

**Preliminary EEB recommendations on proposed Eco-design Framework
for
Energy Using Products**

10 November 2003

a) Objectives of the Framework, should be

1- ~~To~~ Primarily to protect, to a high level, -health and environment and promote energy security. There seems to be no reason why such a measure could not be based on article 174 despite its affinity with market harmonisation. A proposal based on 95 risks restricting national environmental/energy requirements that wish to go beyond the EU requirements. This is especially relevant for hazardous substances and regional relevance of issues such as water efficiency. There are other cases of product policy based on article 174 - Directive 1999/32 on the Sulphur Content of Liquid Fuels based on 174?

2- To expressly integrate 6EAP and existing targets and goals –

Chemicals

Resources

Waste

Air

Water

Energy

and goals established in relevant FWK directives, and future thematic strategy targets – in particular the **targets** to be set in the contexts of the Waste Prevention and Recycling and the sustainable management of natural resources.

3- To get rid of the worst products over time and stimulate innovation towards better performing technologies and service delivery (setting minimum requirements through specific measures)

4- To ~~B~~build up the flow of product lifecycle information, where insufficient data exists, with the dual purpose of allowing eventual setting of specific measures and improving product impacts transparency in general – (in particular for ~~in~~ B2B and expert usage – consumer eco-test magazine networks, research and expertise networks, LCA databases, eco-labelling etc)

5- Providing a roadmap for the Energy Using Products manufacturing industry

b) Essential mechanisms for a useful EuP

- 1 - Systematic methodology for screening impacts of products and setting minimum requirements (Methodology in Annex I and II are useful here) but some more detailed guidelines on product prioritisation are needed in the absence of a methodology being developed under the ongoing IPP work.(article 12 is too vague)
- 2- A whole lifecycle perspective – from extraction to disposal (‘design’ to disposal is too vague). If the EuP IS as it claims to be, based on the IPP approach consideration of just final ‘factory-floor’ impacts, use and end-of life phases are not sufficient.
- 3- The Use of independent benchmarking (EU and International) and market studies. These should be independent to economic interests and peer reviewed by advocates of environmental/energy efficiency advocates.
- 4- Balanced and structured stakeholder involvement in setting Implementing Measures. Balanced means that there is a deliberate equilibrium created between energy efficiency/ environmental interest advocates and economic interests. Structured means, if proper democratic and transparent co-decision procedure is not to be used for each Implementing Measure then a highly structured process of pre-comitology decision making should be set up and made binding in a Commission Regulation (as for the Community Ecolabel) such a procedure should be at least as transparent, disciplined and accessible as the co-decision process and special mechanisms for alerting the other institutions, such as the Parliament, should be foreseen and be open to all stakeholders.
- 5- A Clear hierarchy between specific minimum (cut-off) requirements and non-prescriptive information requirements (generic measures) needs to be established. The principle should be to identify areas of environmental lifecycle impact that should be addressed, and then those that can be addressed and to strive-aim to set specific minimum requirements for these aspects. Only where this is not possible due to severe lack of data and therefore the temporary inability to benchmark should generic measures be introduced as intermediate tools, primarily with the view of achieving the sufficient level of data and information to allow future setting of specific requirements.
- 6- Third party certification of conformity to Implementing measures (assessment and declarations) should be required. Taking into account potential administrative burdens this will imply a streamlined procedure involving by specialised (expert) notified bodies would probably be the best solution to achieve a balance between the necessity for credibility and also harmonisation and the potential expertise burden on enforcement capacity.
- 7- Easily comparable ~~The conformity procedures implementation procedures~~ should be easily assessable ie comparable and (thus more harmonised. There seems to be no reason why there should be more than) – one methodology (such as the internal design internal design only procedure- similar to Annex IV). One , single system for all would avoid confusion and create less margin for creative interpretation and de-harmonisation. If the objective is to encourage the for less confusion dissemination or integration of use of EMS this could be adequately dealt with in additional -guidelines to help member states in the various ways to apply the single
- 8- Active use of data and knowledge being generated through data collection, aggregation and transparency on a collective sectoral basis – as for FIEEC EIME CODDE project... for use by wider civil society and other institutional programmes such as labelling

c) Concrete amendment suggestions:

... **...** = amendments

... = comments

... = for clarification

COM(2003) 453 final - 2003/0172 (COD)

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

Having regard to the Treaty establishing the European Community, and in particular Article 95 **and article 174 thereof**, **(double legal basis in same text possible? – I thought it wasn't as they are essentially in conflict. It should be better to ask for separate initiatives or change to 174...?)** I prefer separate initiatives, because that's more clear – I also doubt if a double legal basis is possible – I can ask that to Luc Lavrysen, jurist specialised in product legislation. I even wonder if it wouldn't be better, as environmentalists, just to ask for art. 174 legislation, setting minimum requirements, and leaving the opportunity for MS to go further.

