



# Table of Contents

1. Background	4
2. Methodology	5
3. Current state of play	6
4. Strategies/Scenarios investigated	15
5. Findings and opportunities	17
Annex 1: Questionnaire	24
Annex 2: List of interviewees	25
Annex 3: Product design-relevant Directives and Regulations	26
Annex 4: Responses to consultation on SCP/SIP plan	30

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# Abbreviations

CPD	Construction Product Directive
DG	Directorate General (of the European Commission)
DG ENT	Directorate General Enterprise
DG ENV	Directorate General Environment
DG SANCO	Directorate General Health & Consumer Protection
DG TREN	Directorate General Energy and Transport
EEB	European Environmental Bureau
EIPRO	Environmental Impact of Products
EEB	European Environmental Bureau
EMAS	Eco-Management Audit Scheme
EP	European Parliament
EPD	Environmental Product Declaration
EPR	Extended Producer Responsibility
ETAP	Environmental Technologies Action Program
EuP	Energy Using Products
EC	European Commission
FoE	Friends of the Earth
GHG	Greenhouse Gases
GPP	Green Public Procurement
IM	Implementation Measures
IMPRO	Environmental Improvement of Products
IPP	Integrated Product Policy
IPPC	Integrated Pollution Control
IPR	Individual Producer Responsibility
JRC	Joint Research Centre
LCA	Life Cycle Analysis
LLCC	Least Life Cycle Cost
MS	(EU) Member State
REACH	Registration, Evaluation, and Authorisation of Chemicals
RoHS	Restrictions of Hazardous Substances
SCP	Sustainable Consumption and Production
SIP	Sustainable Industry Policy
SME	Small and Medium-sized Enterprise
SSNC	Swedish Society for Nature Conservation
SVHC	Substances of Very High Concern
WEEE	Waste Electrical and Electronic Equipment
VA	Voluntary Agreement

# 1. Background

The Swedish Society for Nature Conservation (SSNC) has, for many years, been working to improve the environmental quality of products on the market, most markedly through their own eco-labelling system Good Environmental Choice (Bra Miljöval). In order to safeguard achievements in product eco-design, SSNC also strives to strengthen EU product legislation. Eco-labelling and other voluntary measures will continue to spearhead the development of eco-friendly products, but SSNC believes that "cut off" legislation (setting minimum requirements) is necessary to raise the level of ecodesign requirements on products, and prevent bad products from entering the market.

What is needed to achieve this? EU product legislation should seek to ensure that products and services on the market are 'safe' for the environment in a sustainable society, and create producer responsibility for this. Safe for the environment could mean safe for climate change, for resource biotic and abiotic sufficiency/efficiency and safe for environmental and health toxicity.

Such, extended concepts for eco-design have been discussed for many years. One model was presented in a Swedish EPA report back in 1999. The concept included introduction of general obligations for all products with daughter directives enacted for specific product groups when required. The sketched framework directive included the use of voluntary standards, a 'code of conduct' and guidelines.<sup>1</sup>

In 2004, European Environmental Bureau (EEB) presented a simulation of a directive titled Environmentally Sound Product Directive<sup>2</sup>. What the EEB proposed was a product eco-design umbrella directive, creating a far reaching re-

gime of producer responsabilisation for the environmental performance of their products in the design phase, and laying down the principle that all consumer products should be environmentally sound.<sup>3</sup>

During 2007 the European Commission has been developing an EU strategy on Sustainable Consumption and Production Action Plan. This plan is a response to calls for a more proactive response and EU leadership on the 2002 Johannesburg Sustainable Development Conference commitment on a 10 year framework of programmes and plans on Sustainable Consumption and Production (being implemented through the so called Marrakech process). This plan coincides with the necessity for the EU Commission to deliver its next steps on the Strategy on Integrated Product Policy (in particular an overdue assessment of what steps could be taken on '(eco) design requirements' as proposed in the IPP strategy itself.

This study looks at current trends in the development of eco-design law in EU. It takes a broad view, including to what extent the EEB type of comprehensive producer responsibility is being considered as a viable proposal. The aim has not been to go into great detail on the pros and cons of the different actions or policy tools on the table, but instead to generically map the legislative landscape and identify potential opportunities for avenues to be followed up at this point in time in the political discussions, taking particular account of the ongoing developments of the Sustainable Consumption and Production Action Plan, in order to further develop strategies within SSNC.

1 Naturvårdsverket [Swedish EPA]. (1999) "Producenters ansvar för varors miljöpåverkan", Report 5043 (In Swedish).

2 For further description of the EEB proposal, see chapter 4

3 The term environmentally sound was used by the EEB as "those products which ...do not have a significant impact on the environment, throughout the whole life cycle, taking into account the objectives of the Sixth Environmental Action Plan and specific objectives on chemicals, resource efficiency, energy etc established in the same legislation."

