Background document IV:
comments first findings report

ENER/C3/2012-523

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Evaluation of the Energy Labelling Directive and specific aspects of the

Ecodesign Directive

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Summary of stakeholder comments per chapter

It should be noted that stakeholders tend to comment more on issues they want to have changed than on issues they agree with. The text below therefore does not necessarily reflect overall agreement or disagreement with the first findings report.

1 Objectives of the Directive

Primary energy factor

The feedback we received from stakeholders can be summarised as follows:

- A large and vocal group *(Kaisa-Reeta Koskinen, Finnish Energy Authority – Energiavirasto; AIE, CECED, EUEW, European Copper Institute, EUHA, EURELECTRIC, NHO; Economic Ministry of Belgium; Roberto Moneta, Italian government)* disputed the use of the PEF at the fundamental level, believing that it:
    - Is inconsistent with the Directives as it does not focus on energy end-use;
    - Is inconsistent with long term (2050) energy and climate objectives which will require electrification of heating;
    - Discriminates unfairly in favour of gas appliances over electric appliances;
    - Is unreasonable as many countries do not have developed gas networks;
    - Misleads consumers – particularly on the impact on their energy bill of electric heating appliances;
    - That energy system efficiency should be addressed by other policies, not through use of a PEF and that using a PEF is unfair to electric product manufacturers as they cannot address the PEF themselves.
- In support of the use of a single EU-wide PEF, a smaller group of industry and consumer associations *(ANEC BEUC, EPEE, Europump)* stated that:
    - Energy efficiency is a means to address energy consumption so a PEF is valid and easier for consumers to understand;
    - The PEF should be regularly updated to account for changes over time.
- All stakeholders strongly supported the concept of technology neutrality (Orgalime, VDMA).

To summarise, the use of the PEF is one of the most controversial fundamental issues for the regulations, there is a vocal and increasingly broad group that strongly believe that the use of a PEF is unfair and contradicts the long term policy goals of the EU on energy and climate. This group is strongly represented by stakeholders in the Nordic region and those with a vested interest in the electricity sector. Only a few stakeholders vocalised support for the use of PEF, although there was some support for comparability within products of the same function regardless of fuel, with associations representing gas appliances prominent in this group. There is support for technology neutrality from all, although there are different interpretations of what this is.

The group opposing the PEF recommends that the PEF is simply removed from the regulations and/or that separate ED and ELD requirements are implemented for products based on the fuel/energy carrier used. It is clear that as a fundamental methodological consideration this is relevant to priority

Level of ambition

There were some general comments from industry to be more careful with claims on low level of ambition and specifically the claim of low level of ambition for televisions was contested by one group.

Product systems

There was support on this section but also some criticism that it needs further work, incl. better defined. There is no one size fits all, especially for B2B. Some groups find the package label a good step towards capturing more system savings. Other groups called for a separate evaluation of the package label for boilers and considered it premature to consider it a good choice, as the label has not even entered into force yet.

A distinction was made between ED and ELD, because energy labelling is not subject to CE marking.

Other environmental impacts, current scope

Digital Europe: The digital industry welcomes the call for modifications to the MEErP methodology for "properly including non-energy aspects (be it for ErP or non-ErP)", although it is important to stress that non-energy requirements should never impede innovation. Requirements should be verifiable.

Orgalime+VDMA: support the general concept of encompassing all environmental aspects of the whole life cycle. Nonetheless they stress the fact that any new parameter needs to equally qualify against all criteria of the Directive, including evidence of "a significant potential for improvement without entailing excessive costs". They challenge the significance of the improvement potentials of non-energy aspects.

2 Other EU policies

To sum up, stakeholder comments essentially reflected the controversies already sketched in the First Findings report. A few recommendations for future work were shared by most stakeholders or can be deduced from the comments:

- Be more explicit and detailed in what is recommended with respect to documentation requirements and a "product passport";
- Elaborate recommendations on CPR; give more detail, better reasoning, and arrive at clearer conclusions;
- be more cautious in the evaluation of the installer label;
- elaborate on the possible use of Ecodesign benchmarks for other policies.

Scope extension (3a)

Views are divided about the scope extension to non-Energy related products (non-ErPs). While most stakeholders support that it is premature to consider a scope extension at this time, although they think this should be reassessed again at a later stage, and consider a scope expansion as a risk for the ongoing implementation on ErP, others support the view that the extension of scope would reduce the need to revise the legal framework too often, and there are enough filters/criteria at the moment in the implementation process to ensure that decisions on any new product groups would be sufficiently mulled over and prepared.

One common view seems to be the Ecodesign Methodology needs to be improved to better take into consideration non-energy-related impacts, particularly those related to resources use. More emphasis should be put on the sustainable materials use, taking more explicitly into consideration the environmental burdens and gains related to resource extraction, reuse/repair, disassembly, recyclability and recycling, in this way ensuring that more sustainable products are broadly available to consumers. The drawbacks of the EcoReport tool methodology for the scope extension for non ErPs should not be seen as a reason not to discuss a scope extension, but only show that further improvement of the methodology is needed.

One stakeholder does not agree with the recommendation to expand the EL to B2B energy related product because labelling is not the most appropriate tool for providing information in the area of industrial products considering that professional users have different information needs than what the Energy Label is designed for or able to give

Most of the comments received are in support of the conclusions and recommendations of the report.

3 Appropriateness of the energy label

We have broken down comments received regarding chapter 4 into two parts, one dealing with the label's appropriateness issues, and one focusing on the label layout, design and rescaling issues.

1 - Label appropriateness
Comments received are in their great majority supportive of the first findings' report, sometimes suggesting to explore further specific issues. However, some stakeholders are in disagreement with other specific recommendations (notably the need to focus on energy consumption compared to energy efficiency, the inclusion of bonuses rewarding products promoting and informing low energy consuming user behaviour and the labelling of B2B products).

Energy efficiency versus energy consumption
Most comments support the idea of giving more focus to energy consumption, whether in the calculations of the Energy Efficiency Index (EEI) or on the label – mostly because "How to reduce absolute energy consumption to receive real energy savings (...) is crucial to achieve European Climate and Energy saving goals and to release consumers from increasing energy bills" (BUND Germany). However, some

stakeholders argue that larger appliances should not be penalised either. Finally, others express doubt about rewarding new features that would have a positive impact on environmental performance.

Number of label classes and setting the highest efficiency class
Comments were received on the structure of the classes, and the fact that both top and bottom classes may be empty.

Additional information which could be displayed on the label

The report concludes that "the possibility to display additional (environmental and/or cost) information on the energy label should be maintained. Nevertheless, currently it is suggested not to add new environmental information, monetary information or whole life cycle impacts information on the energy label until and unless sufficient evidence is made available to demonstrate their viability and to confirm that there is a net benefit from doing so. In general, it should be possible to adjust the number of parameters on the label to the needs for individual product groups."

All comments support this statement and confirmed the positions analysed during the consultation phase, sometimes providing further details on which type of information is preferred and what should be the procedure to decide on whether to consider including additional information or not.

Product fiche and use of ICT

Regarding product fiches, BAM (Germany) suggests that "In a first step at least the fiche of the energy label and product information required under the ecodesign directive should be merged together in the fiche". They also propose another use for the Fiche which "could also serve to provide environmental information for very conscious consumers, which is difficult to display on the label".

Testing the use of ICT such as QR codes is generally supported:
Some comments even urge for its direct inclusion in the future regulations.
However sensitive points about the use of ICT are also identified.
These comments are in line with the findings report, which concludes on the high potential of the use of ICT but also the necessity to implement field trials. The comment from BAM leads to another question about the trend to block Internet access in shops to impede consumers to compare products and retailers - this could jeopardize the objective of e.g. a QR code.

Information conveyed in distance selling
One comment from the Deutsche Umwelthilfe BUNDESGESCHÄFTSSTELLE underlines the difficulties with the display of products' energy efficiency class in advertisements, which is not respected whereas it is mandatory.
This comment is being tackled by the possible Delegated Regulation, already quoted in the findings report, "amending all relevant regulations so that the label, or at least a colour arrow with the energy class, should be mandatorily displayed on internet sales material and in cases when end-users cannot see the product (as opposed to the current situation in which the label information should be displayed in a specific order but not necessarily the whole coloured scale)".

Display of the label in shops and on-line
Green NGOs would like the statement on p. 70 'today the energy labels are generally correctly displayed' to be "tempered by the market surveillance findings mentioned elsewhere in the report".

B2B Products

Several industry stakeholders worry that the findings report recommends the labelling of B2B products, even though the report rather suggests that there is "evidence of energy performance information failures also applying in the procurement of professional energy using or related equipment and hence there is a significant opportunity to increase energy savings by addressing these informational failures through the mandatory provision of energy performance information. Whether this information needs to be supplied through the form of a printed label affixed to a product is another matter. (...) Thus it could be envisioned that for products destined for professional sales channels that energy labelling information requirements could be specified differently than for those destined for consumer sales channels".

In addition, Green NGOs would like "the analysis (to) go deeper into assessing where this would be most relevant and where there would be potential barriers to overcome.

2 - Layout, design and rescaling issues

In general there were only a modest number of comments on these issues. This may either indicate that the reviewers were generally accepting of the study's findings and the Commission's approach or that they have simply not found the time to review these aspects of the work.

The need to rescale the label

The first findings report sets out a set of conditions that would potentially trigger a need to rescale the energy label for a given product.
This finding was supported by several parties and not opposed by any.

Simplicity

Both Orgalime and the German consumer association (Verbraucherzentrale) argued in favour of keeping the label simple.

New/revised label designs and rescaling

There were only a limited number of comments on the topic of the preferred label scale. Germany (BAM), Sweden, Orgalime, Eurovent and Consumer futures asserted that the A-G scale was the most effective but most supported the process of testing alternative designs along with the A-G scale. Italy has a different view and Digital Europe argues in favour of setting a scale to zero.
The German consumer association (Verbraucherzentrale) provided a summary table on the different label options.

Regarding the process of identifying the optimal label design
- CECED state they "support the study conclusions that "consumer understanding should be the chief concern for future label revisions" (page 6). We fully share this view and believe that the second phase of the testing by IPSOS Mori/London Economics will give good indications as to consumer preferences and understanding of the proposed label layouts. However, testing should not limit to a Consumer understanding must be tested over the lifetime of the energy label. Consumers should thus be confronted with scenarios of transition. Such thorough assessment is the only way to ensure the label is workable and understood."

- The Belgian Economics Minstry comments "We would suggest looking into a labeling design that lasts for at least 6 to 10 years. This would increase the consumer understanding and trust. And it would give the industry the stability they need to invest in innovation. The A-G scale but also the

proposed alternatives should be analyzed carefully for their ability to warrant a stable labeling for 10 years. "

A comment was sent on our interpretation of graphical illustrations presented in a paper co-authored by CECED, ECOS and EEB. This comment does not challenge the conclusions or preference among the label options but underlines that we have compared these illustrations, which were meant to look at possible variations on specific building blocks of the label taken in isolation, to a complete label option.

Experimental methodology
Comments proposing alterations in the experimental method adopted by the Commission's studies were made by ANEC/BUEC, the German consumer association (Verbraucherzentrale) and Italy. CECED also commented on the issues to test.

Transition period
Italy (in particular) and CECED propose that more focus be given to testing the transition stage and impacts. The German consumer organisation calls for more information on the transition period. The Green NGOs assert that the study could include more analysis of the transition phase. Digital Europe express concerns about the implications of transitions on consumer confusion and supply chain actors. Other comments are supplied by Sweden and Orgalime.

Scale within a scale
Only Denmark and Tait Consulting commented on this, both arguing against the idea. Denmark opposes because of concerns about added complexity whereas Tait comments "If this was felt to be necessary then the whole label simply needs rescaling". This indicates confusion regarding the reason why the scale within a scale could ever be necessary.

Multiple scales
Two stakeholders argue against the concept of multiple scales. Including Digital Europe and ANEC/BEUC.

By contrast BAM (Germany) argue that a comparative scale for noise be introduced and provide a worked example. They also assert that "the absolute [energy] consumption has to be displayed on the label more prominently and in a way which will be understood by the consumers (cf. our comments on the consumer study to test the understanding of an additional horizontal scale on absolute energy consumption below the efficiency scale). At the same time, energy efficiency should remain the main focus of the label."

Note, the first findings study did not recommend the use of dual scales but simply pointed out it was an option and gave examples of what could be done with dual scales. It recommended that they should only be considered if shown to be viable through consumer research.

Label Layout focus
BAM (DE) asserts "the absolute consumption has to be displayed on the label more prominently and in a way which will be understood by the consumers"

When to rescale and frequency of revision
A handful of comments were made which address this issue by Eurovent, Belgium and CECED.

Language on the label

CECED state "the report recommends the reintroduction of national languages for the label (sic)1. Abandoning the language neutrality of the label would entail switching back to 24 different labels (one for each official language). In a single market where products cross borders at any time, this would be a logistical nightmare and raise concerns of enforceability because of increased risks of incorrect label use".

Consumer futures (UK) suggest that "concerns about the language used on labels could be overcome by the concurrent provision of „open data" that can be used by retailers, consumer organisations and others."

4 Rulemaking process

Phases and stakeholders in regulation process
Digital Europe is against a merger of ED and ELD, but this seems to be because of the erroneous assumption that this would automatically apply ELD to all product groups incl. B2B. And this is what they oppose.
UEAPME and EBC are concerned about the accessability of SMEs to the process.
Italy mentions additional factors that tend to slow down the regulation process: differences between ED and ELD process, the trend to cluster together several heterogeneous products and the controversion primary energy factor.

Progress and planning in the regulatory process
There was support on the recommendation for planning in the regulation process (from Digital Europe, Orgalime) and there was some support for guidelines for the preparation of IMs. Sweden suggests an an "ecodesign platform" is created consisting of an internet-based portal with all implementing measures, summaries, guidelines and FAQs.

Resources
There was some support for more resources for preparatory studies (Tait, Sweden).