...

Whereas:

(1) **The Council Conclusions on Integrated Product Policy from October 2003 recognised that economic activities should respect the limits of the earth and... Something similar possible for the EP?**

~~(1)~~(2) The disparities between the laws or administrative measures adopted by the Member States as regards the eco-design of energy using products can create barriers to trade and distort competition in the Community and may thus have a direct impact on the establishment and functioning of the internal market. The harmonisation of national laws is the only means to prevent such barriers to trade and unfair competition. **And this is of course always the reason for art. 95 legislation, like it always is for products. (However, there exists one exception, Directive 1999/32/EC, a product directive and a minimum directive NOT based on art. 95. What are the considerations in that directive?)**

~~(2)~~(3) Energy using Products (hereafter "EuP") account for a large proportion of the consumption of natural resources and energy in the Community. They also have a number of other important environmental impacts. For the vast majority of product categories available on the Community market, very different degrees of environmental impact can be noted though they provide similar functional performances. In the interest of sustainable development, continuous improvement in the overall environmental impact of those products should be encouraged, **notably when this improvement does not entail excessive costs.**

~~(3)~~(4) A coherent framework for the application of Community eco-design requirements for EuPs should be established with the aim of ensuring the free movement of those products which comply and of improving their overall environmental impact and at the same time not restricting member states to drive innovation beyond such measures. Such Community requirements should respect the principles of international trade.

~~(4)~~(5) This Directive seeks to achieve a high level of protection for the environment by improving resource efficiency of EuPs, which will ultimately be beneficial to consumers and other end users. Sustainable development also requires proper consideration of the health, environmental, social and economic impact of the measures envisaged. Improving the energy efficiency of products contributes to the security of energy supply which is a precondition of sound economic activity and therefore of sustainable development

~~(5)~~(6) The approach set out in the Green Paper on Integrated Product Policy¹, which is a major innovative element of the 6th Environment Action Programme laid down in Decision No 1600/2002/EC of the European Parliament and of the Council², aims to reduce the environmental impacts of products across the whole of their life cycle, from cradle to grave, (ie extraction to waste). Add more? Considering at the design stage, a product's environmental impact throughout the whole life cycle has a high potential to facilitate environmental improvement in a ~~cost~~-effective way. There should be sufficient flexibility to enable those factors to be integrated in product design whilst taking account of social, technical, functional and economic considerations. (do we have the right balance here?)

~~(6)~~(7) It ~~may be~~is necessary and justified to establish specific quantified eco-design requirements for some products or environmental aspects thereof in order to ensure that their environmental impact is minimised. Such priority measures should be introduced taking into account, in particular, their potential for reducing greenhouse gases emissions at low cost. Such measures ~~can~~should contribute to the achievement of the goal set in the Kyoto Protocol to the United Nations Framework Convention on Climate Changes (UNFCCC), approved by Council Decision 2002/358/EC³, which calls for an 8% reduction in emissions of greenhouse gases for the Community by the year 2012 as well as to further reductions beyond 2012.

(8) Even when such specific targets are not available ut action is deemed necessary, specific eco-design requirements can be adopted ~~can also contribute to~~ seeking to achieve, inter alia the goals of the Water Framework Directive, the Air Quality Framework directive, the Waste Framework Directive and the OSPAR convention and the Community directive (XXX) on Persistent Organic Pollutants, as well as the forthcoming targets to be laid down in the Thematic Strategies on Waste Prevention and Recycling and the Thematic Strategy on Sustainable Use of Natural Resources.

And the chemicals strategy (REACH) ??

(9) In addition to the above they can also constitute a major contribution to the ten-year framework of programmes on sustainable production and consumption agreed at the World Summit on Sustainable Development in Johannesburg in September 2002.

¹ COM(2001)68final

² OJ L 242, 10.9.2002, p. 1

³ OJ L 130, 15.5.2002, p.1

(10) Recognising that Integrated Product Policy should establish a common and harmonised framework on procedures for setting minimum eco-design requirements the activities undertaken under the European Commissions Integrated Product Policy, in particular product prioritisation and the approach on Product Design Obligations, should be taken into consideration. (is this too risky?? On ~~dealy~~delays - IPP should have finished the study of their product prioritisation methodology by X and so can apply it in 3-4 years. There is no reason why we cannot build in Climate change as a priority issue in this and get greater opportunity to chose the appropriate products for energy effic. Measures... too slow -Germana?)

(7)(11) The level of eco-design requirements ~~should normally~~shall be established on the basis of technical, economic and environmental analysis. Flexibility in the method for establishing the level of requirements can make swift improvement of environmental performance easier. However, for minimum energy efficiency standards, clear criteria for standard-setting, such as the least-life cycle cost principle, will be used. The setting of mandatory measures requires proper consultation of the parties involved, including structured and balanced participation of economic intests and energy efficiency/environmental advocates. ~~Such consultation may highlight the need for a phased introduction or transitional measures.~~ The introduction of interim targets increases the predictability of the policy, allows for accommodating product development cycle and facilitates long term planning for the interested parties. (Ok with phased introduction? Can maybe allow stricter target setting and interim targets?)