## 2. Methodology

The concrete goals of the study were defined as the following:

- Analyse the state-of-play of on-going EU legislative processes with relevance to product policy
- Discuss with different stakeholders that could influence the decision making process on the options to introduce further EU "cut-off" (minimum ) requirements on the ecodesign of products, and the advantages and disadvantages and likelihood of having them realised.
- Evaluate the most significant trends observed and highlight opportunities for advancing the ecodesign legislation debate.

The study has been carried out mainly through interviews with Commission officials, Member state authorities, ministries, academic researchers, NGOs and industry representatives. Some of these actors have the possibility to directly influence the decision making process, some of them were interviewed for their experience from 'observing the process'.

The scope involved looking at legislative initiatives, but also to some extent discussing the role of voluntary initiatives and other policy tools, given the assumption that this was still the preferred policy option for most industry sectors. Based on initial analysis of on-going political processes, three main strategies towards expanding the setting of ecodesign minimum requirements on products were defined:

- Expanding scope and effective implementation of EuP
- Creating a general legislative framework for eco-design
- Making better use of other legislative instruments

The strategies are overlapping in scope, but give a conceptual division of ideas. Based on these three scenarios, the interviewees were asked about i) the most desirable way forward disregarding political/administrative obstacles that could hinder accomplishment, and ii) the most administratively/politically feasible way forward.

A second part of interviews related to the use of environmental targets. Interviewees were asked how environmental objectives could drive the setting of minimum requirements, which targets could be used for non-energy objectives, and how targets could be integrated into a new framework directive.

Two different discussions of findings have been arranged: One in collaboration with EEB in Brussels on 13 September, with European NGOs participating. Here some preliminary findings were presented to provide background to strategic discussions on the NGO response to the consultation on the SCP/SIP action plan. A second meeting was held on 22 October in Stockholm in the form of a Roundtable with participation from national authorities, government, academics, NGOs and industry in Sweden.

The scenarios for possibly strategic approaches to expanding the setting of ecodesign minimum requirements on products is described in chapter 4 and the questionnaire used in interviews and as basis for meetings is presented in Annex 1. The list of persons interviewed is shown in annex 2. A current state-of-play on relevant EU processes (legislative, voluntary and policy plans) provides a background to the discussion and is covered in chapter 3. The complete information collected on the product relevant directives and regulations can be found in annex 3.

Due to the fact that the debate on the different legislative options was less mature (and more diversified) than we expected we chose just to present some dominant trends found in the discussion (as it stands now) instead of an exhaustive account of the advantages and disadvantages of the different scenarios as identified by the interviewees. We then identified some opportunities for action towards furthering the eco-design legislation debate, presented in chapter 5.

## 3. Current state of play

This chapter gives an overview and some preliminary analysis on the current state of EU processes with relevance to product eco-design. We cover the most obvious product relevant directives and regulations. In addition to which we evaluated some current perceptions concerning voluntary agreements and we summarised the background to and the current EC activities on the SCP/SIP action plan under development in the Commission. Finally we documented two international policy tools that might have a role to play. Note: A more detailed and descriptive overview of the different product relevant regulations and directives including their implementation processes, evaluation, or revisions that are ongoing is presented in Annex 3.

### 3.1 Overview and gap analysis

This chapter intends to give an overview of the main directives and regulations that are relevant to product eco-design and undergoing processes of either implementation, revision or review. During the discussions and interviews conducted we realised that the information collected on the state-of-play on the different product design relevant directives and regulations could be used to perform a gap analysis to compare the maturity of the different ‘legislative toolboxes’ for three main areas of environmental concern in product policy (energy, chemicals and resource efficiency).

We adopted a systematic approach using a ‘tree’ of options – namely:

1. roughly which thematic area – energy, chemicals, resource efficiency does the law address
2. roughly which product sectors – electronics, other household products such as textiles and furniture, food, transport and building or building products are covered by the scope
3. what is the status of three different policy tools – minimum requirements (for product design), obligatory grading/labelling requirements and voluntary better-than-minimum criteria

From this ‘tree analysis’ a preliminary and very rough gap analysis is constructed that gives some idea as to the priority areas that any new policy action on ecodesign could fill.

#### *Energy and Greenhouse gases*

In this thematic area we see the highest number of legal initiatives, linked to the high political priority given to reduction in energy consumption and associated reductions in GHG emissions.

Regulations/directives that specifically address this thematic area include:

- the ecodesign for energy using products (EuP) directive (including already existing implementing measures on boilers, ballast, fridges and freezers)
- the energy labelling for household appliances regulation
- the energy star (voluntary) for office appliances
- the European ecolabel – including energy criteria on 8 appliances and heat pumps
- minimum standards and certification of energy performance of buildings

Overall the product sectors covered are minimum (design) requirements on the electrical and electronic appliances (EuP directive) – i.e. all energy using products except vehicles. Labelling requirements (obligatory) on household appliances (8 categories) and new and renovated buildings exist. Voluntary criteria (EU ecolabel and the energy star) exist on 8 household appliances, one ‘building’ appliance (heat pumps) and several office appliances. Computers are the one product that has existing voluntary criteria (EU ecolabel and energy star) and future possible minimum criteria (EuP). There is also currently a political intention of the European Commission to establish minimum requirements on car emissions.