Data and Product registration database
There was support as well as opposition on the recommendation of a mandatory product registration database. Several industry groups oppose the idea because they fear a large administrative effort (UEAPME and EBC, Orgalime, VDMA). A consultant and NGOs and Sweden are in favour and some ask for more detail. Belgium is more cautious worries about the administrative burden for manufacturers and asks for further evaluation.

Methodology
Various comments pro's and con's additional tools to ensure sufficient ambition have been received. The general trend of it is that industry as well as Italy tend to think that no change or additions are necessary. The exception is EPEE, who calls for a good level of ambition without further specifications. On the other hand, NGO's and Germany have given support to the various proposals.

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[1] This statement is incorrect. The report recommends that the merits of labels with national languages versus those without be assessed by consumer research. It does not recommend the reintroduction of national languages.

Learning effects
Digital Europe: says price erosion knowledge is already part of the requirement setting and fears that taking into account learning effects, resulting in more stringent requirements, increases inevitably costs which impacts profit margins which could result in further losses of jobs in EU.

Benchmarks
Support from NGOs, opposition from CECED.

Requirements beyond LLCC
Digital Europe and CECED recommended to refrain from moving towards the BE point. However, this was not recommended by the study team.
Sweden support equal LLCC requirements.
CECED commented that even for product groups that do not show a clear correlation between price and efficiency a systematic modification of the LLCC methodology should not be made.

Energy efficiency vs. energy consumption
There is support for the recommendation to consider energy consumption in addition to efficiency from NGOs and from Sweden. CECED is in favour of sticking to energy efficiency. They also claim that the size effect is already considered, since boundaries of energy efficiency classes are built on regression lines that ensure higher capacities are not favored.

Non-energy impacts
Orgalime and VDMA question in how far information requirements could satisfy the criterion of "significant potential for improvement without entailing excessive costs" and see a risk of real duplication of already existing information requirements, in particular article 33 REACH and articles 14 and 15 WEEE.
CECED fears that requirements aimed at reducing the use of materials may lead to less durable goods. Furthermore, according to CECED, legal requirements targeting a minimum technical life of a product can prove to be difficult in terms of market surveillance due to lack of standards, related cost, time and effort for testing and stresses that any measure on non-energy requirements should be measurable, enforceable, relevant and competitiveness-proof.

Standardisation
Denmark has fundamental remarks on standardisation, asserts that standards should only focus on essential parameters, which it does not at the moment. According to Denmark our recommendations are minute. Instead, more fundamental changes are necessary, where the American way (standards defined by the government) could serve as inspiration. As an alternative, the Commission could try to require simplicity and cost effectiveness when setting up mandates.
Orgalime + VDMA fully agree to availability of standards to be considered early and market surveillance authorities to play a greater role in their development.
A report was received from CLASP/ECOS on measurement methods. Concerns are expressed on the capacity of the EU standardisation process to adequately support the policy process.

Voluntary Agreements
Germany asks for a more clear reporting of the outcome of the survey ('A slight majority of respondents thought that the possibility of laying down Ecodesign requirements in voluntary agreements should be maintained, however these should not be prioritised over mandatory regulations.").

ANEC\BEUC notes that the literature report was more extensive on the discussion of VAs and asks for an asked for an assessment of whether voluntary agreements are indeed less burdensome and more cost effective while providing added value in terms of the improved overall environmental performance of the product covered.

Revision

NGOs (including CLASP) have asked for more input on the revision process, incl. clearer rules and guidelines, possibly to be set in the Directives, ensuring that requirements and labelling classes are updated regularly.

Digital Europe misses out on proposing a task zero for reviews of IM (or implementing acts) which assesses the potential energy savings and non-energy gains, with the ability to avoid spending time on marginal cases such as STB, EPS or UPS.

5 Market surveillance

Within market surveillance, stakeholders that reacted on this area, have mainly made the following comments:

- Two industry associations support to consider an idea of an EU level market enforcement authority, five industry associations supported a general need for increased level of market surveillance.
- Two government representatives agreed specifically on the need to improve cooperation or provide annual report on surveillance activities, three industry associations supported improved cooperation, or high level participation to ADCO. An environmental NGO' s paper also highlighted the role for European projects.
- Environmental and consumer NGOs, an independent expert and one member state welcomed the product market surveillance database proposal, four industry associations commented by asking for careful assessment of mandatory registration or sharing of information from the database.
- Two industry associations, one member state and consumer NGOs stressed that market surveillance should be led under a horizontal regulation.
- On 3rd party certification, one member state and environmental NGOs confirm it as an important tool, three industry associations ask that it is not used as a replacement for market surveillance.
- One industry association stresses that the requirements should be clear, measurable and enforceable and one individual manufacturer and one member state also highlight the difficulty of undertaking market surveillance for product parameters, which are not possible to check on the product itself. One member state asked a Step2 procedure (3 units tested) to be reduced to one extra unit tested only.
- One member state and environmental NGOs ask for clearer rules for the definition of equivalent models.

6 Market effects

In general, our findings are very well received. However, our assessment of the impact on SMEs is believed by the interested stakeholders to be too optimistic. We understand that more weight should be placed on the negative impacts on SMEs, particularly micro-SMEs, from the constraints imposed by the implementing measures.

Relating to the priorities identified in our summary the feedback reinforces the need for market surveillance to maximise the benefits of the regulations (priorities 2 & 3). It also highlights that introducing new information requirements (as in priority 4) could disproportionately impact SMEs given their limited resources.

More detailed comments per chapter

Ch 2 Primary Energy Factor

The stakeholder feedback is summarised in more detail below, directly addressing the main points we made in the first findings report.

Using a PEF supports comparability and technology neutrality
- One group argues use of PEF is a de-facto technology discrimination, in favour of gas and other fossil fuels and against electricity, potentially completely banning some electric products – this could impose huge costs on some countries, i.e. to build new gas networks. *(Kaisa-Reeta Koskinen, Finnish Energy Authority – Energiavirasto; AIE, CECED, EUEW, European Copper Institute, EUHA, EURELECTRIC, NHO; Economic Ministry of Belgium)*
- One group argued that use of the PEF misleads consumers as they think of energy efficiency and use in terms of the price impact it will have on their energy bills, primary energy is an empty term to consumers. *(AIE, CECED, EUEW, European Copper Institute, EUHA, EURELECTRIC, NHO; Roberto Moneta, Italian government)*
- One group argues for a technology neutral label *(Orgalime; VDMA)* with ambitious Ecodesign requirements that will eliminate the need to differentiate by energy carrier. *(ANEC-BEUC)* but find a scale within a scale would be too complex *(Orgalime).*

Use of PEF is in principle consistent with EPBD
- One group argues that in situations where there is no gas alternative it is counter productive to present consumers with a label as if this was an option, and also irresponsible with long-term emission reduction goals in mind. *(Kaisa-Reeta Koskinen, Finnish Energy Authority – Energiavirasto)*

PEF multiplies innovation impact for electric products
- One group disagreed with this point believing that the PEF does not act as an incentive as the requirements are stated in final energy consumption, not primary energy. *(Kaisa-Reeta Koskinen, Finnish Energy Authority – Energiavirasto)*
- Labelling leads to a 'jam' in the EE distributions on labels so that it is difficult to differentiate across the product group as a whole and particularly those of the same energy carrier. *(Roberto Moneta, Italian government)*

Regulations are for reduced energy consumption - use of PEF is most closely aligned to this.
- One group fundamentally disagrees with this assessment and argues that product policy should not seek to address energy system and infrastructure needs and that this should be addressed through other channels *(Orgalime; VDMA; Economic Ministry of Belgium) some* go further and argue that the purpose and scope of the regulations is only to influence end-use efficiency of products, and therefore that use of a PEF is outside the scope of the regulations. *(Kaisa-Reeta Koskinen, Finnish Energy Authority – Energiavirasto).*
- Another group supports the use of the regulations to promote reduced energy consumption. ´The overarching goal of these policy instruments is to promote energy efficiency as a means to reduce the overall energy consumption." The label must remain technology neutral for ease of consumer understanding. *(ANEC-BEUC)*

A 'lock-in' in gas-based technology can be avoided

- One group argues that lock-in should be avoided by use of other measures, that ELD and ED should not use a PEF and focus only on end-use efficiency. This would also be more consistent with the long-term need to switch to renewables. *(Kaisa-Reeta Koskinen, Finnish Energy Authority – Energiavirasto; AIE, CECED, EUEW, European Copper Institute, EUHA, EURELECTRIC, NHO)*

An EU wide PEF - while not perfect - is the best choice for cost, simplicity and legal reasons
- it is impossible to guarantee that products labelled in one country are not then sold in another with a much different PEF;
- As energy markets are increasingly integrated there is no guarantee that renewable energy produced in one country is consumed there;
- PEFs can change rapidly with market and fuel switching, for example recent significant increases in the use of coal for electricity in some countries;
- The cost of maintaining 28 or more national product labels and keeping them up to date would be significant.
    - One group agrees that using national PEFs would undermine the policy and add significant complexity to the regulation. *(ANEC-BEUC)*
    - Another group argues that this is a non-issue, it should be use of PEF or not. (*Kirsti Hind Fagerlund, Norwegian Water Resources and Energy[NVA]; Economic Ministry of Belgium)* and that a single EU level PEF is incompatible with goals of Energy Label *(Economic Ministry of Belgium)*.

More general arguments
- Fundamentally disagree with use of PEF in ELD and ED *(Kirsti Hind Fagerlund, Norwegian Water Resources and Energy Directorate)* should be used for energy security not end-use *(EnergyNorway)*
- Should have separate ED requirements per energy carrier *(Kirsti Hind Fagerlund, Norwegian Water Resources and Energy Directorate)*
- Use of PEF across a variety of EU policies exists, but is inconsistent with longer term policy goals on emissions reduction and internal markets *(Kirsti Hind Fagerlund, Norwegian Water Resources and Energy Directorate)*;
- In favour of use of EU-wide PEF *(EPEE)*; but could differ by period of electricity use, i.e. heating, lighting, air-conditioning. *(Eurofuel);* should be updated to better reflect the actual, and future, EU average PEF. *(EPEE)*
- PEF controversy has slowed whole process down *(Roberto Moneta, Italian government)*

Ch 2 Level of ambition

No more details.

Ch 2 Product systems

- Digital Europe: Further assess and define the term "product system" with stakeholders to arrive at informed conclusions. The term "product system" (pages 2, 13, 23-24, 26 & 45) needs to be defined more clearly. While it sounds logical lightening, heating or motor systems, there is uncertainty on how it would apply to more complex or larger structures as in the ICT industry. Would "system" mean the entire (European) mobile network with all its devices or an entire data centre (IT & building& heating & cooling, etc.) or would connected TVs rather be part of a building network? There is potential to build upon for example the Code of Conduct for Data Centre. The interaction of components within the building can offer significant energy savings potential. Building management systems offer similar potential. At this stage it would appear that a systems approach might be better suited as a Code of Conduct rather than regulation. Nevertheless this requires an extended technical discussion as Ecodesign/energy label can only regulate something that a manufacturer can be held responsible for. Digital Europe will be happy to collaborate on any such extended technical discussions on "product systems" in order to arrive at informed conclusions.
- Orgalime+ VDMA: We agree with focusing on products (components) rather than complex systems for the sake of practicability, measurability and simplicity, as there are practical limits for targeting components that go into systems, especially into buildings, despite their efficiency potentials. We agree that product systems bear further energy efficiency potentials. We confirm the draft study findings that there are intrinsic limitations of addressing systems under the ED in its nature of a product legislation. Overall coherence between these instruments could indeed be improved. How to address system savings potentials remains a difficult issue. We do not see a "one size fits all" solution in the B2B field:
    - o For some cases (motors, pumps), the "extended product approach" was a good way forward.
    - o The more complex products (for example: machinery) are targeted, the more we see the need to check for alternative regulatory options (in particular the Industrial Emissions Directive).
    - o If ErP were the instrument of choice to regulate, then we suggest looking at the second option of generic requirements that the Ecodesign Directive offers.
    - o Overall, a better use of standardisation is the preferred option (it is possible to have very good results, such as machinery directive and safety requirements)
    - o The option of voluntary agreements should be maintained as the priority route (many of the IMs have been preceded by successful voluntary agreements).
- European Aluminium Association AISBL fully supports the conclusion that "Energy saving potential of product systems could be better exploited" and we see the regulation of boilers as a good step into that direction.
- A distinction was made between ED and ELD by the Netherlands, because energy labelling is not subject to CE marking. The NL also criticised the description of product systems.

Ch 2 Other environmental impacts, current scope

- Digital Europe: The digital industry welcomes the call for modifications to the MEErP methodology for "properly including non-energy aspects (be it for ErP or non-ErP)", although it is important to stress that non-energy requirements should never impede innovation. Requirements should be verifiable. There should also be a mandatory follow up to obligate the beneficiaries of the requirement to make use of it. the revision process for the TV/Display regulation covered non-energy aspects without such modifications to the methodology, which again raises doubts about the adequateness of the non-energy related proposals made for the TV/Display regulation. Mobile phones: these product categories have been assessed several times such as in the preparatory studies of the first and the current ErP work programme 2012-2014

- Orgalime+VDMA: The general concept of encompassing all environmental aspects of the whole life cycle is a truly sustainable and holistic approach. We support it. The scientific based approach of the ED framework led to the identification of the real environment benefit areas in application of life cycle thinking, namely the focus on the use phase and mass standalone products. Any additional parameters must not undermine the ongoing energy efficiency implementation. We kindly ask to add two new entries to the draft report:
  - Any new parameter needs to equally qualify against all criteria of the Directive, including evidence of "a significant potential for improvement without entailing excessive costs" following article 15 ErP. The chapter misses this criterion. During the 2013 review of the MEErP methodology, the contractor BioIS presented the following figures: "the current contribution of Eco design to resource efficiency in the EU results in 91.3 Mt of materials saved per year". The additional potential of Eco design measures on products could contribute to additional 0.95Mt to 5Mt material savings per year. We therefore challenge the significance of the improvement potentials of non-energy aspects.
  - If energy related products turn out not to offer the most substantial saving potentials, it might be worth re-considering whether ErP policy measures (and sectors) are the right policy focus.