(8)(12) ~~Priority should be given to~~ alternative courses of actions such as self-regulation by the industry should only be considered where such actions are likely to deliver the policy objectives and the same or higher level of environmental requirements faster ~~or less costly~~ (less costly, for who? lots of interpretation possible...) than mandatory requirements. Any self-regulation requires democratically pre-defined clear and ambitious objectives, targets, deadlines. To ensure credibility sanctions, in the form of a clear intention for legislative action should exist. (use such a text or just delete this part of recital??) Which part ??? Legislative measures ~~can be~~ needed where the market forces fail to evolve in the right direction or at an acceptable speed.

(9)(13) EuPs complying with the eco-design requirements laid down in implementing measures to this Directive should bear the “CE” marking and associated information, in order to enable them to be put on the internal market and move freely.

(10)(14) Regard should be given to the modules and rules intended for use in technical harmonisation Directives set out in Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking⁴.

(11)(15) Surveillance authorities should exchange information on the measures envisaged within the scope of this Directive with a view to improving surveillance of the market. Such co-operation should make the utmost use of electronic means of communication and relevant Community programmes.

(16) Accumulation and evaluation of the body of knowledge generated by eco-design efforts of manufacturers is one of the crucial added values of this initiaive. Exchange of information on environmental lifecycle performance and achievements of design

solutions should also be facilitated with the information being centrally processed and made available to public scrutiny in a useful format. For such purposes standardisation of reporting of such information is necessary (essential to have public access to the ecological profile information and the achievements possible by design changes in an understandable and comparable/ standardised format)

~~(12)~~(17) It is in the interest of the functioning of the internal market to have standards which have been harmonised at Community level. Once the reference to such a standard has been published in the *Official Journal of the European Union*, compliance with it should raise a presumption of conformity with the corresponding requirements set out in the implementing measure adopted on the basis of this Directive, although other means of demonstrating such conformity should be permitted.

~~(13)~~(18) Harmonised standards are technical specifications adopted by the European Standardisation bodies, as referred to in Annex I to Directive 98/34/EC of 22 June 1998 of the European Parliament and the Council laying down a procedure for the provision of information in the field of technical standards and regulations⁵, on mandates given by the Commission in conformity with that Directive and in accordance with the general guidelines for co-operation between the Commission and those bodies. In the interest of international trade, international standards should be used wherever appropriate.

~~(14)~~(19) This Directive is in accordance with the principles for the implementation of the new approach as set out in the Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards⁶ and of making reference to harmonised European standards. The Council Resolution of 28 October 1999⁷ recommended that the Commission should examine whether the New Approach principle could be extended to sectors not yet covered as a means of improving and simplifying legislation wherever possible.

~~(15)~~(20) Synergies and complementarity of this Directive with existing Community instruments such as Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances⁸, Regulation (EC) N°1980/2000 of 17 July 2000 on a revised Community eco-label award scheme⁹, Regulation (EC) N°2422/2001 of 6 November 2001 on a Community energy efficiency labelling programme for office equipment¹⁰, Directive 2002/96/EC on waste from electrical and electronic equipment¹¹, Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment¹² should contribute to increasing their respective impact and building coherent requirements for manufacturers to apply.

⁵ OJ L 204 of 21.07.1998, p. 37, as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p.18)

⁶ OJ C 136, 4.6.1985, p. 1.

⁷ OJ C 141, 19.5.2000, p.1.

⁸ OJ L 297, 13.10.1992, p. 16.

⁹ OJ L 237, 21.9.2000, p. 1.

¹⁰ OJ L 332, 12.12.2001, p.1.

¹¹ OJ L37, 13.02.2003, p.24

¹² OJ L37, 13.02.2003, p.19

~~(16)~~(21) Since Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels¹³, Directive 96/57/EC of the European Parliament and of the Council of 3 September 1996 on energy efficiency requirements for household electric refrigerators, freezers and combinations thereof¹⁴ and Directive 2000/55/EC of 18 September 2000 of the European Parliament and of the Council on energy efficiency requirements for ballasts for fluorescent lighting¹⁵ already contain provisions for the revision of the energy efficiency requirements, they should be integrated into the present framework.

~~(17)~~(22) Directive 92/42/EEC provides for a star rating system intended to ascertain the energy performance of boilers. Since Member States and the industry agree that the star rating system has proved not to deliver the expected result, Directive 92/42/EEC should be amended accordingly.