So far there are no energetic minimum requirements, obligatory labels or voluntary criteria on other household products such as textiles and furniture or on food and trans-

port other than cars. It is not currently possible to set obligatory labels for appliances other than the 8 covered by the appliances labelling directive.

The EU ecolabel regulation has however the freedom to set better-than-minimum criteria on any appliances and any products except food products. A revised proposal is due in February 2008. The revision could potentially be used to expand it to food products, although that is not a priority of the European Commission at this moment.

In summary the minimum requirements are missing on all *non*-electronic and energy consuming appliances and would probably not be added till July 2010 when the EuP is due for revision (if this was the policy tool chosen). The obligatory labelling (grading) requirements is missing on the majority of products and the voluntary criteria is missing on many energy using and non-energy using products but the policy tool to set these exists and is under revision.

Overall however – concerning energy it could be observed that the policy tools by and large exist and either need to be created for non-energy using products – presumably for those that have relevant impacts in their production/use concerning energy – or the policy tools could be broadened in scope (obligatory labelling similar to the energy labelling appliances directive).

### *Chemicals*

Regulations/directives that specifically address (or potentially address) this thematic area include:

- RoHS, covering electrical and electronic appliances
- Substance restrictions in waste legislation such as the batteries directive, end-of-life vehicles legislation and packaging and packaging waste legislation
- REACH covering all chemical substances and mixtures and use in products
- The Market Restrictions directive
- Product safety daughter directives – such as the Toys directive
- The Construction products directive (covering many

construction materials and products – from gypsum to safety systems)

- EuP directive on all energy using products except vehicles
- WEEE directive through individual producer responsibility for the end-of-life costs of treating WEEE

Overall the product sectors covered are minimum (design) requirements on electrical and electronic appliances via RoHS (currently under review for later revision of the scope of substances) and batteries, cars and packaging via the waste legislation. There is a potential for future design requirements on all energy using products. Given the priority focus and urgency to establish minimum requirements on energy for EuP products it is however not expected that the implementing measures on individual products will actually set any requirements concerning chemicals – at least not in the first round (2008-2010).

For building products, requirements on chemicals content could possibly emerge from the coming revision of the Construction Product Directive (CPD). At present, the directive merely covers health and environmental aspects during use of these products, which means that all aspects of chemicals during production, transport and the waste phase are left out. A number of national environmental authorities have jointly suggested that the scope of the law should be extended to the whole life cycle, and to integrate issues such as climate change, chemicals use and waste treatment. Sweden has suggested a similar approach for broadening the scope on chemicals, and also wants a minimum requirement that information about dangerous ingredients should be provided when a product is marketed.

Housing is one of the priority areas defined by the EIPRO study, and it would seem logical that CPD is developed to include eco-design requirements on products. However given the approach taken so far by COM, it seems unlikely that any radical changes will be made during the revision. CPD also has the potential disadvantage of being heavily

dependant on the New Approach methodology for setting its standards.

The Toys directive, according to some interviewees, has so far failed to properly address design requirements in toys concerning chemicals. That may change during the ongoing revision however.

REACH introduces new requirements, both through its authorisation and restriction procedures. It is still unclear though, to what degree this will actually affect product design. The current Market Restrictions Directive (76/769/EEC) which up to now has been a vehicle for introducing limitations to chemicals in products, will cease to exist in 2008 as its role is taken over by the restriction process in REACH. The new procedure provides (at least in theory) the possibility to restrict dangerous chemicals in both EU manufactured and imported products, effectively creating 'design' requirements. However, if a substance is subject to the authorization procedure, it will not be possible to subject the same substance to restriction initiatives under REACH. This seems to create a quite peculiar situation where a "competition" could take place between under what chapter of REACH a substance is treated.

REACH will effectively create a form of obligatory chemicals information for all products manufactured in the EU but it would not do so for imported products. However this will not necessarily extend to a label that could be used in the same way as the energy label. There are some existing regulations that require listing of ingredients – such as cosmetics, food additives and chemical preparations with hazardous substances. However these requirements do not exist for more complex products such as electronic and electrical equipment, other energy using equipment, furniture, textiles or building products and materials or even buildings themselves.

The requirement to supply information about substances of very high concern (to the user of a product) could also have indirect design impacts. It is not clear at this moment whether this will in fact be implemented strictly for imported products and how market surveillance will be set up on

both EU manufactured and imported products concerning the substance restrictions. It may be necessary to have eco-design requirements introduced through more product oriented directives (such as EuP, the CPD or PSD daughter directives) to make the restriction procedure a reality. In which case there is a gap in the product areas of household products such as furniture, textiles, and transport. The chemical information would have to be clearly established in the essential requirements of the CPD and stakeholder balance reinforced to be able to use the CPD as a minimum requirements policy tool.

The WEEE directive and its requirement that producers bear their own products end-of-life costs can be a future driver for design. However this will require corrections in the national transposition of the producer responsibility regime (2/3 countries have transposed incorrectly or ambiguously undermining the function of the individual producer mechanism). For producer responsibility to drive design changes the economic framework surrounding end-of-life treatment also needs to be correct such that treating more hazardous substances is more expensive otherwise. If this is not the case the economic signal will not push for 'designing out toxics'.