Ch 3 EU other policies

- The question of a **merger** of ED and ELD remains controversial. Stakeholder arguments are essentially the same as presented in the First Findings Report: On the one hand, ther is the simplification of procedures and of the legal framework (Netherlands, van Orsthoven). On the other, there is a danger of further complicating rulemaking processes plus the issue of different scope and mechanisms (energy in use phase vs. all environmental impacts; use of CE marking or not) (Italy, Digital Europe, EPEE, Orgalime). All stakeholders agree, though, that the Lisbonization has been detrimental and a merger must not result in the delegated acts procedure being used for both Directives. Farther reaching mergers (e.g. with EPBD, EED or Ecolabel) were met with caution and only suggested by consultant von Orsthoven.

- Furthermore, it remains contested whether **procedures can and should be merged** or streamlined without actually merging the directives themselves (e.g. in the form of an integrated workplan or revision procedures). This was thought as attractive by some stakeholders (Orgalime, Belgium, CECED).

- In a similar vein, stakeholders remain divided on the question to what extent an early **consideration of possible applicable other policies** (and possible requirements under those policies) should take place (e.g. in the Working Plan or Preparatory Study stage). All stakeholders had a strong feeling that policies should be coherent, avoiding double work for manufacturers and supporting instead of contradicting each other. However, it was not clear whether an integrated Working Plan or Preparatory study would be the best way forward. CECED mentioned these possibilities while Tait Consulting feared that consultants might not be competent enough to cover all related issues and felt that a timely coordination between various DGs before any regulation would be a preferable path. Orgalime questioned how the different scope would be taken into account (e.g. B2B products). Italy feared that such an extended consideration could further delay rulemaking processes.

- The suggestion to **align documentation requirements and conformity assessment procedures** under different policies triggered much stakeholder attention and some controversy. It was supported by the German Environmental Agency, who thought it would make it easier for manufacturers and importers to meet documentation requirements. In addition, it would facilitate market surveillance, especially if managed electronically. EHI also supported it. Orgalime was more cautious and unsure about the possible benefit and VDMA did not see any added value. Furthermore, they feared that such a mandatory unified format could conflict with the general provision that Module A (manufacturer self-declaration) should be the default conformity assessment procedure. A general demand of most stakeholders was to spell out this idea in more detail and explain better what is meant and how it could be implemented. As a related issue, Belgium suggested the streamlining of test procedures used for ED, CPR, and EPBD in order to spare manufacturers double work.

- In a similar vein, it was discussed whether Ecodesign **"environmental profiles" could be a useful tool for tackling certain non-energy impacts and thereby support other policies.** For example, Sweden elaborated a proposal of how a declaration of hazardous content might be included in Ecodesign, and Belgium suggested in a discussion paper using the Product Environmental Footprint or a "product passport" that declared the BOM and possible hazardous content. The proponents pointed out that this approach could support other policies such as REACH and WEEE. The approach was supported by Emerson, Tait Consulting, and the EEB while Orgalime feared that it might lead to double regulation and overly complex documentation requirements,

and Digital Europe asked for the target group and effects of the information. Italy suggested that any additional information requirements would make market surveillance more difficult because the veracity of the information would have to be checked (an assumption that was contested by Sweden). Furthermore, Digital Europe pointed out that the PEF was not mature enough.

- Concerns on possible **policy overlap with EPBD** were voiced by Belgium and ECOS.
- With respect to **Construction Products,** Belgium, the European Aluminium Association and Construction Products Europe are strongly in favour of using the established procedures under the CPR instead of Ecodesign. Main arguments were that the report took insufficient notice of the possibility to set minimum requirements under CPR, that no overlapping requirements should be created and that the harmonized measurement standards used under CPR were better adapted to the specific characteristics of construction products than the MEErP. Italy questioned whether minimum standards would be a suitable instrument at all. Finally, Belgium suggested combining ED testing with CPR testing.
- Belgium suggested **further possible interactions** to be examined, e.g. with recyclability and dismantlability requirements in the Action Plan for a competitive and sustainable steel industry, or a synergy between the envisaged product database and the national registers under WEEE.
- eu.bac, EPEE and Orgalime felt that the positive evaluation of the "**installer label**" was premature given the fact that there is no experience with it yet.
- **GPP and Ecolabel criteria** were contested by Eurofuel, and consequently the idea to make them mandatory was opposed.
- **Extended use of benchmarks** for other policies was suggested in a discussion paper by Oekopol, for example, serving as basis for Ecolabel and GPP criteria (while considering the amount of different models on the market that fulfil the criteria), or as marking the highest populated label class.
- The European Aluminium Association recommended the **extended use of electronic media** for information provision, for example in order to adapt information to the consumer's climate zone.
- EHI stated that "Once products comply with Ecodesign requirements, they should not be subject to national restrictions under the EPBD (or other national rules, e.g. on boilers)".

To sum up, stakeholder comments essentially reflected the controversies already sketched in the First Findings report. A few recommendations for future work were shared by most stakeholders or can be deduced from the comments:

- Be more explicit and detailed in recommendations for streamlined documentation and conformity assessment requirements and a "product passport";
- review recommendations on CPR taking into account the comments;
- be more cautious in the evaluation of the installer label;
- elaborate on the possible use of Ecodesign benchmarks for other policies.

Ch 3 Scope extension

- Referring to the application of MEErP methodology to non-ErPs **Federal Institute for Materials Research and Testing, Germany** says that there is a need to be differentiated more carefully between impacts taking place during the use phase of a product (such as impacts resulting from energy use of EuP) and "technological aspects of the product itself". The latter also include aspects such as the type and amount of materials a product (irrespectively whether this is an EuP, ErP or non-ErP) is composed of, which definitely are a cause of environmental impacts and the basis for improvement. These aspects are addressed up to now based on generic data (average of different preproduction chains). If resource impacts should be addressed more meaningful, more specific data (including different material production routes) needs to be included for all types of products (EuP, ErP and non-ErP). This would not need a fundamental shift in the methodology approach. Nevertheless it can be difficult to enforce: In the current system of market surveillance in Europe, a requirement on production or on sourcing of raw materials can only be checked by its documentation, if the product originates from outside the EEA.

    The drawbacks of the EcoReport tool methodology for the scope extension for non ErPs do not serve as a reason not to discuss a scope extension, but only show that further improvement of the methodology is needed. The drawbacks described are also important for the products already in the scope of Ecodesign Directive. Especially complex electrical and electronical equipment (EuP) include several materials with comparable high environmental impact, which is up to now not reflected properly due to the reasons described. So the assumption that the energy demand from use phase is the most important environmental impact can be questioned here.

- The **Federal Institute for Materials Research and Testing** supports that the appropriateness of a scope extension should be assessed again at a later point in time should then also be part of the executive summary (p. 4/5), possibly including a recommendation for a tentative date at which the assessment should be made. Especially in the context of the strategy on a resource efficient Europe product policy could provide valuable contributions.

- **ANEC/BEUC** sustains that in order to ensure that more sustainable products are broadly available to consumers the Ecodesign Directive should better address non-energy related parameters and should cover more categories of consumer products. Although the current Ecodesign Directive formulation lays the ground for addressing non-energy related parameters, the use of hazardous chemicals, resource efficiency, durability, availability of spare parts and reuse have been poorly addressed so far. ANEC/BEUC sees the ongoing revision as an excellent opportunity to better integrate these aspects in the framework legislation. Additionally, ANEC/BEUC see a need to extend the adoption of Ecodesign implementing measures not only to other energy related products but also to other categories of consumer products that have significant improvement potential such as furniture, textiles and toys.

    ANEC/BEUC agree on the conclusion that presently for transportation other legal tools are more appropriate under the precondition that the Commission services in charge will stay committed to ensure that long term binding targets lowering further CO2 emissions of cars will be put in place and that the EU car labelling scheme will be revised to give meaningful information to consumers in all EU countries.

- **Federal Public Service Health, Food Chain Safety and Environment (Belgium)** are in favour of extending the scope of ED to non-Energy related products (non-ErPs). For non-ErP

impacts production and End of Life (EoL) phases are relatively more important. More emphasis should be put on the sustainable materials use, taking more explicitly into consideration the environmental burdens and gains related to resource extraction, reuse/repair, disassembly, recyclability and recycling:

- The work done by DG JRC on recyclability and recycled content and DG ENTR on the MEErP should lead to inclusion of these aspects in MEPS-like requirements (see our proposals and reflections in the annex).
- The work done on Product Environmental Footprinting (PEF) by DG ENV could provide the necessary methodology and experience for 'generic requirements', also treating non-energy related issues.

To confirm attention to non-energy related issues, notably resource efficiency, add a point iii) in Article 15 2.c):"iii) the resource intensive production of any products which are generally discarded prematurely; i.e. which are still in working order, or which can be refurbished."

The most benefit is likely to be achieved by extending the life time of non-ErPs or ErPs and EuPs where the impacts of product manufacturing or waste generation are significant (e.g. computers; thermal insulation) or for reviews of existing Ecodesign Implementing measures (IM) where the consumption of resources and energy during use are already covered.

Environmental benefits would arise from avoided production (including Critical Raw Material import) and supply and reduced waste generation. It would also make socio-economic sense to give priority to products primarily produced outside the EU and to give support to environmentally sound waste treatment inside the EU.

Any refurbishment environmental impacts are very likely to be negligible compared to avoided manufacturing and waste treatment. Cost to consumers will be less than for purchasing a new product, without affecting functionality. Refurbishment can increase employment in the EU (2nd hand market, after sales services).

For EuP already covered by Ecodesign foreseen improvements do not compensate the impacts associated with manufacture. Energy consumption reductions in use will be in the order of a few percent, while reduction of embedded energy in materials and components can yield double digit reductions, while reducing costs.

To do this in future work explicit reference has to be made in 2009/125/EC Annex II to the possibility of introducing:

- Mandatory durability criteria and other measures allowing longer product use such as repairability, upgradability
- Extended product warranties
- Guaranteed availability of replacement parts
- Information on non-destructive dismantling for consumers and customers
- Information on non-destructive dismantling for recognised refurbishment centres and providers of repair services

For low cost and rapidly innovating products reduced manufacturing impacts and effective recycling would probably be a better strategy. To do this explicit reference has to be made in Annex II to the possibility of introducing:

- weight and material restrictions
- recyclability and recoverability (see our proposals in the annex)
- mandatory recycled content (see our proposals in the annex)
- Information on dismantling and depollution for authorises waste collection and treatment facilities (see our proposals in the annex)

Design for EoL is of course compatible with measures for extended lifetime. We find these issues important and we have made some detailed proposals and reflections in the annexes at

the end of this document. Some of these proposals need substantial preparation regarding standardisation, review of ED or both. All would need discussion in the final report on the EL/ED review.

- **EPEE – European Partnership for Energy and the Environment (Belgium)** considers any discussion to expand the scope as premature. Indeed, EPEE recommends to first complete and implement all on-going measures for the product groups currently in place. The decision on whether or not to extend the scope of non-energy-related products shall be postponed. Such an extension would certainly mean a complete re-thinking of the Ecodesign and Energy labelling methodology and would require additional financial and human resources on the Commission side in order to cope with the significant increase of the workload.

- **Norwegian stakeholders (namely Department for Energy Systems- Norwegian Water Resources and Energy Directorate and Confederation of Norwegian Enterprise)** does not support a scope expansion to include non-ErPs and transportation and thinks that these products should be dealt with by other policy instruments.

- With regard to the extension of the scope of the Directive(s) to non-energy products, **Environmental NGOs** agree with a decision not to rush into regulating non-energy products, however Environmental NGOs do not see any reason to do an a priori exclusion. Opening the scope would reduce the need to revise the legal framework too often, and there are enough filters/criteria at the moment in the implementation process to ensure that decisions on any new product groups would be sufficiently mulled over and prepared. Besides, in order to develop the necessary methodologies and standards to address non-energy products a first signal has to be sent.

- **ORGALIME** agree that an expansion of the scope of the ED and ELD beyond ErP remains premature and considers a scope expansion as a risk for the ongoing implementation on ErP. Also do not agree with the recommendation to expand the EL to B2B energy related product because labelling is not the most appropriate tool for providing information in the area of industrial products considering that professional users have different information needs than what the Energy Label is designed for or able to give. For new parameters in ED: ORGALIME question that these draft recommendations are consistent with the confirmation given in the draft report that the use phase is by far highest impact phase for ErP. ORGALIME recommend retaining the focus on technological aspects of the product that the manufacturer can control and influence that are measurable and enforceable. Requirements regarding the origin of raw materials should not be envisaged, since not enforceable (if a raw material producer certifies his raw material, control activities should be on him not on producers using certified materials; in case of non-compliance, liability and image damage would be on product manufacturer although he has no power to control claims).

- **Swedish stakeholders** agrees with the conclusions and the recommendations. In particular they stress that, before further expanding the scope of the ED and ELD, the products already in working plans should be handled, and the existing possibilities to address non-energy aspects better used. Sweden further support that more resources are allocated to continuously update and develop the MEErP and the EcoReport Tool, in order to accommodate system products, more ErPs and resource efficiency aspects. Also, Sweden believe that there is a great potential in using the energy label beyond the scope of the ELD, i.e. in all sectors and in particular as a complement to other policies covering means of transportation.

Ch 4 Appropriateness and label design

1 - Label appropriateness
Comments received are in their great majority supportive of the first findings' report, sometimes suggesting to explore further specific issues. However, some stakeholders are in disagreement with other specific recommendations (notably the need to focus on energy consumption compared to energy efficiency, the inclusion of bonuses rewarding products promoting and informing low energy consuming user behaviour and the labelling of B2B products).

EHI makes a case for treating labels for heaters separately and tackling separately consumers' understanding of the energy label for heating products for several reasons: (1) heating products have to be installed by specialised professionals, (2) heating products are investment products with long life-cycles (15-20 years), whose purchase depends on external factors such as buildings properties and environment, and (3) energy consumption is highly dependent on consumer behaviour / situation / building , therefore a heating product bench marker differs from one building to another.

