measures to adapt Annex I and Annex II of the directive and to provide more detailed specifications is appreciated.

### Essential Requirements – Annex II

The language used is not appropriate. The requirements pertaining to the design solutions a manufacturer is required to apply are vague and make enforcement impossible.

For instance, article 2 of section B) Requirements for the design of electrical and electronic equipment says that **“the choice of a specific design solution shall achieve a reasonable (?) balance between environmental factors and other relevant considerations**, such as safety and health, technical requirements for functionality, quality, and performance, and economic aspects, including manufacturing costs and marketability”.

From this follows that enforcement officers would have to judge whether a reasonable balance has been achieved which is, of course, a purely subjective decision. It may be a suitable guiding principle for law making, but cannot be regarded as a meaningful legal requirement.

The same argument holds true for the requirement in article 3 that the manufacturer must choose the **“most appropriate (?) design solution”**. Who will finally decide what the most appropriate design solution is?

Also the requirements pertaining to labelling (section C) are similarly imprecise. **“The manufacturer shall ensure that relevant (?) information and/or labelling concerning the environmental design aspects of the product is provided** to those who are responsible for the product following the design phase, where applicable.”

### Environmental Assurance System – Annex IV

We find the second track of the conformity assessment – the environmental assurance system - very confusing. Whilst the internal design control option (Annex III) requires at least to document whether the vague requirements of the directive have been fulfilled, this does not seem to be the case with the provisions of the environmental assurance system. The way this annex is written suggests that you can even bypass the requirements of the EEE directive by introducing a small scale environmental management system. From our point of view this is entirely unacceptable.

## **Conclusion**

This draft directive on environmental impacts of EEE cannot be supported by ANEC, BEUC and EEB. It is not proper co-regulation, but gives self-regulation a carte blanche. The proposal does not ensure a high level of environmental protection in the internal market. There are only few positive elements such as the obligation to carry out a lifecycle assessment of products. Apart from this obligation the proposal is more than vague. Hence, ANEC, BEUC and EEB advise to either make this draft a substantive one by including clear-cut requirements or to withdraw it.