Concerning voluntary better-than-minimum criteria setting the EU ecolabel covers substance restrictions in almost all its product categories, and has the theoretical scope to cover any products except food. However in this area it has tended to not go beyond the legal requirements of the EU. An example of this is recent discussions on PVC in furniture, brominated flame retardants in electronics and potentially allergy causing perfumes in detergents during revisions of different product Ecolabel criteria.

Overall therefore – concerning chemicals – it could be observed that uncertainty exists concerning the setting of minimum requirements or restrictions of chemicals in products. Some uncertainty also exists as to whether the producer responsibility mechanism (only covering electrical and electronic appliances) will survive incorrect transpo-

sition. There is very little obligatory labelling outside of food sector and chemical products (such as cosmetics and paints). The voluntary better-than-minimum criteria setting is not so far delivering better than minimum, and it is not clear whether this will be improved by the revision of the EU Ecolabel regulation.

#### *Resource efficiency*

There are no regulations/directives that specifically address this thematic area. Indirectly, the waste legislation promotes producer responsibility (or co-responsibility) to different extents for the end-of-life impacts of their products. The waste legislation has not so far however created direct requirements for the use of more or less or certain priority materials or the re-use of certain material (through recycled content quota for example).

There is some evidence of changes in packaging materials and composition due to the global recycling targets that need to be met (some packaging materials and material combinations are more easy to recycle). Light-weight materials that has been used as an example of less use of resources (materials) driven by the packing recycling targets being weight based targets.

Concerning packaging there are also harmonised EU standards on aspects such as 'compostability' which could be seen as criteria for resource efficiency as they enable recycling and reuse of the material in the natural biodegradation cycle.

On certain products such as cars it is possible that the next step in the recycling targets set (95% of the car to be recycled by 2015) will force some design changes in the plastics components of cars to enable the car manufacturers to reach these targets. At the moment the plastics fraction of the car can be incinerated so its' composition is of little concern to manufacturers (except to remove certain plastics that may cause problems in incineration – e.g. PVC).

As for the chemicals the EuP directive could theoretically deliver criteria on product design linked to material efficiency – for example by requiring less use of certain mate-

rials or design for high recyclability or reuse. However, due to the priority focus on energy it is not expected that the first generation of implementing measures (IMs) will set binding requirements on resource efficiency. There is also a lack of strategic guidance on which materials/ resources should be addressed as a priority. The EU's Natural Resources Strategy is still assessing methodology and has not arrived at either a clear resource efficiency target or identified which resources need to be addressed and how (for example in which sectors/products).

No obligatory resource efficiency or material efficiency labelling tools exist at the EU level so far.

Concerning voluntary better-than-minimum labelling the EU Ecolabel has some criteria concerning resource efficiency, mostly via recycling. Products such as soil improver materials are supposed to contain a minimum content of recycled biodegradable waste and the packaging materials of some products such as detergent should be clearly labelled and not exceed a certain level relative to the weight of the product, and different plastics should be easily separated into mono-material parts. Paper based packaging often has a minimum recycled content level, electronic appliances often contain 'easy disassembly' requirements and requirements that attempt to ensure better quality recycle (eg vacuum cleaner plastics should not have metal inlays) and labelling of component materials. Electrical and electronic products and some household products like mattresses and textiles also contain some minimum durability and upgradeability requirements.

Overall therefore – concerning resource efficiency – it could be observed that no policy tool is expected to deliver direct product design minimum requirements in the near future. Indirect product requirements exist in some product sectors that have been a priority for waste management – namely cars, packaging and electronics. It is difficult to foresee design-for-resource efficiency coming from the producer responsibility mechanism as there are probably little or few 'resource scarcity' or 'resource use impact' economic signals

coming back from the end-of-life phase as yet (for example it is not yet cheaper or more profitable to design in certain materials due to the demand of certain recyclates or the impacts of treating and processing certain types of materials).

There are no obligatory labelling tools and the voluntary better-than-minimum criteria are mostly focused on plastic components, durability and packaging. In terms of scope they probably do not cover the majority of material/resource impacts of household products, and certainly do not cover the main resource use impacts of food and transport.

### 3.2 Non-legislative developments

Since this study is primarily concerned with opportunities for legislative action, we have not gone into depth assessing existing non-legislative tools, for example product or sector specific voluntary agreements. However, a few things are worth mentioning. Voluntary agreements are often presented by industry associations or individual companies as a preferable path compared to legislative action. “Gentlemen’s agreements” have been said to deliver more flexible and effective solutions to problems, and industry organisations have made a number of voluntary commitments concerning the environmental performance of their products in the past.

Recently there seems to be a shift in the way voluntary agreements are seen by decision makers. One indicator is the recent decision by CECED – the European home appliance federation – to halt its work with voluntary commitments, and instead advocate legal standard-setting as the way forward. CECED states that its voluntary commitments have led to significant results, but that they are abandoned because non-CECED members, which can act as ‘free-riders’ as they do not participate in the CECED commitments, have increased their market shares. Regulatory standards that apply to all firms are therefore preferred.