Energy efficiency versus energy consumption
Most comments support the idea of giving more focus to energy consumption, whether in the calculations of the Energy Efficiency Index (EEI) or on the label – mostly because "How to reduce absolute energy consumption to receive real energy savings (...) is crucial to achieve European Climate and Energy saving goals and to release consumers from increasing energy bills" (BUND Germany). However, some stakeholders argue that larger appliances should not be penalised either. Finally, others express doubt about rewarding new features that would have a positive impact on environmental performance.

- The German consumer association – Verbraucherzentrale suggest to "adapt the calculation scheme for the absolute consumption: Consumers have to be sure that they save energy and costs if they buy a best class product. It has to be avoided that larger products can reach better classes to the actual extent (see Annex I, graph 2)". "The central goal should be to picture absolute reduction potential. The absolute consumption should be therefore highlighted, especially due to its potential to be linked via IKT to monetary information".
- Also BAM – Germany recommends that "The absolute consumption has to be displayed on the label more prominently and in a way which will be understood by the consumers".
- ANEC / BEUC "strongly support an Energy Label that rewards aside from energy efficiency, overall lower energy consumption (and) welcome the fact that the study has identified the need to develop guiding principles that will allow the development of product specific energy scales based on a balanced combination of energy efficiency and energy consumption in order to tackle the phenomena where the energy label involuntarily promotes larger appliances".
- Green NGOs suggest ways of promoting low absolute energy consumption in the setting EEI:
    o "Technology neutrality: the Energy Label must allow direct comparison between different technologies or energy carriers. The Ecodesign requirements and labelling classes should therefore not camouflage products of a lower efficiency with separate EEI calculation formulas, reference lines or bonuses/correction factors.
    o Ecodesign requirements and Energy Label classes could be set so that the higher the energy consumption, the higher the difficulty to meet these. In some cases maximum levels of consumption could be set (e.g. similar to those in the adopted regulation on vacuum cleaners). The use of non linear formulae, as referred to on p.84, can help in achieving this."

- Tait consulting suggests this focus on energy consumption " should be included in the guidance provided to those developing policy options. In particular, the design of labels and minimum requirements should ensure that a consumer is not fooled into purchasing a much larger appliance than they need because of its better energy label class when in fact it consumes more energy. Comments made by the European Environment Bureau at the conference were extremely pertinent to this, regarding making the annual, or per cycle, energy costs more prominent on the label".
- BUND "assigned a study to collect and investigate possibilities to integrate a stronger view on achieving absolute energy savings into both directives. Once it is finished we are happy to send it to the Commission as well as to the authors of this Ecofys study".

However, in opposition, Orgalime argue that " a focus on energy efficiency allows the taking into account of technical specificities related to the functionality of the product, such as volume and size. This guarantees a balanced and fair way of ranking appliances. On the contrary, absolute consumption would provide a limited range of information about the different performance and characteristics a product can offer, while risking leading to unfair competition and discrimination of larger appliances against smaller ones".
Also CECED would like to maintain in future regulations "the current approach where ecodesign and labelling requirements focus on energy efficiency rather than absolute consumption (as it) provides a balanced way to rank a product according to its energy efficiency and parameters related to its functionality (such as performance/capacity). A focus on absolute energy consumption could even be detrimental to energy efficiency overall, in particular when used on the energy label. For example, a consumer may purchase two small table-top, relatively inefficient, refrigerators instead of one larger but more efficient one, due to total consumption figures provided on the energy label. This representation of information gives the wrong impression that the small appliances are more energy efficient. Today the size effect is already considered, since boundaries of energy efficiency classes are built on regression lines that ensure higher capacities are not favored".

In addition, there are reservations on the recommendation of ranking bonuses for products that educate users or reward features with a positive impact on the environmental performance.
- ANEC / BEUC "would be hesitant to provide an advantage to such products through the Energy Label and under certain circumstances through Ecodesign as in case the technical features that are put in place to achieve the energy efficiency improvements can be easily disabled by the user the overall benefit will be automatically lost. Such bonuses would also be misleading information to consumers in case the message will not be correctly understood and consumers could be confronted with much higher running costs than expected".
- Green NGOs would like the "suggestion to consider bonuses that reward various features with a positive impact on the environmental performance of the product (e.g. helping to reduce energy or water consumption) (to) be tempered by the necessity to design them very carefully and update them regularly. It has to be made clear that bonuses should only be granted for features that improve the environmental performance of a product e.g. reduce their energy consumption; bonuses should not be granted for extra features adding further functions to the product, potentially increasing the product's energy consumption. If an extra function has a negative impact on a product's environmental performance (e.g. it increases the product's energy consumption), this should be made transparent and clearly communicated by the energy label, and not be camouflaged by bonuses or correction factors (as it is the case with the controversial bonus granted for domestic refrigerators). More guidance could be provided on how to design safeguards and limits to avoid unduly favourable bonuses".
- Tait consulting also underlines the "confusing potential influence on the energy label earned by a product and should not be recognised. Provision of advice on appropriate user behaviour to reduce

consumption should be a fundamental requirement of the eco-design directive and not an enhancement worthy of credit. (...) Regulatory requirements should drive towards simplicity of settings for optimum efficient eco-performance (even steering their form of labelling for clarity) not encouraging multiplication of options. Management of this is already becoming complex when such settings rely on software or firmware that can be updated later in the life of the product (this is now causing significant confusion and uncertainty in the testing of Internet-connected televisions for example). Regarding the latter, a simple blanket requirement that firmware and software must not degrade energy performance in any respect should be considered. At least then a retrospective check can be made if disputed."

In addition to the energy efficiency vs. energy consumption discussion, EHI raised the issue of the rewarding of renewable energy. EHI believes that promotion of energy efficiency and energy consumption should be the guiding principles, "even when renewable energy is considered, for the sake of consistency across labels and products"

Number of label classes and setting the highest efficiency class

Comments were received on the structure of the classes, and the fact that both top and bottom classes may be empty.

Orgalime comment "a sufficient number of classes need to be maintained to differentiate between products and provide clear information to consumers. It is of the utmost importance to ensure comparability, but also sufficient differentiation between the functionalities of products. The label scale should be defined in a way that significantly differentiates products both in terms of energy efficiency and its other key functionalities". They add that any "changes need to be carefully assessed and tested, including the testing of the understanding of consumers during any transition period from the current label layout to any possible next one, and for further future upgrades under the same layout".
Sweden suggests "maintaining the seven classes of the label as a principle, but suggest that a different number of classes are used for specific products if justified".

At the top of the scale
- Sweden suggests "the two highest classes are set at BNAT level. Nevertheless we believe it is important to show the consumer the best available class on the market at a given time. One way to achieve this is to use grey shades for not yet "populated" classes and add the publication year on the label.
- Consumer futures UK find that "consumers may set out with the intention to buy a top-rated grade appliance and may be disillusioned if there are no products with that rating, particularly when there are products in the top tier in other product category. Greyed out categories can help communicate this, but may undermine the value of products that have achieved the highest efficiency in those categories at the time or rating, to the detriment of consumers, manufacturers and the innovation process. Clarity could perhaps be provided through open data, which would improve the consumers' ability to compare all relevant products."
- Green NGOs underline that "There is some contradiction in the report on the principle governing the setting of the highest labelling class. In some parts it is stated that a principle of the EL should be that the top class is always achievable (p.99), while in other parts it is said that there is merit in adding empty classes at the top (p.133). A more consistent message would be welcome."

At the bottom of the scale

- Sweden supports the study authors in that lower classes that are forbidden according to ecodesign should not be shown on the label.
- ANEC / BEUC support the "recommendation that the labels should not display empty classes at the bottom of the scale. We express reservations however on the recommendation that in case classes are not active anymore, this should be somehow indicated. We suggest instead, that products are spread through all classes and that only top classes of the scale should be allowed to be empty in order to accommodate technological progress".
- However, CECED argues that this is not possible in practice: As a consequence of a proposed increased coherence between ecodesign requirements and the energy label, it is suggested to display only active classes and remove any bottom class that is no longer populated. We would like to understand how to practically implement such provision bearing in mind that retroactive application is forbidden, i.e. products, which have been placed on the
EU market, cannot be, relabelled. The discussion about potential relabelling of products already placed on the market (page 89) is consequently inappropriate.

Additional information which could be displayed on the label

The report concludes that "the possibility to display additional (environmental and/or cost) information on the energy label should be maintained. Nevertheless, currently it is suggested not to add new environmental information, monetary information or whole life cycle impacts information on the energy label until and unless sufficient evidence is made available to demonstrate their viability and to confirm that there is a net benefit from doing so. In general, it should be possible to adjust the number of parameters on the label to the needs for individual product groups."

All comments support this statement and confirmed the positions analysed during the consultation phase, sometimes providing further details on which type of information is preferred and what should be the procedure to decide on whether to consider including additional information or not.

- ANEC/BEUC suggest is it worth exploring adding monetised information and the different ways of displaying it, and possibly expected product lifespan. They would however oppose the display of "additional information on the environmental performance of products -aside from those already displayed at the moment (noise, water) - particularly if in the form of aggregated values or an additional horizontal scale as we are convinced that it would compromise the overall goal of the label and we express fears about the transparency of such information."
- Consumer Futures (UK) on the one hand support displaying information on costs, arguing that, according to one of their recent research:
    o "Consumers understand financial costs, not kWh or CO2
    o Consumers appear to think running costs can be compared by using the A-G label, which at present they cannot as this does not account for the sizing of the product (see Fig 1)."
  Another helpful element would be the "use of use of open access to product databases to enable third parties" communication of the running costs to consumers".
  On the other hand, they do not support the inclusion of additional environmental information as their experience shows that consumers can find additional information on environmental performance confusing, and it undermines the salience of the A-G label.
- EUROFUEL points out that adding energy operation costs may be difficult since the energy price evolution is hard to predict. However, indicating the average payback period for each type of equipment (e.g. new boiler or heat pump, 5-7 years; a solar system, 10-12 years; a wood boiler, 10-12 years; a window, 15-20 years) would be interesting and relevant to consumers.

- Orgalime also supports the idea of remaining open but insist that, "this requires a sector by sector approach and must not result in a "one size fits all approach" of trying to converge all environmental information on all parameters into "one overall environmental product performance figure/symbol/label", as this would be misleading."
- BAM (Germany) underlines that even though environmental and performance parameters "should be decided in a product specific manner", there is a "need to agree on a core set of parameters which could be relevant for all products and their feasibility should be assessed for each product group in the preparatory study".

Product fiche and use of ICT

Regarding product fiches, BAM (Germany) suggests that "In a first step at least the fiche of the energy label and product information required under the ecodesign directive should be merged together in the fiche". They also propose another use for the Fiche which "could also serve to provide environmental information for very conscious consumers, which is difficult to display on the label".

Testing the use of ICT such as QR codes is generally supported:
- BAM Germany sees it as a way to possibly "solve the dilemma of deciding between a simple, universally understandable label and a maximum of information for interested consumers";
- Tait Consulting states many experiences worldwide on internet-accessible registration product databases: " If the Commission could make available the necessary ID tag for each relevant product model (as embedded in the QR code), then this could provide links to both official EU regulatory information (including the mandatory information requirements and MVE activity) - and could also provide the tag for NGOs, consumer organisations, social media, advertising and reviews etc."
- Green NGOs would like this topic to be further investigated: "Recommendations should be investigated about using QR codes, smartphone apps and other tools to better inform consumers and increase the impact and accuracy of the label information. In the mid-term, the principle of an electronic label instead of a paper one is also a topic to be discussed."

Some comments even urge for its direct inclusion in the future regulations:
- Sweden proposes adding a QR-code on the label "as this opens for many future possibilities. The QR-code would direct the user to further information such as explanation of the symbols in the label, up to date information on the best products on the market, characteristics of the product, and even cost issues, which are particularly important for consumers." Bar codes and QR codes could also convey information on certain chemicals.
- The European Aluminium Association urges to investigate the use of ICT & QR codes "to convey compulsory information. For example, an energy-related product whose performance depends on the location where it will be used could be rated using a QR-code and a smart phone into which the input (post code) of the consumer would point to the rating of the relevant climatic zone or to a more accurate simulation software. We agree with the comment made by IKEA during the meeting that, in case a consumer would not be equipped with an ICT tool, some could easily be made available at the point of sale".

However sensitive points about the use of ICT are also identified:
- If consumers are reliably redirected towards websites with more information "the question is more whether the information on the related websites is correct and up to date" (BAM Germany)
- "A practical problem occurs as many retailers currently ban the use of camera phones to avoid consumers ordering the displayed product online on the spot" (BAM Germany)

These comments are in line with the findings report, which concludes on the high potential of the use of ICT but also the necessity to implement field trials. The comment from BAM leads to another question about the trend to block Internet access in shops to impede consumers to compare products and retailers - this could jeopardize the objective of e.g. a QR code.

Information conveyed in distance selling

One comment from the Deutsche Umwelthilfe BUNDESGESCHÄFTSSTELLE underlines the difficulties with the display of products' energy efficiency class in advertisements, which is not respected whereas it is mandatory. Therefore, they suggest "to set minimum standards for the indication of the energy efficiency of products in advertisements. This could be achieved similarly to Directive 1999/94/EC for the provision of data on fuel consumption and CO_2 emissions of passenger cars in promotional literature (…) In addition to the contextless indication of the mere energy efficiency class, we recommend to include at least two more pieces of information in promotional literature:
- the range of the efficiency scale (e. g. "Energy efficiency class on a scale of A+++ (more efficient) to D (less efficient)") and
- "the annual power consumption".

"Online advertisements it should be mandatory to display the complete label, since there are no comparable restraints of space as in newspaper advertisements."

This comment is being tackled by the possible Delegated Regulation, already quoted in the findings report, "amending all relevant regulations so that the label, or at least a colour arrow with the energy class, should be mandatorily displayed on internet sales material and in cases when end-users cannot see the product (as opposed to the current situation in which the label information should be displayed in a specific order but not necessarily the whole coloured scale)".