~~(18)~~(23) The requirements laid down in Council Directive 78/170/EEC of 13 February 1978 on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings¹⁶ have been superseded by provisions of Directive 92/42/EEC, Council Directive 90/396/EEC of 29 June 1990 on the approximation of the laws of the Member States relating to appliances burning gaseous fuels¹⁷ and Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings¹⁸. Directive 78/170/EEC should therefore be repealed.

~~(19)~~(24) Directive 86/594/EEC of 1 December 1986 on airborne noise emitted by household appliances¹⁹ lays down the conditions under which publication of information on the noise emitted by such appliances may be required by Member States, and defines a procedure to determine the level of noise. For harmonisation purposes noise emissions should be included in an integrated assessment of environmental performance. Since this Directive provides for such an integrated approach, Directive 86/594/EEC should be repealed.

~~(20)~~(25) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission²⁰ (comitology??). In addition to these measures and to ensure appropriate stakeholder participation and balance interests, as WHAT MS7COM HOOK?, in particular re-inforcing environmental and social aspects, a pre-comitology Advisory Committee consultation process should be adopted.

~~(21)~~(26) Member States should determine the penalties to be applied in the event of infringements of the national provisions adopted pursuant to this Directive. Those penalties should be effective, proportionate and dissuasive.

¹³ OJ L 167, 22.6.1992, p. 17.

¹⁴ OJ L 236, 18.9.1996, p. 36.

¹⁵ OJ L 279, 1.11.2000, p. 33.

¹⁶ OJ L 52, 23.2.1978, p. 32, as amended by Directive 82/885/EEC (OJ L 378, 31.12.1982, p.19).

¹⁷ OJ L 196, 26.7.1990, p. 15, as amended by Directive 93/68/EEC.

¹⁸ OJ L 1, 4.1.2003, p. 65.

¹⁹ OJ L 344, 6.12.1986, p.24

²⁰ OJ L 184, 17.07.1999, p.23

~~(22)~~(27) Since the objectives of the proposed action, namely to ensure the functioning of the internal market by requiring products to reach an adequate level of environmental performance, cannot be sufficiently achieved by Member States acting alone and can therefore, by reason of their scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

(23) In keeping with objectives of requiring products to reach an adequate level of environmental performance no restrictions should be placed on national eco-design requirements that go beyond the ambitions of the EU measures either for reasons of national policy on environmental and health, or for reasons of security of supply. (This ensures that EuP just 'cuts off the tail', ie restricts market to the worst products but does not 'cut off the head' ie restrict member states to require better products and so stimulate further innovation. This is crucial issue and could get lot MS support – need legal advice here.)

So we deal with a minimum directive, and not Art. 95!

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Subject matter and scope

1. This Directive establishes a framework for the integration of environmental aspects in product design and development to ensure the free movement of energy-using products within the internal market.

It provides for the definition of environmental requirements which the energy using products covered by implementing measures must fulfil with a view to their placing on the market. It contributes to sustainable development by decreasing the total lifecycle environmental impact of products aiming at a high level of environmental protection and increasing security of energy supply and by aiming at a high level of environmental protection.

~~2.~~ This Directive shall not apply to means of transport for persons or goods by inland, sea and air. (Ideally cars should be in, there is also much regulation on whitegoods and they are included so the argument of them having much regulation is not very good. Maybe we should count them? (what is the 'detailed legisl. On design that the Memorandum mentions) It would be good that they feel at any time they could be addressed. This is the 'Damocles sword' theory of DG ENT.)

Article 2
Definitions

For the purposes of this Directive the following definitions shall apply:

- (1) “Energy-using Product (EuP)” means a product which is dependent on energy input (electricity, fossil and renewable fuels) to work as intended and a product for the generation, transfer and measurement of such energy, including parts which are intended to be incorporated into EuP which are placed on the market as individual parts for end-users, the environmental performance of which can be assessed independently;
- (2) “Components and sub-assemblies” means parts intended to be incorporated into EuP, and which are not placed on the market as individual parts for end users or the environmental performance of which can not be assessed independently;
- (3) "Implementing measures" means measures adopted pursuant to this Directive laying down eco-design requirements which are necessary for achieving the aim of this Directive for defined EuPs or for environmental aspects thereof;
- (4) "Placing on the market" means making a EuP available for the first time on the Community market with a view to its distribution or use within the Community whether for reward or free of charge;
- (5) “Manufacturer” means any natural or legal person responsible for the conformity of an EuP with this Directive in view of its placing on the market under its own name or trademark or for its own use;
- (6) “Authorised representative” means any natural or legal person established in the Community who, explicitly designated by the manufacturer, acts on its behalf and may be addressed by authorities and bodies in the Community instead of the manufacturer with regard to the latter’s obligations under this Directive;
- (7) “Materials” means raw materials, intermediate products and auxiliary materials
- (8) “Product design” means the set of processes that transform legal, technical, safety, functional, market or other requirements to be met by the product into the technical specification of a EuP;
- (9) “Environmental aspect” means an element or function of a EuP that can interact with the environment;
- (10) “Environmental impact” means any adverse change to the environment, wholly or partially resulting from EuPs;
- (11) *new – Total lifecycle environmental impact of a product means the cumulative environmental impacts over the total lifecycle of the EuP;*
- (11) “Life cycle” means the consecutive and interlinked stages of a EuP from raw material extraction, its design to its final disposal; check EuE text...
- (12) “End of life” means state of a EuP having reached the end of its first use;
- (13) “Re-use” means any operation by which a EuP or its components, having reached the end of their first use, are used for the same purpose for which they were conceived, including the continued use of a EuP, which is returned to collection points, distributors, recyclers or manufacturers, as well as re-use of a EuP following refurbishment;