### 3.3 Action Plans

The work to create a coordinated and coherent policy for products has a long history in the EU debate. A general feeling about the Commission’s IPP strategy Communication from 2002 was that it didn’t establish any clear work program for action on product design requirements. IPP working groups that were carried out focused on theoretical discussions on product information strategies (although the working group on Product Information Needs indeed recommended that to get quality and comparable information a legislative framework would be needed) or on largely bureaucratic actions such as member state reporting formats.

The exercise on voluntary pilot projects (dialogue with industry/retailers on wooden furniture and mobile phones) produced no concrete results. The only tangible outcome from the last five years of Commission activities on IPP could be said to be the product prioritisation studies on which products would be the priority for improving environmental performance – the EIPRO and IMPRO studies – and the LCA database resource set up at the JRC. The former can be used as a basis for prioritising the focus of policy actions on product ecodesign and the latter could possibly be the basis of a future product performance data centre.

With the event of the Marrakech process<sup>4</sup>, discussions on IPP have shifted into the policy discussion on the EU contribution to the Marrakech process, and more specifically into an EU Action Plan on “Sustainable Consumption and Production” (SCP). More recently, DG Enterprise announced an initiative called Sustainable Industry Policy (SIP), which has obvious overlaps with the SCP Action Plan.

There is also some cross-over with existing action plans being implemented by DG Environment. The Environmental Technologies Action Program (ETAP) progress report<sup>5</sup> in May 2007 emphasised the need to provide resources to in-

<sup>4</sup> The UN lead Johannesburg Plan of Implementation calls for the development of a 10-year framework of programmes and plan in support of regional and national initiatives to accelerate the shift towards sustainable consumption and production.

<sup>5</sup> COM 2007 162

crease the demand for cleaner products, with focus on three or four sectors in particular. The report notes that demand (for environmental technologies) could be encouraged by providing financing for technological development of such products, but also by financing users (tax and market mechanisms). Demand could also be encouraged by information on cleaner products.

The existence of two action plans developing in parallel by two different directorates, apparently originally without coordination led the Commission to merge the two drafts into one background document that was published for public consultation in June 2007<sup>6</sup>. The two action plans, which are both to be presented in spring 2008, might also be merged into one single action plan (foreseen as likely by some Commission staff members). Since they have developed separately, and are guided by different objectives, we however describe them separately here.

#### *The SCP Action Plan*<sup>7</sup>

According to indications from DG Environment the SCP Action Plan will probably have a concrete list of actions and describe how existing policy instruments link together. The Plan will cover three main themes – *Leaner Production*, *Better Products* and *Consumption*.

- Leaner Production to ensure processes need to be compatible with environmental and social constraints and concerns
- Better Products – how do we design, use and dispose of the products we use every day
- Consumption – the patterns and behaviour in using the products available to us

Initiatives concerning Better Products could include proposals on dynamic performance requirements (beyond

minimum requirements – for example using (ecolabel?) benchmarks as binding in the future), re-evaluating the standardisation system, the use of EPDs and sustainability labels, and a framework for Eco-design of products. In summary the consultation feedback gave “overall support for strengthening ecodesign approach in general, support for extending EuP to non-EuP and creating dynamic requirements for evolving product design”. The commission concluded that the message was “Use experience from EuP to base broader product policy on, let it be implemented for a while before assessing and reviewing, look at successes of EuP to help improve other product policy in future”.<sup>8</sup>

On Leaner Production the main tool that stands out – apart from existing tools such as IPPC and EMAS is the possibility of establishing specific targets on resource efficiency. The 3% resource productivity target is mentioned in the consultation questionnaire. On Consumption the initiatives are less concrete, beyond the revision of the EU ecolabel scheme. Possible actions include agreements with big retailers, reconsidering VAT reductions (for example on EU top runner/ecolabelled products), evaluating instruments for tackling misleading advertising, communication and education campaigns and taking some initiative (probably in a separate Commission policy proposal) on greening Public Procurement.

On GPP there is clear pressure for the Commission to take some steps towards making it mandatory, possibly through EU level or National level target setting. The Commission does not seem entirely convinced however.

#### *The Sustainable Industry Action Plan (SIP)*

DG Enterprise has for some time been engaged in elaborating a strategy called “Greening Industry”. In June 2007, they announced their intention to present an action plan,

<sup>6</sup> <http://ec.europa.eu/enterprise/environment/sip.pdf> (Consultation ended 23 September 2007)

<sup>7</sup> Information here is based on presentations given by DG ENV at EEB workshop 13 Sept. and SCP stakeholder feedback event 2nd Oct. 2007

<sup>8</sup> Verbal communication by Herbert Aichinger, DG Environment, EU Commission stakeholder feedback meeting on SCP consultation results, 2 October 2007

now renamed the Sustainable Industry Policy (SIP). When asked in June about the content, DG ENTR responded that the intention was to cover products and services, using a sector approach. Regarding products, it would primarily focus on expansion of the EuP directive or possibly creation of a mirror directive on end-use products.