Display of the label in shops and on-line

Green NGOs would like the statement on p. 70 'today the energy labels are generally correctly displayed' to be "tempered by the market surveillance findings mentioned elsewhere in the report".

B2B Products

Several industry stakeholders worry that the findings report recommends the labelling of B2B products, even though the report rather suggests that there is "evidence of energy performance information failures also applying in the procurement of professional energy using or related equipment and hence there is a significant opportunity to increase energy savings by addressing these informational failures through the mandatory provision of energy performance information. Whether this information needs to be supplied through the form of a printed label affixed to a product is another matter. (...) Thus it could be envisioned that for products destined for professional sales channels that energy labelling information requirements could be specified differently than for those destined for consumer sales channels".

- Digital Europe underline that "The many B2B products are purchased with detailed technical specifications (e.g. enterprise servers). An energy label for this product group or horizontal regulation (network standby) is of limited value and only creates a burden to manufacturers without a benefit. If an internationally recognized label for a product group is available, industry strongly advocates the usage of that label in particular if products such as in the ICT and consumer electronics industry are created for a global market".
- EPEE (European Partnership for Energy and the Environment) fears that "using a business-to-business label could lead to an oversimplification for usually very complex products. Most B2B

products cannot be sold "off the shelve" - evaluation by a building engineer is required to evaluate what product is best suited for a given application. A product with highest energy efficiency is not necessarily the best choice for all applications. Indeed, the energy efficiency is always calculated based on one type of application whilst in reality for B2B products many different applications exist. EPEE therefore recommends continuing using the product fiche and installer label when required for B2B products"

- Orgalime disagree with the "recommendation to target B2B products in the future implementation of the Energy Label Directive considering that professional users have different information needs than what the Energy Label is designed for or able to give (…). The Energy Label is not the most appropriate tool for providing information to professional users and can be expected of limited help for professional actors. For professional actorsbetter targeted B2B tools exist already, including technical fiches or tendering specifications and contracts.

- VDMA (the German Engineering Association) also disagrees as "professional clients cannot be compared with final consumers who need guidance on energy efficiency. Technical expertise informs the buying decision. Labels for customised products would not serve the initial purpose of "pulling the market".

In addition, Green NGOs would like "the analysis (to) go deeper into assessing where this would be most relevant and where there would be potential barriers to overcome. Labelling professional products does not necessarily always translate into affixing an A-G scale on a product. It could use another form of ranking and display (more tailored to professional purchasers and specific products – e.g. international classification of motors, IE2-IE3-IE4). There is a vast area to investigate and currently the report provides only superficial observations (page 78). We encourage the authors to provide more precise recommendations that could be turned into concrete policy guidelines."

2 - Layout, design and rescaling issues
In general there were only a modest number of comments on these issues. This may either indicate that the reviewers were generally accepting of the study's findings and the Commission's approach or that they have simply not found the time to review these aspects of the work. The comments which were received are summarised below.

The need to rescale the label
The first findings report sets out a set of conditions that would potentially trigger a need to rescale the energy label for a given product.

This finding was supported by several parties and not opposed by any:
- Sweden assert "we very much agree with the study authors that the scale of the energy label needs to be revised to be effective"
- Orgalime and the German consumer association (Verbraucherzentrale) also agreed with the study conclusion that "all options will require a rebasing of current efficiency classes". Orgalime comment that "we believe that the current energy label framework should be improved to provide sufficiently strong incentives for best performers. The Energy labelling scale needs to be reviewed to be more dynamic and flexible, but also to create the conditions for industry to further invest in innovative technologies."
- However, Digital Europe argue that the Energy Label is not mature enough to the point that it requires significant changes in the case of consumer electronics. They assert that label thresholds for TVs should not be revised except that the A+++ could be made more demanding to attain than under the current requirement.

- Orgalime propose that revision (i.e. rescaling) of the label must not result in a requirement to re-label products that have been legally placed on the market.

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EHI states that rescaling or updating the energy label design should be applied on a case-by-case basis for each implementing Regulation, once one third of these specific products on the market reach the upper class, based on a thorough and dedicated market analysis.

Simplicity

Both Orgalime and the German consumer association (Verbraucherzentrale) argued in favour of keeping the label simple.

- "..During the meeting the problem of cognitive overload was mentioned several times. We share this view and urge both the commission and the study team to keep this in mind when constructing the further label. To give simple and effective consumer information the actual label is already overloaded." (Verbraucherzentrale) and then "The scales have to be similar for all products and it should not be possible to use different scales for one product type at the one time, e.g. for TV´s (see Annex I, graph 1)."

New/revised label designs and rescaling

There were only a limited number of comments on the topic of the preferred label scale. Germany (BAM), Sweden, Orgalime, Eurovent and Consumer futures asserted that the A-G scale was the most effective but most supported the process of testing alternative designs along with the A-G scale. Italy has a different view and Digital Europe argues in favour of setting a scale to zero. EHI argues against a scale to zero.

- Sweden comments "We believe that the triple mnemonics (A-G-scale, red-to-green colour code, and length of the arrows) that have made the energy label a widely recognised symbol for energy efficiency should be kept as far as possible."
- Consumer Futures (UK) states "We are supportive of the planned research but we note that several research studies comparing the two approaches show the bounded A-G scale is preferred by consumers, who find it easier to understand and choice research shows consumers are more likely to choose an efficient product when the bounded A-G scale is used"
- Eurovent remark "The recommendation to consider re-grading the A-to-G efficiency scale would be a preferred option. In its most simple form the label the threshold reference scale year YYYY" could be on the label referring to the (older or newer) regulation that applies."
- Green NGOs state "..we believe the analysis could be improved in some parts, notably from page 100 to 106 where different energy labelling layout options are discussed and the superiority of the closed A-G system is concluded. The authority of this conclusion could be increased by looking a little less preconceived and after a more solid discussion of all pros and cons in an equal way."
- Italy stated that this was their least preferred option but also supported the alternative design testing process. Italy further provide some specific comments on the precise characteristics of the design options to be considered.
- Digital Europe assert that "when establishing the format, setting a scale to zero seems very good in principle in avoiding revalidation of formats, as long as sufficient differentiation of products will be possible across the scale".
- EHI would favour a meaningful open scale energy label design with seven active classes, which does not require any additional rescaling in the future – such as through a reverse numeric scale, but also states that any transition should thoroughly be tested beforehand.

The German consumer association (Verbraucherzentrale) provide the following summary table on the different label options.

Table 1

Draft No.	1 (closed A+++ -E-scale)	2 (closed A-G- scale)	3 (open scale with numbers + grey bars	4 (open scale with numbers 1-7)
Problem of rescaling process	Necessary	Necessary	Necessary in the beginning, later regular "rescaling" necessary to avoid problem of empty classes	Necessary in the beginning, later regular "rescaling" necessary to avoid problem of empty classes
Problem of transition periods	Have to be solved	Have to be solved	Have to be solved	Have to be solved
Problem of empty classes	Can be avoided through a strict harmonization of ED and ELD	Can be avoided through a strict harmonization of ED and ELD	Unavoidable, but necessary	Unavoidable, but necessary
Problem of different best classes	Easily to be avoided when assuring a proper implementation	Easily to be avoided when assuring a proper implementation	Not avoidable, as technical progress differs from product groups	Not avoidable, as technical progress differs from product groups
Data base	Necessary for rescaling	Necessary for rescaling	Necessary for rescaling	Necessary for adaption

Regarding the process of identifying the optimal label design
- CECED state they "support the study conclusions that "consumer understanding should be the chief concern for future label revisions" (page 6). We fully share this view and believe that the second phase of the testing by IPSOS Mori/London Economics will give good indications as to consumer preferences and understanding of the proposed label layouts. However, testing should not limit to a Consumer understanding must be tested over the lifetime of the energy label. Consumers should thus be confronted with scenarios of transition. Such thorough assessment is the only way to ensure the label is workable and understood."

- The Belgian Economics Ministry comments "We would suggest looking into a labeling design that lasts for at least 6 to 10 years. This would increase the consumer understanding and trust. And it would give the industry the stability they need to invest in innovation. The A-G scale but also the proposed alternatives should be analyzed carefully for their ability to warrant a stable labeling for 10 years. "

A comment was sent on our interpretation of graphical illustrations presented in a paper co-autored by CECED, ECOS and EEB. This comment does not challenge the conclusions or preference among the label

options but underlines that we have compared these illustrations, which were meant to look at possible variations on specific building blocks of the label taken in isolation, to a complete label option. We propose to correct the presentation and introduction of these illustrations in the next version of the findings report.

Experimental methodology

Comments proposing alterations in the experimental method adopted by the Commission's studies were made by ANEC/BUEC, the German consumer association (Verbraucherzentrale) and Italy. CECED also commented on the issues to test.

- ANEC/BEUC comment "We welcome the study's reminder that consumer understanding must be the chief concern of the future label revisions as well as the recommendation to test the energy consumption indication and the appropriateness of the "per cycle" vs. "per annum" indication, the use of national language on the label and graphic improvements of the pictograms. We regret that the study on the understanding of the energy label focuses primarily on the scale layout and has not fully taken into account these recommendations. We suggest that the two study teams work closely in order to integrate these questions in the second phase of testing."
- The German consumer association (Verbraucherzentrale) remark "When it comes to the general structure we have difficulties understanding the strict separation of the studies from Ecofys and from Ipsos. In our opinion they should be a better link between the work done by both teams. There are several interesting findings in the work done by Ecofys such as the chapter on consumer understanding. Nevertheless, the findings were not considered nor could have been considered due to the timescale of the whole process. However, it would have contributed to the work done by Ipsos on consumer understanding where we see potential for amendments especially in the following points:
- Experimental design: The setting of the experiment in phase II does not reflect real buying situations as the number of displayed products do not reflect the variety in stores. Furthermore, the participants will be asked a hypothetical question ("Which product would you buy…"). In reality, consumers have to take their choices between hundreds of e.g. TV´s or washing machines with different sizes, prices and other quality factor in the shops. With the suggested design of the study, phase II will have another experimental design and will not fulfill all essential requirements for the relevant questions."
- CECED assert "Consumer understanding must be tested over the lifetime of the energy label. Consumers should thus be confronted with scenarios of transition. Such thorough assessment is the only way to ensure the label is workable and understood. Building on the findings of phase I of the IPSOS Mori/London Economics study, the report stresses that an A to G scale (with year value to be distinguishable) appears preferable to numeric, open scale or adding more plusses. It is sensible that the A to G scale scored best as it has been the unique label consumers were confronted with for years. However it has to be recalled that there is no outrageous difference among scales: all options scored from 90 to 95%. It confirms the need to further test the different options as recommended."
- Italy comment "The non-paper documents specifies that "the label designs to be tested are in a form as they would look after rescaling/updating of the label". From the description of the field work it is not clear if the proposed methodology will show at the same time the two generations of the label before and after the updating/rescaling. This is for us a must to provide relevance and credibility to the test results. As far as the choice of the options to be tested, we consider also fundamental than the selected options are tested against their capability to respond in case of:

voluntary pre-labelling, label generations with or without products rescaling/downgrading, obsolescence of the ranking, just to mention some of the open issues." Italy go on to make a number of specific comments on the specific label options to be tested.

Transition period

Italy (in particular) and CECED propose that more focus be given to testing the transition stage and impacts. The German consumer organisation calls for more information on the transition period. The Green NGOs assert that the study could include more analysis of the transition phase. Digital Europe express concerns about the implications of transitions on consumer confusion and supply chain actors. Other comments are supplied by Sweden and Orgalime.

- Italy states "Non-paper on Energy Labels design for testing and methodology. We support the decision that the main focus of the exercise should be to test consumers' reaction to the rescaling/updating of the label. In our opinion this means that the test should focus on:
  - the transitional period when old and new labels coexist in the shops and consumers are exposed to a possibly contradictory information for identical models.
  - the understanding of the consumer that the products purchased few weeks before with a certain label class, and now found in the same shop with a lower label class, is not a rip-off of the retailer/manufacturer
  - the use within the voluntary pre-labelling approach"

- Italy assert "At page 118 it is just stated that "the principal recommendation is to fine tune rescaling by testing the proposed label options informed by the IPSOS/LE consumer understanding study inserted in a contemporary label's context". In our view this approach is totally distorting the order of priorities: consumer understanding of the proposed label layout options cannot be assessed if the different options are not tested against the generations transition. It is quite important that consumers are not misled during the period of coexistence of the different generations."

- A dfferent perspective was provided by Consumer Futures (UK) who remark "We recognize there are concerns about transition, but these should have marginal impact on the goals of incentivising innovation through consumer information:

- These products are infrequent purchases. Provided the delineated colour chart is maintained, we expect few consumers to actively notice any change.

- Retailers work with just-in-time supply, and so there will be little overlap on the shop floor

- A small period of overlap on the shopfloor can be overcome through the provision of two labels and a clear switchover date for retailers, with an additional online printing facility.

- -Some retailers, such as IKEA, are interested in the electronic provision of information which could be dynamically updated from a central database."

- Sweden comments "Two recent Swedish surveys show that most consumers (90% for white goods) do consider the energy use of the product using the energy label when purchasing new products (see attached summary of surveys). Recognising the great concern from industry and consumers that rescaling causes difficulties during the transition period, we suggest that the best class after revision is set near zero energy use. We suggest the two highest classes are set at BNAT level."

- CECED state "as is rightly pointed out in the report, any label update implies the co-existence of two labels (old and new label, and in some cases, two generations of the same label) on shop floors, which would cause confusion in consumers' mind. This aspect cannot be neglected if we want to have a credible tool that works for all. Unlike other instances provided in the report, the EU market being composed of 28 Member States, it takes quite some time for products bearing old

labels to completely disappear from the marketplace. Moreover product distribution is uneven according to the countries and can be slow. No solution to shorten this confusing period could be identified up to now. Authors mention that coexistence of A to G and A+++ to D labels at present time can generate
- further confusion (page 74). It has to be noted that this inconsistency will carry on as recently
- adopted product measures plan the future introduction of A+++ and are expected to remain in force
- for some years. This is a relevant aspect for policy makers to consider and address in the review."