- (14) “Recycling” means the reprocessing in a production process of waste materials for the original purpose or for other purposes but excluding energy recovery. Energy recovery means the use of combustible waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;
- (15) “Recovery” means any of the applicable operations provided for in Annex II B to Council Directive 75/442/EEC²¹; ~~???~~ [add ECJ reading?](#)
- (16) “Waste” means any substance or object in the categories set out in Annex I to Directive 75/442/EEC which the holder discards or intends or is required to discard;
- (17) “Ecological profile” means a description, in accordance with the implementing measure applicable to the EuP, of the inputs and outputs including, as appropriate, raw materials, intermediate products, emissions and waste, associated with a EuP throughout its lifecycle ~~which are significant from the point of view of its environmental impact and are expressed in physical quantities that can be measured;~~
- (18) “Environmental performance” of a EuP means the results of the manufacturer’s management of the environmental aspects of the EuP, as reflected in its ecological profile; [\(ecological profile includes raw mats, intermed prods, ems and wastes to final disposal – includes use phase therefore – just need to ensure lifecycle includes pre-assembly impacts ie the ecological rucksack of the materials used – not just from the factory onwards – see definition of lifecycle\)](#)
- (19) “Improvement of the environmental performance” means the process of enhancing, the overall environmental performance of a EuP, over successive generations, [judged against a common benchmark, \(otherwise we get tiny improvements over very long time frames and they are all improvements\)](#) although not necessarily in respect of all environmental aspects of the product simultaneously;
- (20) “Eco-design” means the systematic integration of environmental aspects into product design with the aim to improve the environmental performance of the EuP throughout its whole life cycle;
- (21) “Eco-design requirement” means any requirement in relation to a EuP, ~~or~~ [and the design of a EuP, intended to improve its environmental performance](#) ~~or any requirement for the supply of information with regard to the environmental aspects of a EuP~~ [\(requirements for information although desirable are NOT eco-design requirements\);](#) ~~OK, but then maybe another definition is necessary for “information requirement” : = any requirement for the supply of information regarding the environmental aspects of a EuP ; otherwise it looks as we don’t believe that information is important)~~
- (22) “Generic eco-design requirement” means any eco-design requirement based on the ecological profile as a whole and not setting limit values on particular environmental aspects;
- (23) “Specific eco-design requirement” means a quantified and measurable eco-design requirement relating to a particular environmental aspect of a EuP, such as energy consumption during use, calculated for a given unit of output performance;

²¹ OJ L 194, 25.07.1975, p. 39.

- (24) « Harmonised standard » means a technical specification adopted by a recognised standards body under a mandate from the Commission in accordance with the procedures laid down in Directive 98/34/EC for the purpose of establishing a European requirement, compliance with which is not compulsory.

Article 3

Placing on the market and putting into service

Member States shall take all appropriate measures to ensure that EuP covered by implementing measures may be placed on the market and/or put into service only if they comply with those measures.

Article 4

Marking and declaration of conformity

1. Before a EuP covered by implementing measures is placed on the market, CE conformity marking shall be affixed and a declaration of conformity issued, whereby the manufacturer or its authorised representative ensures and declares that the EuP complies with all relevant provisions of the applicable implementing measure.
2. The CE conformity marking consists of the initials “CE” as shown in Annex III.
3. The declaration of conformity shall contain the elements specified in Annex VI.
4. The affixing of markings on EuP which are likely to mislead users as to the meaning or form of the CE marking shall be prohibited.
5. Member States may require the information to be supplied pursuant to part 2.3(n) of Annex I to be in their official language(s) when the EuP reaches the final user. Member States may also authorise this to be provided in one or more other official Community language(s).

When applying the first subparagraph, Member States shall take into account in particular:

- (a) whether the information can be supplied by harmonised symbols or recognised codes or other measures;
- (b) the type of user anticipated for the EuP and the nature of the information which is to be provided.

Article 5

Free movement

1. Member States shall not create any obstacle to the placing on the market and/or putting into service, within their territories, on grounds of eco-design requirements, of a EuP that complies with all the relevant provisions of the applicable implementing measure and bears the CE marking in accordance with Article 4.