The scope of the SIP plan seemed to be limited to current Energy using Products (ie those in the scope of the EuP directive) plus cars and would focus primarily on energy use. The motivation for the energy focus was the political urgency of this issue and the need for a fast-track process.

There is a lot of interest in ‘EU Top Runner’ (also called dynamic benchmarking or lead performance levels). DG ENTR would like to see a link between green public and private procurement and lead performance levels or benchmarks. There is a possible role for integrating an additional dynamic benchmarking mechanism into the revision of the energy label. Benchmarks would have timeframes by when they became obligatory. However, if necessary timelines could be flexible.

Other items of the action plan relevant to products would be to foster green public and private procurement so that labelling schemes like the European energy label on household appliances are used ambitiously (i.e. demanding A++). Possibly through an enhanced cooperation mechanism of interested member states, for example agreeing among themselves to aim for 40 per cent public procurement based on the top levels of the labelling spectrum and possibly the future EU top runner or ‘lead performance’ benchmarks (see chapter 5 for more details on the concept of ‘lead performance’ benchmarks).

#### *The joint SCP/SIP consultation document*

From July to September a joint background document to the action plans (SCP and SIP) was subject to an online

consultation. It defined five ‘key challenges’: Leveraging innovation, creating a dynamic internal market for better performing products, increasing the resource efficiency of production, changing consumption behaviours, and exploiting first mover advantages and levelling the playing field for industry worldwide. The environmental issues given special emphasis are climate change and use of natural resources, energy and materials. The text states that phasing out hazardous substances and endangered materials from production and processes “could also” be addressed in a plan (indicating a lower prioritisation of this objective). The document listed the following “main actions under consideration”<sup>9</sup>:

- Lead market Initiative
- Networking (innovation actors, research, industry)
- Dynamic Performance Requirements
- Environmental product declarations, sustainability labels and data collection
- Enhanced use of eco-design instruments at EU level
- Standardisation
- Resource and material efficiency targets
- Reinforcement of eco-innovation and environmental technologies
- Target-setting for eco-innovation and the uptake of environmental technologies
- Review of eco-management legislation, etc (EMAS, IPPC)
- SMEs
- Environmental Performance Agreements with retailers
- Enhanced use of market based instruments
- Differentiation of VAT rates
- Revision of the Eco-label regulation
- Misleading advertising/false environmental claims
- Green Procurement
- Consumer information/education/training campaigns

<sup>9</sup> Headings somewhat shortened here

- Adapt EU policies to fostering energy and resource efficiency
- Global Sectorial Approaches
- Strengthened international cooperation on SCP

We have not analysed the background document in detail here. However, it is worth mentioning the absence of the term ‘Producer Responsibility or any tool that would deal with this concept in the document. This is in strong contrast to the Council’s conclusions on the Natural Resource Strategy published recently<sup>10</sup> (the same conclusions that the Commission claims is its mandate to take a lot of the actions it foresees for the SCP AP e.g. on GPP). Note – these Council Conclusions also made reference to the previous Council Conclusions on the Sustainable Development Strategy that has a specific chapter on SCP.

The absence of recognition of the importance of Producer Responsibility is also in contrast to recent Council first reading position on the Waste Framework directive (see annex 3) and the ongoing debate on individual producer responsibility in the review of the WEEE directive.

DG Environment presented an overview on the results of the online consultation of the background document at an informal stakeholder feedback meeting in Brussels on the 2<sup>nd</sup> of October. An overview of the presented feedback is presented in Annex 4.

The two action plans, which both are projected to be presented in spring 2008, are likely to be presented together, possibly as a “package”<sup>11</sup> or merged into one document. Also according to COM, the package might also include an Ecolabel and EMAS review and GPP communication.<sup>12</sup>

### 3.4 International developments

A number of international processes are also influencing the eco-design discussion in the EU, most notably the UNEP-led Marrakech process. However, whilst the EU’s involvement in these could be both proactive (aiming at spreading the EU’s position to a wider arena) or reactive (“bringing home” visions and strategies from ongoing international processes) the general expectation is that the EU should take a proactive leadership role. Previous attempts by the European Commission to limit its actions to a mere documentation of existing actions were criticised by the NGOs and some member states.<sup>13</sup>

A couple of examples of relevant policy processes relating to the EU’s interaction with other regions are FLEGT and SAICM:

#### FLEGT<sup>14</sup>

The EU Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT), 2003, among other issues, addresses illegal logging and puts in place steps to tackle this issue. It is currently aimed at illegal timber, with the main focus being a process that permits the EU or member states to make voluntary partnerships with countries that produce timber. If a voluntary partnership is made, then a process is set up to verify the legality of timber, permitting EU countries to reject illegal timber. i.e. countries enter the processes voluntarily, but once in it there are legal controls (but also opportunities for funding). The Commission’s action plan (published in 2003) goes further than this though, suggesting the possibility of future legislation banning the sale of all illegal timber, including from countries

<sup>10</sup> 23rd October 2006

<sup>11</sup> Speech by Klaus Kogler, DG ENV at Stakeholder meeting 2 Oct, Brussels

<sup>12</sup> COM commentary at IPP regular meeting, 2 Oct

<sup>13</sup> The European Stakeholder Meeting on Sustainable Consumption and Production held in Ostend, Belgium, November 24–26 2004

<sup>14</sup> Parts of the summary are taken from the FoE position paper on the SCP action plan September 2007

outside the voluntary partnerships. However, such legislation has not yet been proposed by the Commission.