- Orgalime remark "…, it must not end up in relabeling requirements for products that have been legally placed on the market. Overlaps in the market between old and new classes, such as old 'A' and new 'A' label, should also be avoided, since this risks confusing consumers."
- German consumer association (Verbraucherzentrale) state "A rescaling process seems inevitable in almost any case. Our market research has shown that there are many stores where the stock turn-over is relatively low. A market check in the end of 2013 (see Annex I, graph 3 + 4) has shown that on average there are still 13% dishwashers and 10% fridges with old labels on the market. In kitchen studios and furniture the rate is higher (about 20%). Although the new label has been obligatory since December 2011, that means two years after implementation. Having three different label versions on the market is not beneficial for consumer understanding. We therefor urge the study team and the legislator to explore a revision with the parameter of a short transition process or providing retailers with transition labels. We furthermore recommend to develop a database as a monitoring instrument for necessary adaptions of the scale."

Given the likelihood that transition issues will receive greater attention in the remaining discussions it may be advisable to include additional work in this area

Scale within a scale
Only Denmark and Tait Consulting commented on this, both arguing against the idea. Denmark opposes because of concerns about added complexity whereas Tait comments "If this was felt to be necessary then the whole label simply needs rescaling". This indicates confusion regarding the reason why the scale within a scale could ever be necessary, and hence suggests it might be helpful to provide a concrete example to illustrate why rescaling would not address the same issue.

Multiple scales
Two stakeholders argue against the concept of multiple scales. Including:
- Digital Europe remark "industry is concerned that the use of multiple scales on one label is diluting the value of the label and focus should not be on non-energy requirements, especially where standards or mandates to have uniform measuring methods in place do not exist".
- ANEC/BUEC comment "With regards to additional information, it is worth exploring adding monetised information and investigating different ways of displaying it. Further to non-energy related aspects already displayed currently, expected product lifespan can also be added to the label based on the relevant assessment of the product specific preparatory studies. Nevertheless, we would oppose the display of additional information on the environmental performance of products-aside from those already displayed at the moment (noise, water) -particularly if in the form of aggregated values or an additional horizontal scale as we are convinced that it would compromise the overall goal of the label and we express fears about the transparency of such information."

By contrast BAM (Germany) argue that a comparative scale for noise be introduced and provide a worked example. They also assert that "the absolute [energy] consumption has to be displayed on the label more prominently and in a way which will be understood by the consumers (cf. our comments on the consumer study to test the understanding of an additional horizontal scale on absolute energy consumption below the efficiency scale). At the same time, energy efficiency should remain the main focus of the label."

Label Layout focus

BAM (DE) asserts "the absolute consumption has to be displayed on the label more prominently and in a way which will be understood by the consumers"

When to rescale and frequency of revision

A handful of coments were made which address this issue by Eurovent, Belgium and CECED.

- Eurovent propose "The principle used in some voluntary labelling schemes could apply where at the date of creation, the top class (e.g. A) must represent less than 1% of the population of references, the next class (B) less than 5%, C less than 15% and D less than 30% each, with E, F and G covering the rest of the products with more than 50% of the products. After a given number of years (3, 5…), the thresholds shall be updated if the population in top class A is higher than 5% and the population in B is more than 15%. The new thresholds shall then comply with the original population references given before."

- The Belgian Economics Ministry states "We would like the study team to look at the possibilities and challenges of changing the labels of all product groups put on the market at the same moment. By the time the revised energy labeling directive will come into effect a lot of product groups will have an energy label. Consumers will have to make a decision based, or partly based, on the label at least every year. The consumer will be confronted with the possible existence of a new label for every one of the product groups. It is still unclear if the co-existence of different labels for the same product group has a significant impact on the decisions made by consumers. It is clear however that if consumers know about a rescaling but not know exactly for what product group, they will at least begin to question the label. And it is this consumer trust that is the key component of the labeling scheme : it should under all circumstances be maintained."

- CECED state "Last paragraph of page 79 addresses fundamental aspects for this review that we fully support: a sustainable approach is needed to allow planning certainty and maximise manufacturers' investments in new technologies. In the same paragraph the authors rightly underline again the fact that frequent rescaling must be avoided as it can generate confusion for consumers and be very burdensome for market operators."

Language on the label

CECED state "the report recommends the reintroduction of national languages for the label (sic)2. Abandoning the language neutrality of the label would entail switching back to 24 different labels (one for each official language). In a single market where products cross borders at any time, this would be a logistical nightmare and raise concerns of enforceability because of increased risks of incorrect label use".

Consumer futures (UK) suggest that "concerns about the language used on labels could be overcome by the concurrent provision of „open data" that can be used by retailers, consumer organisations and others."

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[2] This statement is incorrect. The report recommends that the merits of labels with national languages versus those without be assessed by consumer research. It does not recommend the reintroduction of national languages.

Ch 5 Regulatory process

Phases and stakeholders in regulation process
- Digital Europe proposes to abstain from merging EL and ED directives and creating an automatic link between the energy label and the ErP requirements. If an internationally recognized label for a product group is available, industry strongly advocates the usage of that label in particular if products such as in the ICT and consumer electronics industry are created for a global market.
- UEAPME and EBC: With regards to the Consultation Forum of the Ecodesign Directive, SMEs are de facto excluded as very technical and long documents in English are sent by the Commission to the members of the Consultation Forum with very short deadlines to reply. Such documents are so technical that only the manufacturers of the products concerned by the consultation or independent external technicians with expertise in the given field would be able to understand them. Regrettably, due to time constraints and language barriers, it is almost impossible for small manufacturers to provide their feedback on such documents. The result is that often no response is provided to Consultation documents leaving free rein to industry organisations representing big manufacturing companies.
- Italy: The document refers to the lengthy discussion and approval process as a result of lobbying influences that tend to slow the process and/or water down the ambition of the resulting measure. In our opinion three additional elements are not properly highlighted and require further consideration before consolidating a view on the effectiveness of the in force measures and of their preparatory process:
  - lack of coherence in the legal form of implementing measures preparation process (delegated acts vs. comitology);
  - trend to cluster together several heterogeneous products, with the result of progressing at the lowest speed (for example: Ovens & Hoods; Lot 1 & Lot 2);
  - reference to the controversial primary energy parameter for the assessment of products energy efficiency, and the use of the even more controversial 2,5 conversion factor.

Progress and planning in the regulatory process
- Digital Europe welcomes the call for transparency in the rulemaking process including a target date for publication of final implementing rules and securing the corresponding headcount capacity within the Commission needed to achieve this target. Digital Europe proposes to introduce a strict timed procedure that can exploit the results of the preparatory study as opposed to them becoming obsolete, in particular for the review of existing IMs with a task zero to assess potential savings and non-energy gains.
- Orgalime agrees to better transparency on planning, including a target date for publication. Guidelines for the preparation of IMs to support the process could perhaps be helpful.
- Sweden: In order to increase transparency in the rulemaking process and to improve implementation of the regulations, we suggest that an "ecodesign platform" is created consisting of an internet-based portal with all implementing measures, summaries, guidelines and FAQs.
- VDMA supports guidelines for the preparation of IMs to support the process

Resources
- Tait Consultants: as the scope of Energy labelling and ecodesign expands into additional commercial and industrial products, they will increasingly be business to business traded goods and so likely to be more complex and tailored to particular solutions. Labelling and ecodesign

regulations will have to deal with more product variants (multiplying performance data requirements as well as testing cost implications), more impact on SMEs, more challenges due to complex controls and software/firmware updates, wider system design issues (the 'extended product'), larger products made in smaller numbers, more prevalent and important cross-cutting issues such as RoHS, F-gas, CPD, machinery and safety regulations etc. Any one or combination of these could stall or destroy an emerging regulation. The resources necessary to prepare evidence to tackle these issues should be carefully considered along with resources to tackle any more second order environmental impacts, under already highly stretched contracts.

- Sweden believes more resources should be granted for preparatory studies. Sweden encourages the Commission to take into account third countries' work on relevant product groups when drafting new regulations.

Merging of ED and ELD

- Digital Europe is against a merger of ED and ELD, but this is because of the erroneous assumption that this would automatically apply ELD for all groups incl. B2B. And this is what they oppose.

Data and Product registration database

- Tait Consultants: The suggestion of an evaluation step partway through the preparatory study to assess data availability is an excellent one. Market product performance data is sufficiently important to merit its own focused project (or sub-project) to ensure that this is delivered adequately to underpin future labelling and ecodesign requirements. It has been surprising how poor product performance data has been in several preparatory studies.
- ANEC BEUC very much supports the development of a database of Ecodesign and Energy labelling specifications for all regulated products. This is a common and successful practice under other jurisdictions such as for example Australia and New Zealand.
- UEAPME and EBC: With regards to data collection, the study mentions that a database with Ecodesign and Energy Labelling product specification could be established. The study recommends making it mandatory for manufacturers to supply the required information. UEAPME and EBC want to stress that micro and small enterprises find it difficult to cope with increasing mandatory requirements. The specificities of such companies should be taken into account before imposing further obligations.
- Environmental NGO's: The description of the recommended market monitoring product database (on p.128) could be a little more detailed. How should the data collection work in practice? Should it be model-based? Sales-based? How will it be ensured that models that are no more sold are removed from the database? Etc.
- Orgalime + VDMA oppose to the suggestion to create an "EU-wide mandatory product database". This option would be very costly and would cause significant administrative burdens for companies. Such a proposal would run counter to the drive for a simplification of the regulatory environment. In addition, it would not solve the issue of free riders. Although registers are used under EU legislation, such as the Waste Electrical and Electronic Equipment Directive (however for a different purpose than discussed in the draft report for ED/ELD), such an instrument is inappropriate to secure the functioning of the Directives and their enforcement.
- Sweden, information requirements: One way of inserting the information requirement in the Ecodesign directive would be to use the technical product information requirements which manufacturers and importers are already obliged to submit. This could be done in a similar way as it is dealt with in the Construction Product Regulation (CPR) which contains a requirement for manufacturers to declare information required in REACH. This would assist to provide those actors with a more standardised format for reporting, which could be applied in other legislative acts than

the Ecodesign directive as well. However, one challenge is how this information could reach the end-of-life sector in an expedient way. There are other options. However, all options would need to be further analysed and assessed to better understand the pros and cons, such as access to appropriate and better information in the end-use-phase vs extra administrative burden for manufactures, importers etc. This also needs to be done when implementing measures are adopted.

- Belgium: We would like the study team to further evaluate the proposed mandatory registration product database. The study already stresses some benefits, but the historical reasons not to have a mandatory registration of products that are put on the market should also be taken into account (at the roots of the New Approach). If the reasons for this would have lost importance, for instance if the administrative burden for manufacturers has become a lot smaller, this should be in the report so that any decision on this matter can be made based on solid argumentation. It should be pointed out that the entry form of this database would be a very convenient place to inform manufacturers on all the directives to which their product needs to comply.

Methodology
- ESB networks: In relation to the above an important point which has not featured to date, but which is critical to EcoDesign,is the use of the correct discount rate in evaluating the economic justification for any proposal. When EcoDesign picks an area in which to improve efficiency it can end up diverting funds to this area from other alternatives which have not been regulated. This can be overcome by using the same Discount rate for investments considered under EcoDesign and this which would be considered by private companies i.e. a rate of about 6% rather than 4%. the existing 4% rate used in all EcoDesign studies appears to come from internal EU Guidelines which predate the EcoDesign Directive. The Ecodesign Directive required that the discount rate used in EcoDesign should be advised by the ECB, although this does not appear to have happened as yet. This should be rectified.
- Italy: The fact that almost all stakeholders consider that requirements were not too high and only some consider them from low to too low means that overall a good balance was found among environmental, social and economic considerations. Therefore the current methodology has so far worked pretty well. We would therefore consider un-wise that a radical change is introduced for something that has proven to work well, but are open to a methodology fine tuning and responsible positive improvements to support sound economic activity and therefore sustainable development.
- Italy: In this respect we would like to highlight that all proposed improvement options present positive and negative aspects that should be assessed in the study before any final decision about "if" and "which" of the options could be considered for inclusion in the methodology and under which conditions. Just as an example: the adoption of the benchmark approach or the setting of requirements beyond LLCC would imply that citizens of Member States would be forced to purchase ErPs that would never pay back in terms of energy/major resources savings, while instead the current Least Life Cycle Cost approach represents a no-regret and fair solution towards all EU citizens. In reality, some of the listed options have already been partly considered in the preparation of the existing implementing measures, but their introduction must to be carefully scrutinised in a case by case basis, taking into account the specific product performances, without modification of the current successful LLCC approach
- Orgalime: Setting the proper level of ambition in our view is an issue of implementation rather than of the framework directive, which in our view is appropriate in terms of results at the level of sustainability. Orgalime does not see the need to change the method of setting specific eco design

requirements. The concept of cutting off least performing products on the basis of LLCC ensures a constant upwards trend of the market. LLCC, as such, also ensures affordability of products for consumers and fair competition. The criteria of the ED/ELD today pursue overall sustainability results, which we support.

Learning effects
- Digital Europe: price erosion knowledge is already part of the requirement setting, e.g. by setting more stringent requirements in e.g. a second tier. Reports supporting the concept of "learning curve" have studied the price levels of certain products a few years ago and compared that with current prices. The reports are however flawed as the analysis does not take into account factors like the increased competitiveness by e.g. the growth of e-commerce (online shopping) offering products for a significantly lower price due to a lower cost structure. Also economic crisis has had downward effect on prices. DE opposes taking into account learning effects as they fear that setting more stringent requirements increases inevitably costs which impacts profit margins which could result in further losses of jobs in EU.

