



CONSUMER EXPECTATIONS FROM THE REVISION OF THE EU ECO-DESIGN DIRECTIVE¹

¹ Directive establishing a Framework for the setting of Ecodesign requirements for energy related products (COM(2008)399final)

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Summary

The European Commission has recently announced its intention to revise the EU Eco-design of energy-using products framework Directive (2005/32/EC) in the context of a new Action Plan on Sustainable Consumption and Production and Sustainable Industrial Policy² which was published in July 2008. Consumer organisations welcome this intention as we have long considered that eco-design of products should be put at the centre of sustainability policy. There is an urgent need to address unsustainable product characteristics by obligatory minimum requirements and to remove a certain percentage of the least sustainable products from the market.

However, the revision foreseen by the Commission would mainly consist of extending the scope of the Eco-design Directive to what the Commission calls 'energy-related' products i.e. water-using devices or windows. We are therefore disappointed by the lack of ambition of the Commission's proposal.

In this paper, we suggest improvements to the Commission's proposal for a revised Eco-design Directive and suggest that its scope is extended to non-energy-using products even if they are not energy-related. We emphasise the need for the legislative framework to address all environmentally relevant factors such as resource efficiency, the use of hazardous chemicals and waste management in the product-specific implementing measures. In addition, we call for the provisions for market surveillance and verification procedures to be improved. Finally, we stress that self-regulatory measures should not take precedence over regulatory measures.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan, COM(2008) 397 final, 16 July 2008.

Introduction

In July 2008, the European Commission published an Action Plan on Sustainable Consumption and Production & Sustainable Industrial Policy. As part of this Action Plan, the Commission proposed a revision of the Eco-design of energy-using products framework Directive³ (so-called EuP Directive). The overall objective of the Commission in revising the Eco-design Directive is to extend the framework for the setting of eco-design requirements to energy-related products⁴. In other words, the EuP Directive will be extended to products which do not use energy as such, but which influence energy consumption, such as windows and water devices. Water-saving taps and shower heads can reduce water consumption and therefore the energy used for hot water, and by consequence save resources and money.

In our view, the scope of the eco-design framework should be extended to consumer products which have the potential to be made more environmentally-friendly, whether or not these are directly related to energy consumption. Secondly, all environmentally relevant aspects must be integrated into the design phase instead of limiting the eco-design implementing measures to energy efficiency requirements only. Finally, market surveillance provisions for eco-design products must be improved.

1. Eco-design must apply to a larger number of consumer products

Today, there is an urgent need to improve the overall environmental performance of products throughout their life-cycles, to boost the demand for sustainable products, and to help consumers in making informed choices. In times of narrowing natural resources, environmentally friendly and energy efficient products will not only be for the benefit of consumers and the environment, but will also increasingly determine the success and competitiveness of European companies.

In this respect, ANEC and BEUC welcome the Commission's proposal to extend the scope of the Eco-design Directive to non-energy-using products which have an influence on energy consumption. This will clearly contribute to improving the environmental performance of products and also provide a better range of more sustainable products for consumers.

³ Directive 2005/32/EC of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council

⁴ Proposal for a Directive of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy related products, 2008/0151 (COD).

However, we are disappointed that the EU Commission has dropped its initial plans to call for an extension of eco-design to cover also other consumer products which are not related to energy consumption. Extending the Eco-design Directive to energy-related products clearly lacks ambition as very few new product groups would be added to the current scope. We consider it crucial that the EU legal framework for eco-design allows for a systematic integration of environmentally relevant aspects into the design phase of *all* products presenting improvement potential. We therefore propose that the revised Directive also covers non-energy-using products which are not energy-related, such as furniture, textiles and toys. Manufacturing processes of these everyday consumer products place a heavy burden on the environment as well as on consumers' health.

The EU Sustainable Consumption and Production Action Plan currently only mentions window frames and water-using devices as examples for energy-related products. Apart from these, it is unclear which other products related to energy consumption would be addressed by future eco-design implementing measures. We therefore call on the European institutions to redefine as a minimum requirement the term "energy related product" as products have not only an impact on energy consumption during the use phase but consume also a high amount of energy in other phases of the life cycle, e.g. during production, distribution and disposal. Examples are paper production and construction material such as cement, bricks or tiles. The term "energy related product" should therefore rather refer to any good having an impact on energy consumption in any life cycle including production, use, distribution, recovery or disposal, which is placed on the market and/or put into service in the European Union.

Although we accept that not all of these products can be addressed at the same time, we propose to include in the revised Directive a requirement for the Commission to draw up a priority list of specific product groups to be subject to Eco-design requirements.

2. Eco-design is more than just energy efficiency

We consider it necessary to put more emphasis on the integration of all environmentally relevant aspects into the design phase of consumer products. Eco-design is a holistic approach to product design, aimed at taking into consideration all environmental impacts of the product during its whole lifecycle. Thus eco-design should not only cover energy efficiency of products but also address resource and material efficiency, the use of hazardous substances, and waste management (including recycling, reparability and re-use). We therefore ask for these environmentally relevant aspects to be explicitly mentioned in the scope of the revised Eco-design Directive.

3. Preference should not be given to voluntary instruments alone

The use of mere voluntary instruments is an insufficient, non-dynamic and inefficient way of enhancing the environmental performance of products. Such instruments lack transparency and balanced stakeholder participation. They should therefore only be used if carefully combined and managed with effective regulation and other policy incentives. We therefore do not support the strong emphasis on industry self-regulation in the text of the proposed Eco-design Directive.

4. Mechanisms for market surveillance need to be reinforced

4.1. Joint market surveillance programme for eco-design products

Market surveillance by Member States needs to be greatly reinforced through collective European action supervised by the European Commission. The revised Eco-design Directive should therefore specify a minimum number of product inspections in relation to the turnover of goods which will be carried out in all Member States. Moreover, Member States should be invited to work jointly on a sector specific surveillance programme for eco-design products which allows for product controls as well as exchange of expertise and information.