Exceptions should be made for relevant national eco-design requirements that go beyond the ambitions of the EU measures either for reasons of national environmental and health policies or for reasons of security of supply. (This ensures that EuP just ‘cuts off the tail’, ie restricts

market to the worst products but does not 'cut off the head' ie restrict member states to require better products and so stimulate further innovation. What additional 'market' and competitiveness reasons can we find? Which treaty article can we use?).

That's just the problem with art. 95 legislation. Making a minimum directive from it, just creates obstacles for the free market. As mentioned before, as far as I know, there exists only one product-legislation directive which is a minimum directive: 1999/32/EG. I don't know if we could find some interesting references in that directive.

2. Member States shall not prevent the showing, for example at trade fairs, exhibitions and demonstrations, of EuP which are not in conformity with the provisions of the applicable implementing measure, provided that a visible sign clearly indicates their non-conformity and the fact that they are not available for sale until brought into conformity.

Article 6

Restriction of placing on the market

1. Where a Member State ascertains that a EuP bearing the CE marking referred to in Article 4 and used in accordance with its intended use, does not comply with all the relevant provisions of the applicable implementing measure, and/or that the CE marking has been fixed unduly, the manufacturer or its authorised representative shall be obliged to make the EuP comply with the provisions of the applicable implementing measure and/or **why OR? Isn't the CE marking obligatory?** with the CE marking and to end the infringement under conditions imposed by the Member State.

Where non compliance continues, the Member State shall restrict or prohibit the placing on the market of the EuP in question or ensure that it is withdrawn from the market. **(support this – very important)**

2. Any decision by a Member State pursuant to this Directive which restricts the placing on the market and/or the putting into service of a EuP shall state the exact grounds on which it is based.

Such decision shall be notified forthwith to the party concerned, who shall at the same time be informed of the legal remedies available under the laws in force in the Member State concerned and of the time limits to which such remedies are subject.

3. The Member State shall immediately inform the Commission and the other Member States of any measure referred to in paragraph 1, indicating the reasons therefor, and, in particular, whether non-compliance is due to:
 - (a) failure to satisfy the requirements of the applicable implementing measure;
 - (b) incorrect application of the harmonised standards referred to in Article 9(2);
 - (c) shortcomings in the harmonised standards referred to in Article 9(2).

(d) failure to satisfy the requirements of the applicable national measures (is this necessary?? – to be coherent with better market movement etc etc ? We need to

get a list of national measures – ambitious legal eco-design requirements that will potentially come under the axe if EuP goes ahead...]

4. The Commission shall enter into consultation with the parties concerned without delay and may draw upon technical advice from independent external experts.

Where, following that consultation, the Commission considers, that the measure is justified, it shall immediately inform the Member State which took the initiative and the other Member States to that effect.

Where the Commission considers that the measure is unjustified, it shall immediately inform the Member States to that effect.

5. Where the decision referred to in the first subparagraph of paragraph 1 of this Article is based on a shortcoming in the harmonised standards, the Commission shall immediately initiate the procedure set out in Article 9 (2), (3) and (4). The Commission shall at the same time inform the Committee referred to in Article 14 (1).
6. Where a EuP, which does not comply with all the relevant provisions of the applicable implementing measure, bears the CE marking, the Member State concerned shall take appropriate action against the manufacturer or its authorised representative having affixed the CE marking and shall inform the Commission and the other Member States to that effect.
7. The Member States and the Commission shall take the necessary measures to guarantee confidentiality with regard to information provided during that procedure, where justified.
8. The decisions taken by Member States pursuant to this Article shall be made public.

The Commission's opinion on those decisions shall be published in the *Official Journal of the European Union*.

Article 7 Conformity assessment

1. Before placing a EuP covered by implementing measures on the market, the manufacturer shall perform a conformity assessment of the EuP with all the relevant provisions of the applicable implementing measure.

2. — The conformity assessment procedures shall be specified by the implementing measures and ~~shall leave to manufacturers the choice between~~ by the internal design control set out in Annex IV and by external third party verification of the producer by a notified body, and the environmental management system set out in Annex V. (The model I'm following here is keeping the internal design control, which is essentially a producer self-declaration procedure but requires the producer to document the ecological profile and design alternatives, and with some amendments – see Annex IV to ask them to document the env performance achievements) but with the final qualifier that it must be third party verified using a NOTIFIED BODY.

3. How transparent is this? Must all the information (ecological profile etc.) be kept confidential or not? We want active use of data and knowledge being generated

through data collection (see your introduction), so that kind of information can not be kept confidential.

4.