Benchmarks
- Germany welcomes the recommendations on benchmarks. It would be helpful if the final report could elaborate possible ways of implementation a bit more. In the regulations adopted during the last few years, the benchmarks have often been added as an afterthought or based on dubious or anecdotal sources. This low quality makes them difficult or impossible to use as desired.
- ANEC BEUC: top classes of the energy label scale should be allowed to be empty in order to accommodate technological progress
- Environmental NGO's: There is some contradiction in the report on the principle governing the setting of the highest labelling class. In some parts it is stated that a principle of the EL should be that the top class is always achievable (p.99), while in other parts it is said that there is merit in adding empty classes at the top (p.133). A more consistent message would be welcome.
- CECED: As stated at previous occasions, industry is in need of stability. This being said, setting long-term targets based on the Best Available Technology (BAT) cannot be considered as a sustainable solution. Defining minimum requirements at the BAT level would be in contradiction with the principle of the LLCC. In addition, it would be risky to define which products should be phased out several years in advance by making assumptions on the cost and price evolution in the medium to long term. The consequences of realising too late that we have come to the wrong conclusions could be detrimental for the industry's competitiveness and for the survival of small and medium enterprises. When setting requirements, careful attention needs to be paid in order to maintain a diverse range of prices and product functionalities on the market. Moreover, the competitiveness of the industry in Europe and the employment opportunities in this sector need to be kept in mind.

Requirements beyond LLCC
- Digital Europe recommends to refrain from moving towards setting requirements beyond the least life cycle cost is inappropriate for rapidly evolving ICT/CE products.
- EPEE: A certain level of ambition is necessary to guarantee that Ecodesign and Energy labelling remain valuable tools that allow the uptake of new and renewable technologies and achieve the promised energy savings. Increasing requirements beyond LLCC could drive markets towards highly efficient products, however, such products may sometimes be unaffordable for consumers. As a possible consequence, consumers could opt for cheaper alternatives that consume more

energy as they cannot afford the necessary return on investment. This effect goes against the Energy labelling and Ecodesign objectives.

- CECED: The consultants argue that for product groups that do not show a clear correlation between price and efficiency the LLCC principle will not work very well. We believe that this does not justify a systematic modification of the LLCC methodology, which has worked well for appliances where this correlation exists. The consultant concludes that "if corrections are being made to the process and the methodology to make it more robust, moving toward the BE-point [Break Even] should not be necessary" [page 132]. In addition, when taking into consideration the difference among product groups, a generalised approach might be more difficult and certain flexibility, including ad hoc solutions, could be identified in a case by case basis. We support this conclusion.

Energy efficiency vs. energy consumption
- German NGO BUND strongly supports energy consumption over efficiency, paper in preparation.
- ANEC BEUC welcomes fact that the study has identified the need to develop guiding principles that will allow the development of product specific energy scales based on a balanced combination of energy efficiency and energy consumption.
- CECED: The current approach where ecodesign and labelling requirements focus on energy efficiency rather than absolute consumption, should be maintained in future regulations. This provides a balanced way to rank a product according to its energy efficiency and parameters related to its functionality (such as performance/capacity). A focus on absolute energy consumption could even be detrimental to energy efficiency overall, in particular when used on the energy label. For example, a consumer may purchase two small table-top, relatively inefficient, refrigerators instead of one larger but more efficient one, due to total consumption figures provided on the energy label. This representation of information gives the wrong impression that the small appliances are more energy efficient. Today the size effect is already considered, since boundaries of energy efficiency classes are built on regression lines that ensure higher capacities are not favored.
- Sweden supports, depending on the product details, that requirements can be based on equal LCC and/or on a mix of absolute energy consumption and energy efficiency.

Non-energy impacts:
- Orgalime+VDMA: Any new aspect tackled for implementation must not undermine the ongoing energy efficiency implementation. We question in how far information requirements could satisfy the criterion of "significant potential for improvement without entailing excessive costs". What would providing the information improve in practice? We also see a risk of real duplication of already existing information requirements, in particular article 33 REACH and articles 14 and 15 WEEE.
- CECED: As far as non-energy related requirements are concerned, manufacturers already have an interest in reducing the amount of resources used to build their appliances due to the overall rise in price of raw materials. That being said, requirements aimed at reducing the use of materials may lead to less durable goods which would lead to a contradiction among requirements. Moreover, legal requirements targeting a minimum technical life of a product can prove to be difficult in terms of market surveillance due to lack of standards, related cost, time and effort for testing. We would like to highlight that any measure on non-energy requirements should be measurable, enforceable, relevant and competitiveness-proof.

Standardisation

- Denmark: simplicity and cost effectiveness in mandates. Measurement standards play central roles in the ELD- and ED-regulations. Standards are set on a European level by CEN/CENELEC through procedures, where Industry, especially major companies, plays a leading role. Over the years the complexity and volume of standards has increased. Equally so with the costs of testing at certified labs. This hampers an effective market surveillance. Standards should only focus on essential parameters. The report suggests several minor adjustments to the present working procedure, but a fundamental shift of paradigm should be considered. The American way could serve as inspiration. In the US, the authorities are more inclined to define the needed measuring standards themselves, and this is done in the beginning of the decision process of specific products. As an alternative, the Commission could try to require simplicity and cost effectiveness, when setting up mandates.
- Orgalime + VDMA fully agree to availability of standards to be considered early and market surveillance authorities to play a greater role in their development
- A report was received from CLASP/ECOS on measurement methods. Concerns are expressed on the capacity of the EU standardisation process to adequately support the policy process. A menu of options for making limited adjustments to the current approach is outlined, as well as a set of four more exploratory scenarios to help inform a discussion about potentially more substantial changes to the EU approach.
- EHI states that measurements and calculation methods should be finalised before the delegated Regulations are decided in order to have an exact and common understanding of the ecodesign and energy labelling measures that will be used for applying the ecodesign requirements and the energy label. EHI therefore supports active cooperation in an early stage.

Voluntary Agreements

- Germany: the fact that the outcome of the survey was that a 'A slight majority of respondents thought that the possibility of laying down Ecodesign requirements in voluntary agreements should be maintained, however these should not be prioritised over mandatory regulations." This should be more clearly in report.
- ANEC BEUC: Although the literature review revealed significant delays in the development of voluntary agreements under the Ecodesign Directive, the dedicated chapter on the effectiveness of the regulatory process and the associated recommendations do not reflect these findings. We propose an illustration of the development process of the so far endorsed voluntary agreements as well as an assessment of whether voluntary agreements are indeed less burdensome and more cost effective while providing added value in terms of the improved overall environmental performance of the product covered.

Revision

- Digital Europe: The report misses out on proposing a task zero for reviews of IM (or implementing acts) which assesses the potential energy savings and non-energy gains. If such an assessment comes to the conclusion that savings are minimal, there should be no revision to avoid spending time and ever more scarce resources on marginal cased such as STB, EPS or UPS.
- Environmental NGO's: Regarding improvements to the policy process, in addition to all the recommendations already included in the report, we would like to stress the importance of defining clearer rules and guidelines about the way regulations are to be reviewed and revised. It is at present very unclear how the decisions are made to go through either another full preparatory

study, or only a 'fast track' approach (whatever it means, as it is not properly defined in the legislation). We believe more structured and specified rules could be set in the Directives, ensuring that requirements and labelling classes are updated regularly through a smooth and well-defined process offering visibility and coherence. The short paragraph on p. 126 on this crucial aspect could be expanded.

Ch 6 Market surveillance

Full overview of comments received from stakeholders on market surveillance

The text below summarises the comments and recommendations obtained from individual stakeholders and is structured by the issues discussed and raised by the individual stakeholders.

Role of the European Commission

A representative of the **Belgian government** (Sante Publique Securite de la Chaine Alimentaire et Environment) confirms that the Commission can play a supporting role to ensure better co-operation between MS and the sharing of investigation results.

CECED stated that unique European market surveillance system and/or authority would be the optimal solution.

The industry group **EPEE** stated that the idea of an EU wide enforcement agency could be considered as an interesting and efficient option. To fund such agency, a "visible fee" per product could be considered, as currently existing under the WEEE Directive. Such a fee would protect consumers and manufacturers from free riders on the market. EHI also supports the idea of an EU wide enforcement agency to ensure a level-playing field in the EU.

A more central role is supported in a reaction by **private individual** (Dirk Van Orshoven), stating that the central enforcement seems much better (in the sense of both more effective and more efficient) than dispersed national surveillance activities. It appears that the combined public authorities (i.e. on national/regional and EU-level combined) could provide the best possible service to the society (companies, citizens, etc.) if as a general rule all enforcement actions would be bestowed on the European level, apart from those activities for which it can be clearly proven that they can be performed better on national level. One obvious example of such cheaper national actions seem field inspections (labels in shops, etc.). Product testing in recognised labs (and corresponding punishing, if applicable) would probably more efficiently be executed on a European level (but national inspectors could still collect –some of the– test samples).

Cooperation, information sharing and adoption of results among MSAs

A representative of the **Belgian government** (Sante Publique Securite de la Chaine Alimentaire et Environment) confirms that Belgium would not be against a formal requirement for MS to annually report on market surveillance activities.
A reference has been also made to a draft EU Regulation on the shipments of waste (COM (2013) 516), according to which Member States shall ensure that their competent authorities establish plans for inspections aimed at checking compliance with this Regulation. The plans shall cover the entire geographical area of the Member State concerned and shall include a strategy and objectives, risk assessment, priorities, information on number and types of planned inspections, assignment of tasks to each authority involved, means of cooperation and the assessment of the needs for training of inspectors. Those plans should be reviewed annually and made publicly available.

The position paper of the **Swedish government** (Swedish Energy Agency and Ministry of Enterprise, Energy and Communications) confirms that Sweden agrees with the evaluation team that the market surveillance can be greatly improved if cooperation between Market Surveillance Authorities (MSAs) is enhanced by a well working data base for sharing inspection plans and results (i.e. an improved ICSMS). Sweden would prefer the use of English in the database to ease cooperation.

Environmental NGOs (ECOS, BEE, CAN, FoE, WWF, INFORSE, RREUSE, TOPTEN) suggest, to encourage cooperation, that tests carried out within IEE or concerted projects could be included in the assessment. They also comment that the one important contribution of EU-wide projects on market surveillance is that they not only test products, but also contribute to the understanding/identification of issues with the legislation as well as measurement standards and can reflect on suggestions to improve both. This is an asset for future revisions.

The industry group **EPEE** confirmed also that information needs to be better shared between Member States. Improved cooperation would allow Member States to reduce and share the cost of market surveillance activities.

Both the EU engineering industry association (**ORGALIME**) and the German Engineering Association (**VDMA**) agree with the report findings on "Enhance coordination and cooperation between MS" and on "high level participation in ADCO".

Product database and registration:

Consumer organisations very much support the recommendations for an EU - wide product surveillance database. (ANEC / BEUC). <u>EHI also supports it.</u>

A representative of the **Belgian government** (Sante Publique Securite de la Chaine Alimentaire et Environment) confirms that a protected surveillance database should be set up (e.g. starting from the ICSMS initiative). This should be done in such a way that it facilitates reporting on market surveillance activities. Also use of the RAPEX could be considered. Furthermore on this point, they state that better priority setting and targeting would be possible in surveillance activities if a product could only be placed on the market after submission of the required technical documentation. Most efficient would be to allow importers/producers to submit anywhere in the EU, and to set up an EU database and notification system. This doesn't mean prior permission has to be given to place a product on the market – and the Belgian representatives make a link to the Australian, US and Belgian product registration policies. A **Belgian government** (Ministry of Economy) also expressed a view that introducing product registration database should not reduce the need for more market surveillance.

The German Engineering Association **VDMA** claims that improving market surveillance by providing information electronically could potentially be useful, if handled carefully and if only geared towards strengthening market surveillance. Especially data sensitivity and data responsibility would have to be accounted for. Access would have to be strictly protected. VDMA recommends that it should first be focused on realising the potential of existing legislation and tools before introducing new costly and administratively burdensome instruments. ICSMS could be developed further to include additional modules. Its use could be strengthened considerably.
ORGALIME commented that The Market surveillance Regulation 765/2008 provides national authorities with adequate competences and powers to carry out market surveillance activities.

There is room for improving the cross - border cooperation of authorities, as well as the cooperation at the external border of the European Union. Better use of available databases RAPEX and ICSMS would add to effectiveness, too. These are positive elements of the proposal currently under negotiation. Furthermore, more resources are needed to staff market surveillance authorities adequately in order to render market surveillance effective.

CECED commented that a mandatory registration, depending on the system and level of details required, could be very burdensome for industry. The real benefit for market surveillance should be carefully assessed before putting in place such an obligation.

A position paper by **environmental NGOs** (ECOS, BEE, CAN, FoE, WWF, INFORSE, RREUSE, TOPTEN) states that a product database (outside of ICSMS) would indeed be welcome. They state that if this database was partially available to the public, consumer and environmental NGOs could utilise this tool for communication actions supporting market surveillance. Moreover, the market overview offered by such a database, could further facilitate and provide a stronger evidence base for setting future Ecodesign and Energy Label requirements.

A position paper by **environmental NGOs** (ECOS, BEE, CAN, FoE, WWF, INFORSE, RREUSE, TOPTEN) recommends that the description of the recommended market monitoring product database could be a little more detailed: How should the data collection work in practice? Should it be model-based? Sales-based? How will it be ensured that models that are no more sold are removed from the database? Etc.

The industry group **EPEE** made a general note that the way how information would be shared in practice, how confidentiality would be maintained and how the amount of information can be efficiently managed should all be carefully considered for details.

An **independent expert** (Tait Consulting Ltd.) notes that a better integration of information requirements and documentation would seem extremely desirable and could facilitate far better market surveillance if the necessary data frameworks are established to manage this electronically and automatically. Furthermore it comments that mandatory registration of compliant products not only provides transparency for market verification and enforcement, but provides the necessary evidence to underpin future review of label and eco-design criteria. This should certainly be explored.

Some other stakeholders have also commented on the definition of other information to be provided by the manufacturers, when placing products on the market, such as the Fiche or Technical product information requirements, which then would clearly also have implications for market surveillance.

Market Surveillance package

With regards to the proposed Market Surveillance package, **consumer organisations** believe that it should explicitly cover Energy Labelling and Ecodesign. (ANEC / BEUC).

As mentioned in the first findings report, **Swedish government** argues that the proposed market surveillance package would establish a clearer regulatory framework for market surveillance. However, as its position paper notes, as the market surveillance package may be delayed, it is even more important that the recommendations formulated in the report are implemented.