This process is an interesting step towards EU controls on the extraction of natural resources from outside the EU. It has a clear link through to governance (e.g. how to define and verify legality), and it is binding if the country concerned decides to enter the process, which will give them the benefit of more access to EU funding – and, importantly, the EU market (though there is no block on market access where countries have not joined a voluntary partnership).

### **SAICM**

The Strategic Approach to International Chemicals Management (SAICM) is a process initiated by the UNCED Johannesburg meeting in 2002. It aims to increase the control of chemicals in a global context. A Global Plan of Action was agreed in 2006, which sets out a number of actions to be carried out nationally and internationally to combat chemical pollution. SAICM has no binding or enforcement status, but gives a political context to push for actions on the international level. For instance, stronger information requirements about toxic chemicals in the international trade of products could be one objective for EU's work within SAICM. SAICM could also be a vehicle for EU to push for international measures to meet the requirements set out in REACH.

## 4. Strategies/Scenarios investigated

The possible strategies and ways forward that were the initial focus of the investigation started from a single enquiry that focused more on the different models of Producer Responsibility legislation. However as the scoping exercise evolved some alternative policy tools/strategic options and elements emerged as important parts of the way forward. In particular the role of having non-energy (non-GHG) related targets and subsequently the concept of an EU Top Runner type tool. Thus the following options emerged as summarising the possible strategies:

### *A. Expanding scope and more effective implementation of EuP*

This option means basically how to make more use of existing eco-design instruments. Discussion circled around better implementation and possibilities to establish progressive criteria to drive the development, e.g. by focusing more on non-energy criteria (such as resource efficiency, toxicology criteria). A gradual expansion of scope by adding certain non-energy using products, for instance energy saving products, possibly in the form of a mirror directive, was also discussed.

### *B. Creating a General legislative framework for Eco-Design*

Different models of producer responsibility (responsibility implementing measures or a general responsibility for all products and aspects – an EEB model (see box on next page) – or responsibility only in case an EU implementing measure exists setting minimum requirements – EuP model )

Several interviewees brought up the concept of introducing legislation based on experiences from the Top Runner Programme in Japan. Such an EU regime would supposedly use legislation to ‘chase’ dynamic benchmarking; a best practice benchmark would be identified and a time gap would be negotiated by when all players have to reach it as it will become a minimum by law. It was discussed how such a system would be designed in EU terms. In the following chapters, we will call this a Frontrunner benchmarking mechanism.

### *C. Making better use of other legislative instruments*

Under this item possibilities were discussed how to make better use of, and create better synergies between, already existing legislation with relevance to eco-design, such as: Waste and producer responsibility legislation, recycling legislation and the waste framework directive under revision. Other aspects dealt with possibilities to expand e.g. the RoHS directive to other product sectors. Another legislation discussed that could drive product eco-design forward was the REACH regulation.

The points A-C are overlapping in scope, but give a conceptual division of actions. Based on the options, the interviewees were asked about i) the most desirable way(s) forward, disregarding political/administrative obstacles that could hinder accomplishment, and ii) the most administratively/politically feasible way forward. A second part of the interviews related to the use of environmental targets:

### *The Role of global environmental objectives or targets*

The EEB emphasised the important role of setting objectives around which the product legislation can base its work. Such objectives are critical to making a meaningful process out of the legislation and actually ensuring action is taken on individual products. Existing energy targets (Kyoto and the EU’s energy efficiency targets) are important drivers for development under the EuP directive. These targets and the subsequent work of the EU Climate Change Panel enabled a precise prioritisation of the products that needed to be addressed to deliver on the EU’s commitments for increased energy efficiency for example.

## The EEB proposal for an Environmentally Sound Products Directive

The main objectives of the EEB proposal for a directive on Environmentally Sound Products<sup>1</sup> would be to establish a framework legislation that would:

1. Lay down the principal that all consumer products should be environmentally sound.  
*(Note: this is the element of the proposal that we have assumed as creating the comprehensive producer responsabilisation. It is this element that would distinguish the EEB proposal from an EuP type of legislation, whereby producer liability or responsibility for eco-design aspects, or environmental soundness, is only effectively created once an Implementing measure has been adopted at EU level).*
2. Make the integrated methodology<sup>2</sup> and lifecycle approach to environmental soundness a general requirement of product design and manufacture.
3. Establish general 'background' requirements for environmentally sound products in the absence of specific requirements. Namely requiring producers to publish ecological profiles of their products and future improvements to be reached and regularly evaluate progress.
4. Foresee the establishment of specific minimum criteria (minimum requirements) for environmentally sound products and deny market access to products not meeting the requirements and /or producers who are not disclosing information on the significant environmental impacts of their products.
5. Require producers to supply life-cycle data on their products and foresee standardisation of the reporting of this data.