5. CECED – EU federation on whitegoods – whose ENV Committee is chaired by Electrolux – has also asked for the withdrawal of Annex V, but the justification they use is that Annex V, the Env Man System route to conformity assessment is the 'more stringent option'. They also mention they don't want third party certification, neither does DG ENT see p 20 Memorandum, although they reserve the option to specify this in the Implementing measure...? I think we have to take a closer look at the Annexes as they are critical! When duly justified and proportionate to the risk, the conformity assessment procedure shall be specified among modules B,C,D,E as described in Decision 93/465/EEC. (this is from the procedures applied when applying the CE mark. Modules B,C,D,E require certain scrutiny and documentation procedures, namely...XXX. Concl.: not sufficient?)

~~If a EuP covered by implementing measures is designed by an organisation registered in accordance with Regulation (EC) No 761/2001 of the European Parliament and of the Council²² and the design function is included within the scope of that registration, the environmental management scheme of that organisation shall be presumed to comply with the requirements of Annex V to this Directive.~~

~~If a EuP covered by implementing measures is designed by an organisation having an environmental management system which includes the product design function and which is implemented in accordance with harmonised standards, the reference numbers of which have been published in the *Official Journal of the European Union*, that environmental management system shall be presumed to comply with the corresponding requirements of Annex V.~~

6. 3.—After placing a EuP covered by implementing measures on the market, the manufacturer or its authorised representative shall keep relevant documents relating to the conformity assessment performed and declarations of conformity issued available for inspection by Member States for a period of 10 years after the last EuP has been manufactured.

The relevant documents shall be made available within 10 days upon receipt of a request by the competent authority of a Member State.

4. Where the manufacturer is not established within the Community and in the absence of an authorised representative, the obligation to ensure that the EuP placed on the market conforms with the requirements of the applicable implementing measure shall lie with the person placing the EuP on the Community market.

5. Documents relating to the conformity assessment and declaration of conformity referred to in Article 4 shall be drawn up in one of the official languages of the Community.

Article 8
Presumption of conformity

1. Member States shall regard EuP bearing the CE marking referred to in Article 4 as conforming to the relevant provisions of the applicable implementing measure.
2. EuP for which harmonised technical (see all the problems with the management-like standards in the packaging directive) standards have been applied, the reference numbers of which have been published in the *Official Journal of the European Union*, shall be presumed to comply with all the relevant provisions of the applicable implementing measure to which such standards relate. Apparently not New Approach as the standards must rely to the Implementing Measure and are thus by definition technical – unless its generic...
3. EuP which have been awarded the Eco-label pursuant to Regulation (EC) No 1980/2000 shall be presumed to comply with the eco-design requirements of the applicable implementing measure insofar as those requirements are met by the Eco-label.

Article 9
Harmonised Standards

1. Member States shall ensure that appropriate measures are taken to enable interested parties to be consulted at national level on the process of preparing and monitoring the harmonised standards. Including actively supporting and funding appropriate stakeholder participation of interested groups from organised civil society. (another wording to mean – FUND NGOS IN NATIONAL STANDARD SETTING?)
2. Where a Member State or the Commission considers that the harmonised standards, the application of which is deemed to satisfy specific provisions of an applicable implementing measure, do not entirely satisfy those, the Member State concerned or the Commission shall inform the Standing Committee set up by Article 5 of Directive 98/34/EC to that effect giving the reasons.

The Committee shall issue an opinion as a matter of urgency.

3. In the light of the Committee's opinion, the Commission shall decide to publish, not to publish, to publish with restriction, to maintain or to withdraw the references to the harmonised standards concerned in the *Official Journal of the European Union*.
4. The Commission shall inform the European Standardisation body concerned and, if necessary, issue a new mandate with a view to the revision of the harmonised standards concerned.

Article 10
Requirements for components and sub-assemblies

In accordance with implementing measures, Member States shall ensure that manufacturers of components or sub-assemblies of EuP provide, at the request of other manufacturers making use of the component or sub-assembly in a EuP covered by an implementing measure, all information necessary for the establishment of the ecological profile of the EuP.

In particular, implementing measures may require manufacturers to provide information on the ecological profile, including environmental impacts of material composition and the consumption of energy and/or resources of the components or sub-assemblies they produce, and where available, the results of environmental assessments and/or case reference studies which relate to the use and end-of-life management of the components or sub-assemblies concerned.

Article 11

Administrative co-operation and exchange of information

1. Member States shall designate the authorities responsible for applying this Directive.

They shall encourage those authorities to co-operate with each other and provide each other with information in order to facilitate the application of this Directive.

The administrative co-operation and exchange of information shall take utmost advantage of electronic means of communication and may be supported by relevant Community programmes.

Exchange of information on ecological profiles/environmental lifecycle performance and environmental performance achievements of design solutions should be foreseen and facilitated with the information being centrally processed and made available to public scrutiny in a useful format. For such purposes standardisation of reporting of such information is necessary (see recital 12)

2. Specifications and structure of the exchange of information and standardisation of product lifecycle performance and design solution achievements reporting formats between the Commission and Member States shall be decided in accordance with the procedure referred to in Article 14(2).