ORGALIME confirmed that it agrees that the Package applies to ELD and ED: Improving market surveillance is a horizontal issue beyond ED and ELD.

While not specifically mentioning the Package, **VDMA** comments that "there should be no diverging provisions in the Ecodesign Directive. All relevant requirements should be in the horizontal market surveillance regulation. The same market surveillance provisions should apply to all product requirements." **ORGALIME** confirms this by stating that "No specific rules should be developed under ED/ELD/ for the purpose of ED/ELD "alone". The horizontal Market Surveillance Regulation and
Package should also apply for ED and ELD".

3rd party certification

3th party verification should be used were relevant – according to the **Belgian government** (Sante Publique Securite de la Chaine Alimentaire et Environment): For ED this is foreseen in Article 8 § 2, but till now sparingly used. In EL the same provision should be included. We don't see 3th party verification as a replacement to current market surveillance activities, which would need to continue and improve.

Environmental NGOs (ECOS, BEE, CAN, FoE, WWF, INFORSE, RREUSE, TOPTEN) confirm that third party certification is a major issue that deserves careful consideration. They note that not all aspects are addressed in the paper, notably the legal responsibility aspects, the role of Member States in delivering accreditations, the potential benefits for contributing to a product database or the link with product model identification.

The industry group **EPEE** stresses that third party verification can complement but not replace market surveillance. Indeed, third party verification should not be used as an excuse to compensate for a lack of market surveillance.

Third-party certification is not a substitution for market surveillance activities – as stated by the German Engineering Association **VDMA:** it takes place before the point of placing a product on the market whereas market surveillance authorities act in the market. Third-party testing adds costs and administrative burden on lawfully acting manufacturers. At the same time, it is easily falsified. Experience from safety legislation shows that there frequently are products, which are third-party tested yet still not compliant with the legislation.
On a partly related topic, the **VDMA** also makes the comment that Article 8 of the Directive correctly establishes module A (self-declaration of the manufacturer) as the standard conformity assessment procedure, which VDMA fully supports. It states that it should be maintained, considering the considerable experience with this conformity assessment procedure carried out by manufacturers, which is a core element of the New Legislative Framework and standard procedures, especially in the safety area. It limits economic and administrative burdens of manufacturer while adequately reflecting the fact that the producer remains legally liable for the product that is finally placed on the market. VDMA states that there is neither a need nor a justification to change the standard rule of module A given in the framework directive, and especially not for making third party certification the rule instead. They also add that, in any case, mandatory third party certification can by no means be a replacement for proper market surveillance and enforcement activities.

ORGALIME stated that 3rd party certification cannot be a replacement of market surveillance. It is an issue of conformity assessment procedure before placing product on the market.
Orgalime supports article 8 of the existing ED.

Regarding market surveillance, the Member States, **EUROVENT** argues, could make use of voluntary schemes that convey a recognized level of trust and reliability. In the United States the Department of Energy (DOE) and the Environmental Protection Agency (EPA) rely on data provided by third party certification programs for testing, monitoring and verification of conformity to Energy Star. In a similarly manner Member States could make use of existing voluntary schemes in Europe, especially those that are accompanied by voluntary third party testing to optimise their market surveillance activities. According to EUROVENT, these voluntary schemes are often supported by database identifying the products, their technical documentation tests that have been carried out and because unified procedures for conformity assessment are used could prove useful to support market surveillance. Because the wide variety in products covered by the Ecodesign and Energy Labelling Regulations it might not be possible to develop within a reasonable timeframe an encompassing database that would cover all products. It could therefore prove useful to look at the benefits existing schemes could offer.

EHI states that "for central heating and hot water applications, third party compliance verification of test data should be included and spread to comparable product groups as an additional tool for compliance assessment in the interest of authorities, consumers and industry (level playing field). " "The experience with both the Gas Appliance Directive and the Boiler Efficiency Directive has shown that, in Member States that do apply a surveillance for these directives, third-party verification allows for easier identification of non-compliant products as well as swifter action. In fact, the practice over the past 20 years has shown that third-party verification has indeed eliminated incorrect testing resulting in the disappearance of test houses that do not meet the required standards."

Verification of visible parameters

CECED noted that in order to facilitate the activities of surveillance authorities, requirements should be clear, measurable and enforceable.

A representative of an **individual manufacturer** company (Emerson) stated that they welcome the clear distinction which is made between parameters which can be checked on the product itself and those that cannot. Emerson highlights that targets must be measurable, and for the time being, it is only possible to measure and verify targets which are set on the product itself. The tools to verify other parameters or embedded impacts – which cannot be measured on the product itself - are not yet in place.

The **German government'**s position paper states that it can be difficult to enforce e.g. resource impacts: In the current system of market surveillance in Europe, a requirement on production or on sourcing of raw materials can only be checked by its documentation, if the product originates from outside the EEA.

A Belgian government (Ministry of Economy) noted that simplicity and cost effectiveness are needed for market surveillance: This does not mean that the clauses and requirements related to properties and performance of the appliance should be omitted (they are needed for design and manufacture purposes) but just by-passed (only when the standard has to be used for checking the data on the label) to focus on the clause(s) on energy consumption measurement. Also the "three more tests" requirement in the regulations in case of non-compliance of the first test is standard for manufacturers not in the frame of market surveillance: it should be reduced to "one more test".

Equivalent model names

Regarding equivalent products, the **Swedish government** (Swedish Energy Agency and Ministry of Enterprise, Energy and Communications) supports the findings in the report: It needs to be clarified how equivalent products should be handled in the technical documentation, focusing on manufacturers' and importers' obligations regarding equivalent products. We would like to suggest that a definition of equivalent products is included either in the product specific regulations or in the framework directives.

Concerning the model families, **environmental NGOs** (ECOS, BEE, CAN, FoE, WWF, INFORSE, RREUSE, TOPTEN) comment on the recommendation to include in technical documentation the list of all family model names relevant nationally and EU-wide, in language understandable to the authorities, that it could be made a provision in the ED and EL Directives, as it is not explicitly stated in the individual implementing measures.

Surveillance of SMEs

Representatives of the **Small and Medium enterprises** (EBC and UEAPME) make the note that they understand the importance of a successful implementation of ELD and ED. Nevertheless, both organisations believe that market surveillance is not the way forward. Instead, the focus should be in compliance assistance. They state that SMEs are in the majority of cases not involved in the regulatory process and once confronted with the ED implementing measures, they lack the technical expertise as well as the financial means to introduce the necessary changes in their manufacturing process. Against this backdrop, financial schemes and technical assistance should become available for SMEs, particularly for micro and small enterprises. Such assistance would better contribute to fight noncompliance than penalties.

Minimum level of market surveillance

In general, industry group **EPEEE** confirmed that it supports the strengthening of market surveillance activities. **ORGALIME** also specifically supports the suggestion to define a minimum level of national market surveillance activities in IMs.

Environmental NGOs (ECOS, BEE, CAN, FoE, WWF, INFORSE, RREUSE, TOPTEN) suggest that a minimum level of market surveillance activities imposed on Member States should be set on a per GDP or per capita basis.

Regarding this point, the **Swedish government** (Swedish Energy Agency and Ministry of Enterprise, Energy and Communications) agrees that more extensive and effective market surveillance is necessary. However, they state that they are sceptical to introducing a minimum requirement of the level of market surveillance activities and are also sceptical to the "WEEE inspired" funding mechanism mentioned. They do agree, however, with the kind of general obligation as proposed in the market surveillance package and also agree to more concerted projects at EU-level, as a complement to national activities. They are also in favour of the data collection exercises that the Commission has launched during 2012 and 2013, but suggest clearer reporting principles and the possibility to report also information and other preventive market surveillance activities.

Funding of surveillance activities

While **EPEE** made a comment that an EU-level agency could be funded by a "visible fee" per product, as currently existing under the WEEE Directive, noting that such a fee would protect consumers and manufacturers from free riders on the market, **VDMA**, on the other hand, claims that it should not be an option to recover costs from manufacturers placing on the market compliant products. **ORGALIME** also noted that the reference to WEEE is erroneously made in this chapter, since in article 23.3 WEEE, which refers to "shipments of used EEE suspected to be WEEE" but does not establish a general financing obligation of market surveillance activities on manufacturers.

Non-EU importers

The **Swedish government** position paper (Swedish Energy Agency and Ministry of Enterprise, Energy and Communications) considers that the problem is that the legislation is not clear or uniform on how the MSA should address these cases.

Environmental NGOs (ECOS, BEE, CAN, FoE, WWF, INFORSE, RREUSE, TOPTEN) suggest, as a way to tackle non-EU importers, that it could be a threat of removing/suspending their trading licence, should they be convicted of purposely selling non-compliant products.

Communication between MSAs and economic operators

Environmental NGOs (ECOS, BEE, CAN, FoE, WWF, INFORSE, RREUSE, TOPTEN) note that whilst dialogues between Market Surveillance Authorities and businesses can be beneficial in some areas (e.g. to show to retailers how they can more correctly display energy labels), very strict and immediate penalties for technical non-compliance are absolutely necessary. It is no deterrent for manufacturers if the only action will be to modify their product slightly, or simply discontinue the model at some point. Recovering testing costs from manufacturers found to be non-compliant should also be standard practice.

The industry group **EPEE** supports the current conformity assessment methods under Ecodesign, which set out obligations to provide detailed technical documentation, ensure the compliance of manufacturing processes and provide conformity marking and declaration of conformity.

ORGALIME commented that the suggestion to simplify procedures to a "one step procedure" should be further evaluated.

General

The German Engineering Association (**VDMA**) agrees to the statement that there is a weak enforcement: VDMA fully supports this statement as market surveillance is currently the weak link with regards to realising the full potential of the implementing measures.

Also **ORGALIME** confirms that market surveillance and enforcement require improvement. Similarly, **CECED** fully supports the call for better market surveillance.

On a general note, market surveillance has been supported by European Heating Oil Association industry group (**Eurofuel**): Proper market surveillance should be carried out. Similarly, **EPEE** group (European Partnership for Energy and the Environment) states that "Market surveillance remains a cornerstone of the success of Ecodesign and Energy labelling Directives". EPEE also re-emphasised its call for consistently applied, uniform, and harmonised energy-related market surveillance mechanisms among Member States

and confirmed that it is keen to cooperate with the European Commission and Member States to find solutions so that EU legislation can achieve its objectives.

The **Swedish government** position paper (Swedish Energy Agency and Ministry of Enterprise, Energy and Communications) confirms that Sweden agrees with the findings of the thorough analysis carried out. The barriers and opportunities for increased market surveillance are well described
and accurate, and the conclusions well formulated. Sweden further supports the recommendations
made in the report.

Ch 7 Market effects

The feedback we received from stakeholders can be summarised as follows:

- In general, benefits from Energy Labelling and Ecodesign are perceived to outweigh costs, both for organizations and for society as a whole. The cost:benefit ratio can be improved by better enforcement and processes and better policy coherence. *(Orgalime)*
- Overall, Energy Labelling and Ecodesign have had little perceived impact on overall market sizes, market structure, or product choices. The low impact of EL was agreed, but it was argued that it is too early to judge the impact of Ecodesign. *(Orgalime)*
- The impact of Energy Labelling and Ecodesign on competitiveness was perceived as positive, in particular for Energy Labelling. The positive impact of EL was agreed, but it was argued that it is too early to judge the impact of Ecodesign. *(Orgalime)*
- The impact of Energy Labelling and Ecodesign on small and medium enterprises is generally considered positive. This current finding was based on a balance of assessment of relatively high constraints the regulations imposed on SMEs and the opportunities in niche markets stimulated by the regulations, alongside mixed survey responses on the overall impact. It was argued that insufficient weight was given to the constraints that SMEs, particularly micro-SMEs, face and a less positive finding was more realistic. *(EBC, UEAPME; Orgalime)*

In general, our findings are very well received. However, our assessment of the impact on SMEs is believed by the interested stakeholders to be too optimistic. We understand that more weight should be placed on the negative impacts on SMEs, particularly micro-SMEs, from the constraints imposed by the implementing measures.

Relating to the priorities identified in our summary the feedback reinforces the need for market surveillance to maximise the benefits of the regulations (priorities 2 & 3). It also highlights that introducing new information requirements (as in priority 4) could disproportionately impact SMEs given their limited resources.

Annex: List of stakeholders who sent in comments

Stakeholder	Title, if report or paper
BAM Federal Institute for Materials Research and Testing, Germany	
BUND - Friends of the Earth Germany	
Verbraucherzentrale Bundesverband - German consumer organisations	
Edouard Toulouse for CLASP - discussion paper	Developing measurement methods for EU Ecodesign and Energy Labelling measures
Finnish government	
CECED	
Consumer futures UK	
ANEC BEUC	
Belgian government	
Dirk van Orshoven, independent consultant - brainstorming paper	
Deutsche Umwelthilfe	
Construction products Europe	
Digital Europe	
Danish Energy Agency	
EBC-UEAPME	
EPEE	
ESB Networks	
EUBAC	
Eurofuel	
Eurovent	
NHO Norway - Confederation of Norwegian Enterprise	
Norwegian Water Resources and Energy Directorate	
Zelmer, Poland	
Emerson	
Tait Consulting Limited	
Env NGOs (Ecos, EEB, CAN, FoEE, WWF, Inforse Europe, Rreuse, Topten)	
Dutch government	
Italian government	
ökopol - for German Environemtal Agency (UBA)	Benchmarks in Ecodesign implementing measures
Orgalime	
Swedish Energy Agency	How the Ecodesign Directive could support the implementation of REACH and better acces to information on hazardous substances content in energy-related products
VDMA	

Stakeholder	Title, if report or paper
PEF-Consortium:	
AIE European Association of Electrical Contractors	
CECED European Committee of Domestic Equipment Manufacturers	
EUEW European Union of Electrical Wholesalers	
European Copper Institute	
EUHA Electric Underfloor Heating Alliance	
EURELECTRIC Association of the electricity industry in Europe	
NHO Confederation of Norwegian Enterprise	