



coolproducts
for a cool planet



**Friends of
the Earth
Europe**



INFORSE-EUROPE
International Network for Sustainable Energy - Europe



Brussels, the 22nd of February 2010

To: DG Energy, Director General

CC: DG Energy D3, DG Environment C5 and DG Enterprise B1

MEPs Dr. Peter Liese, Fiona Hall, Anni Podimata and Claude Turmes

Consultation Forum Members

**Inadequate and incoherent assessment of self-regulations in implementing Directive
2009/125/EC – Ecodesign for energy-related products**

Dear Mr Lowe,

With concern we take note of developments in the implementation of Directive 2009/125/EC with regard to the role of self-regulation. We believe that the Commission is not correctly and consistently applying the Directive's requirements. If unchanged there is the risk that the Commission will take decisions favouring self-regulation without sufficient evidence of their advantages. This is not in line with the Directive's requirements and transparency principles.

Therefore, we call on you to ensure that the regular process of drafting implementing measures is re-instated immediately and applied also for all cases where industry is considering or proposing self-regulation. In particular, this requires that the Commission postpones its decision to not draft an implementing measures for complex set-top boxes and to endorse industry's self-regulation initiative as it suggested on 15th February 2010.

So far DG TREN has been following a coherent methodology to develop implementing measures in line with the Directive's requirements, as established by its Article 15. This includes the following steps:

- Working plan to prioritise product groups according to Article 15.2;
- Preparatory study, which forms the basis to set minimum requirements according to Article 15; and
- Impact Assessments following the Commission guidelines.

¹The cool products for a cool planet Campaign was launched in 2009 by the European Environmental Bureau, the European Environmental Citizens' Organisation for Standardisation, Friends of the Earth Europe and International Network for Sustainable Energy. www.coolproducts.eu

We are supporting this necessary and coherent methodology. It has allowed us, as part of the Ecodesign Consultation Forum, to play a constructive role in implementing the Directive.

Nevertheless, it emerges that the Commission is deviating from this methodology to promote and react to four self-regulation initiatives by industry sectors, of very diverse format and quality. The process to consider and assess them as potential alternatives to regulation has proven particularly unclear, as highlighted by Consultation Forum members.

While we believe that industry self regulation initiatives are a welcome proactive effort, they should not lead to a situation where the Commission decides in a haphazard way to abandon the drafting of an implementing measure and delegates the execution of essential procedural requirements to the industry.

We call on you to urgently review this situation and to ensure that the Commission continues leading the drafting of implementing measures until it can very clearly demonstrate on a case by case basis that a self regulation is likely to deliver the objectives faster or cheaper.

In particular, we suggest developing a generic guidance for assessing self regulation vis-à-vis implementing measures under the Ecodesign Directive to achieve a robust and common approach. The guidance should be discussed at a specific meeting of the Ecodesign Consultation Forum and be in place before the Commission takes a decision in favour of proposed self regulation initiatives.

Such guidance is an essential step to ensure credibility in the assessment of what such an initiative may deliver. Numerous past examples of failing self regulation should encourage the Commission to pursue a very robust and cautious approach.

We would be happy to contribute to developing such guidance.

Yours Sincerely

John Hontelez, EEB Secretary General

On behalf of Cool products for a cool planet, EEB, ECOS, FoEE, INFORSE, WWF

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Background

Four Self Regulation Initiatives are being considered by the Commission:

- Medical equipment: although this product group has been identified as priority in a study preparing the working plan, the Commission decided in May 2008 to drop this product group from the working plan (see minutes from Consultation Forum 28 May 2008) because the industry suggested to develop a self-regulation. An industry proposal has been discussed in end 2009 but without any robust independent data and assessment. Furthermore, only a fraction of the product groups prioritised in the working plan study is covered in the scope of the industry proposal.
- Machine tools: are in the working plan, but a discussion has already been initiated by the Commission about an industry initiative whereas the preparatory study has just been commissioned.
- Imaging equipment: Preparatory studies have been concluded in 2007. However the Commission has not developed possible mandatory requirements, before assessing self-regulation proposals from industry.
- Complex set top boxes: Preparatory studies have been concluded in 2008. However the Commission has not developed possible mandatory requirements, before assessing self-regulation proposals from industry. On 15th February 2010 the Commission proposed to the Consultation Forum to endorse the self-regulation proposal on complex set top boxes without providing an assessment which would demonstrate that it will deliver faster or cheaper the objectives.

According to Article 15.3 the Commission, in drafting an implementing measure, has to take into account the industry's own initiatives in order to judge whether they might deliver the policy objectives faster or cheaper. In order to make such a judgment it is essential that the Commission first provides independent information, via the well established route of preparatory studies, to the Consultation Forum. Therefore, the Commission has the duty to prepare and lead:

- The determination of the possible policy objectives; and
- The assessment of whether a self-regulation proposal would eventually deliver the objective faster or cheaper.

For these four self regulation initiatives, the Commission seem to be by-passing some or all of these steps. This means that the execution of essential procedural requirements has been delegated to the industry.

So far the Commission has not answered the open questions from Consultation Forum Members, including

- whether an impact assessment is to be undertaken by the Commission;
- what is the Commission's role in developing and implementing the self-regulation; and
- how the Consultation Forum is to be involved in that.