

Brussels, 9 March 2010

Draft Delegated Regulations for energy labelling of televisions and household refrigerating appliances

In view of the Commission's further proceedings on the draft delegated regulations on energy labelling for televisions and household refrigerating appliances, Orgalime would like to provide an additional comment to the debate.

Articles 4 of both draft delegated regulations refer to the obligation of dealers to ensure that any television or household refrigerating appliance **"offered for sale, hire or hire purchase"** to end-users 16 months after the publication of the delegated regulations are marketed with the new label.

The introduction of this obligation would, in our view, result in a retroactive application of labelling requirements for products that have already been legally placed on the market. Following New Approach principles, sales of products that comply with the existing legislation at the time of their placing on the market, cannot be restricted. According to Articles 4 of both draft delegated regulations, it would, however, not be possible to sell to end-users products that have already been legally placed on the market (originally with the old label) unless a new label for these products is provided by suppliers to dealers.

Products targeted in these draft regulations are already regulated by many New Approach type laws. New legislations including implementation measures under the Energy Labelling Directive should in our view follow the New Approach principles as enshrined in the New Legislative Framework. In particular, the term *"offered for sale, hire or hire purchase"* is neither appropriate for legislation on products, nor to ensure fair competition. *"Offered for sale hire or hire purchase"* should be distinguished from *"placing on the market"*, which is defined, in the Regulation 765/2008/ECⁱ (article 2.2), as *"the first making available of a product on the Community market"*. Further clarification is given in the Blue Guide (chapter 2.3), which states that this initial action of making each individual product available *"takes place when a product is transferred from the stage of manufacture with the intention of distribution or use on the Community market"*.

While the two draft delegated regulations foresee a 4-months delay between the application of the suppliers' obligation to supply any appliances with the new label and the application of dealers' obligation to market any appliances with the new label, it will not prevent the retroactive application of labelling requirements. In fact, products "offered for sale" may have been placed on the market before the application of the suppliers' obligation set out in the article 3, and therefore been compliant with the existing legislation at the moment of placing that product on the market.

Orgalime, the European Engineering Industries Association, speaks for 33 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 11.1 million people in the EU and in 2008 accounted for some €1,885 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

Orgalime therefore requests the Commission to abstain from introducing a retroactive application of energy labelling requirements in the draft delegated regulations for televisions and household refrigerating appliances.

We suggest revising the legal text in a way that allows dealers to sell televisions and household refrigerating appliances legally placed on the market with the label that was mandatory for suppliers at the time the product was placed on the market.

We kindly request your support for these comments in your further proceedings on setting energy labelling requirements for televisions and household refrigerating appliance.

We also ask the Commission to avoid undermining the New Legislative Framework and therefore avoid any retroactive obligation throughout the whole implementation of the Energy Labelling Directive for further product groups to secure legal certainty for our industries and the functioning of the internal market.

ⁱ Regulation No 765/2008/EC of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation No 339/93/EEC.



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