Article 12

Implementing measures

1. The Commission, acting in accordance with the procedure referred to in Article 14(2), may adopt implementing measures, applying the following criteria:

(a) with regard to the selection of the EuP to be covered:

(i) the EuP shall represent a significant volume of sales and trade;

(ii) the EuP shall have a significant environmental impact;

(iii) the EuP shall present significant potential for improvement in relationship to the environmental impact without entailing excessive costs and based on the least life cycle cost principle;

(iv) Community environmental priorities, such as:

- those set out in Decision N° 1600/2002/EC, Just 6EAP – NOT enough!

- the goal set in the Kyoto Protocol to the United Nations Framework Convention on Climate Changes (UNFCCC)

- inter alia, the goals of the Water Framework Directive, the Air Quality Framework Directive, the Waste Framework Directive, the OSPAR convention, [REDACTED] and the Community Directive (XXX) on Persistent Organic Pollutants, as well as the forthcoming targets to be laid down in the Thematic Strategies on Waste Prevention and Recycling and the Thematic Strategy on Sustainable Use of Natural Resources.

-shall be taken into account.

(b) with regard to the content of the measure:

- (i) the entire life cycle, from extraction to [REDACTED], of the product shall be considered;
- (ii) the performance of the product, from the perspective of the user, shall not be significantly affected;
- (iii) health and safety shall not be adversely affected
- (iv) there should be no significant negative impact on consumers in particular as regard the affordability and the life cycle cost of the product;

~~(v) there should be no significant negative impact on manufacturers' competitiveness is taken into account, including on markets outside the Community;~~

2. The implementing measures shall lay down generic eco-design requirements in accordance with Annex I and/or specific eco-design requirements in accordance with Annex II. (this is the other key element of amendments – putting the generic pathway on a second tier. Annex I and II should be the guiding procedure for the stakeholder boards and comitology to define the implementing measure)

~~Specific~~ Generic eco-design requirements, in accordance with Annex I shall be introduced for selected environmental aspects which whilst having a significant environmental impact do not, at that point in time, permit the setting of specific eco-design requirements due to lack of sufficient benchmarking and data-. (The objective of eco-design requirements should be provision of information to fill data holes and permit benchmarking for setting specific requirements in the future. Put the two tiered idea in recitals too)

3. The implementing measures shall include the elements listed in Annex VII.

Article 13

Existing implementing measures

Directives 92/42/EEC, 96/57/EC and 2000/55/EC shall be considered as implementing measures within the meaning of this Directive for domestic hot-water boilers, domestic refrigeration appliances and ballasts for fluorescent lighting respectively with regard to energy efficiency during use.

Article 14
Committee

1. The Commission shall be assisted by a committee, hereinafter referred to as the “Committee”, composed of representatives of the Member States and chaired by the representative of the Commission.

In addition to the Committee, the Commission will be assisted by structures to ensure appropriate stakeholder participation and balance of interests , as WHAT Member State7/COMMISSION plan/paper can we use-HOOK?, in particular re-inforcing environmental and social aspects and the appropriate consideration of technical information CECED agree??. a pre-comitology Advisory Committee consultation process should be adopted. The procedures and constituents of such a structure should be defined by a further regulation or commission decision. (In this way something equivalent to the Ecolabel regulation defining the functioning of the EU Ecolabel Board, the adhoc WGs and the information collection procedures can be set up).

This additional structure, or any individual formally nominated stakeholder, -should have the right to appeal to the Parliament for intervention (HOW?? Presumably in terms of setting legislation we cannot get around the legalised comitology procedures defined by, but if we do not have the right to call for legal scrutiny of the EP or a way to effectively influence implementing measure legislation we should ask that the comitology procedure be dropped ! This implies full co-decision for each implementing measure then – or is there a half way house?? Consult EP legal experts)

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be three months.
3. The Committee shall adopt its rules of procedure.

Article 15
Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in the first subparagraph of Article 18 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 16
Amendment

Directive 92/42/EEC is amended as follows:

- (1) Article 6 is deleted.
- (2) Annex I, section 2, is deleted.

Article 17
Repeals

Directives 78/170/EC and 86/594/EEC are repealed.

Article 18
Transposition

1. Member States shall adopt and publish, by ~~31 December 2005~~ 1 July 2005 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions with effect from ~~1 July 2006~~ 31 December 2005.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

- ~~7.~~ 2.—Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

8. The European Commission shall propose at least two implementing measures with regards to minimum energy efficiency within 1 year from the publication of this Directive on the official journal. Priority products shall be those identified in the Climate Change Programme as having the largest potential for demand reduction and carbon savings. An initiative on stand-by shall also be proposed by the Commission within this same time-frame.

9. The European Commission shall propose a draft Energy Labelling Directive within 18 months from the publication of this Directive on the Official Journal.

Article 19
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 20
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