4.2. Better information exchange

Better and quicker information exchange is crucial to ensure an equally high level of enforcement in all Member States. The large recalls of unsafe toys in the year 2007 have shown once more that a closer co-operation between market surveillance authorities and customs authorities is absolutely crucial to prevent non-compliant products from being placed on the market. Unlike EU product safety regulation, eco-design legislation does not foresee a rapid information exchange system for non-conforming products.

The revised Eco-design Directive should therefore include a provision that a community wide software tool for information exchange between national market surveillance authorities will be set up for eco-design requirements. Furthermore, the legal text should specify a target date by which this tool should be operational. Finally, the findings of market surveillance authorities should be collected in regularly updated EU-wide reports. These reports should be made publicly available. The right of consumers to be informed about products that do not comply with eco-design requirements should be explicitly mentioned in the legal provisions on consumer information.

4.3. Clearer provision on placing products on the market

On 23 June 2008, the Council adopted a Regulation for accreditation and market surveillance as part of the New Internal Market Package for Goods⁵. The objective of this Regulation is to provide reference provisions for future community legislation. We therefore propose that improved rules on market surveillance should also be applied to eco-design products.

Based on the New Internal Market Package, the revised Eco-design Directive should in particular specify in more detail the rights of market surveillance authorities to prohibit access of non-compliant products to the market. We consider improvements necessary in three areas:

- The draft Eco-design Directive does not currently oblige economic operators – manufacturers, importers and retailers – to ensure that non-compliant products are recalled from the end-consumer. This provision is insufficient in ensuring effective enforcement of eco-design requirements. In cases where market surveillance authorities observe significant non-compliance with eco-design requirements, the non-compliant products should be recalled from consumers and rules for compensation (e.g. exchange with new and compliant product free of charge) should be established.
- Obligations for economic operators must be clear. The draft Directive clarifies the responsibilities of importers. However, similar provisions to clarify the responsibilities for manufacturers and retailers are missing from the Directive. We recommend explicitly specifying the obligations of all economic operators for the marketing of eco-designed products in the Internal Market.
- Consumer complaints about products which seem not to comply with legal eco-design requirements need to be followed up. The provisions of the draft Directive require Member States only to give consumers the opportunity to submit observations on product compliance. However, we call on the Commission to introduce a provision which makes a detailed investigation of consumer complaints obligatory for market surveillance authorities.

⁵ The New Internal Market Package contains the Regulation of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing regulation (EEC) No 339/93 as well as the Decision of the European Parliament and of the Council on a common framework for the marketing of products and repealing Decision 93/465/EEC.

5. Verification procedures need to be improved

Many (draft) eco-design implementing measures (e.g. on standby and off-mode losses or on water heaters and simple set top boxes) allow manufacturers to systematically exceed the legal threshold values by a certain percentage. For example, the verification procedure for standby and off-mode losses foresees that market surveillance authorities should test one appliance. If this product exceeds the legal threshold by more than ten percent, three more appliances have to be tested. If on average also the latter three exceed the legal threshold by more than ten percent, the product should be considered as non-compliant with the legal requirements. However, this procedure clearly undermines the effectiveness and credibility of the eco-design process. When making the final assessment on whether or not a product meets the legal requirements all four tested appliances should be taken into consideration and must meet the threshold value on average. The revised Eco-design Directive should therefore prohibit verification procedures that would allow energy efficiency values and other thresholds set in the eco-design implementing measures to be systematically overstepped.

6. The threshold of 200.000 items should be deleted

The current and new proposed Eco-design Directive lists several exemption criteria for setting eco-design requirements. In particular, if the sales volume of a product is below 200.000 items per year, no eco-design implementing measures are established. However, some consumer products which are not sold in high quantities due to their long lifespan in households may nonetheless have significant impacts on the environment. Such products should therefore be subject to eco-design requirements. We propose that the need for eco-design measures should be assessed on the basis of improvement potential for the environment and not on rigid sales figures. Consequently, we ask that the threshold of 200.000 items sold per year under which no eco-design requirements can be set is deleted. The assessment of whether or not eco-design requirements should be developed should instead be based on an environmental impact threshold which is calculated by multiplying the sales figures with the lifespan of the product with its environmental impact (or its improvement potential) per year.

7. The role of benchmarks ought to be clarified

The current Eco-design Directive allows for setting environmental performance benchmarks in the implementing measures referring to the best performing products on the market. Setting such benchmarks is crucial as they are an instrument for producers to continuously improve their products by integrating these benchmarks into their products. However, a major weakness of the current and of the proposed Eco-design Directive is

the unclear and non-binding role of benchmarks as it is not obligatory for manufacturers to integrate them into their production, nor is it mandatory for the legislator to take them into account when revising implementing measures. We therefore recommend including into the revised Directive a provision which makes it obligatory for the legislator to consider benchmarks when revising the implementing measures for specific product groups.

Furthermore, we recommend including in Annex I part 2, which is dealing with the supply of information, a requirement for manufacturers to report how the design of a product is performing compared with the benchmarks of the Implementing Measure.

Moreover, benchmarks should cover aspects other than energy efficiency. As the Eco-label will also have a benchmarking function and will lead to a presumption of conformity for eco-design products, we propose that manufacturers should also be obliged to report on the performance of their products compared with relevant Eco-label criteria. In order to ensure concise reporting, a template should be developed at the Community level.

Finally, the role of benchmarks should be clarified vis-à-vis Member State support for instruments for sustainable consumption such as Green Public Procurement, and for financial incentives such as taxes and subsidies.

End.