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<sup>1</sup> Full texts available on EEB website: [http://www.eeb.org/activities/product\\_policy/EEB-working-document-Explanatory-memorandum-on-Sound-Products-June2004.pdf](http://www.eeb.org/activities/product_policy/EEB-working-document-Explanatory-memorandum-on-Sound-Products-June2004.pdf) and here [http://www.eeb.org/activities/product\\_policy/Simulation-of-Sound-Products-directive-edited-June2004.pdf](http://www.eeb.org/activities/product_policy/Simulation-of-Sound-Products-directive-edited-June2004.pdf)

<sup>2</sup> i.e.integrating all the environmental aspects (water, air, materials, substances etc).

## 5. Findings and opportunities

Based on the interviews conducted and the two meetings where preliminary findings were discussed – the EEB NGO workshop in Brussels on the 13 September 2007 and the SSNC stakeholder roundtable in Sweden on the 22 October 2007 – the following is a summary of some of the key findings and observations of the current political landscape and the policy tools and opportunities that are ‘on the table’.

### 5.1 Findings

The information collected shows certain aspects and tools are getting less attention, or seem to be of a lower priority and some tools and aspects are getting widespread attention.

#### Issues getting less attention

##### *The “General Product Safety Directive” (GPSD) approach and the EEB model*

With some exceptions, interviewees did not see the methodology applied in the product safety directive as a viable way forward in the field of eco-design. Arguments against this approach included; that the process is too reactive (not proactive); that the current template of the GPSD does not make use of objectives that can motivate the setting of criteria towards achieving these objectives; that experts dealing with safety do not have sufficient competence to deal with environmental issues, and that – contrary to product safety issues – the definitions and boundaries for what can should be considered “environmental safe” is quite vague.

The EEB simulation of an umbrella style “environmentally sound product” directive based on a similar conceptual structure to the GPSD was seen as having weaknesses on the same ground, even though the proposal ‘improves’

on the GPSD model (adds clear objectives and foresees EuP style Implementing Measures instead of only setting essential requirements to then be specified using harmonised standards). There was some recognition that such a comprehensive umbrella model would bring some benefits (setting a comprehensive framework that foresee a number of functions other than just setting minimum requirements – information requirements and information standardisation, synergistic coordination between existing tools, providing a mechanism for member states to demand action on a new product if they have new evidence that would warrant it etc) but in general there was little understanding/awareness among respondents concerning the EEB initiative. It was also pointed out that such a comprehensive policy was not the way that the EC traditionally approached environmental legislation, tending to have instead a more piecemeal or individual sector focused approaches. There was also some scepticism as to the capacity of EU policies to create effective coordination between different tools given poor performance of efforts to do so in the past (eg attempts to link innovation policy and product policy were apparently not a success).

#### *Producer Responsibility*

With the exception of some industry respondents from sectors addressed by the WEEE directive and its individual producer responsibility requirements, very few respondents mentioned the need or possibility of using producer responsibility<sup>15</sup> tools. Those that did mention it saw it as playing more of a role in the end-of-life phase (i.e. producer responsibility for more types of waste), i.e. not as a generic eco-design driver for other life phases.

<sup>15</sup> By producer responsibility we mean ... a policy principle to promote total life cycle environmental improvements of product systems by extending the responsibilities of the manufacturer of the product to various parts of the product’s life cycle, and especially to the take-back, recovery and final disposal of the product (Lindhqvist, 2000).

### *Information requirements*

Given the authors' perception that information about product performance is important as a driver for the establishment of binding requirements or voluntary criteria on products, and given that without sufficient information influx on products it becomes difficult to do anything, it was somewhat surprising to see that this aspect was not raised more by interviewees. Especially given the situation that the area of product information requirements was the only legislative request that came out of the IPP WG processes.<sup>16</sup> REACH can be taken as an example of the importance given to the potential impact of information requirements: although the regulation for most producers is restricted to few data requirements, it is driving producers to take broader actions, and take increased responsibility for their products.

Industry did express fears that information will be requested without clear intentions for its use, and that this will just generate work for industry without delivering benefits.

### **Issues getting more attention**

#### *Growing readiness to introduce new legislative elements?*

There is increasing acceptance among key stakeholders to have new legislative elements introduced in the product eco-design area. What these new elements would entail is still very open. The discussion is not mature enough to evaluate what kind of producer responsibility model would be supported or not.

The serious consideration being given to the possibility of introducing new legislative measures by the EU Commission is somewhat contrasted by the lack of clear voices of encouragement for a legislative measure from other actors, who seem to be more inclined towards instru-

ments based on "softer" approaches, such as information gathering and indirect mechanisms such as public procurement. This could however simply be because the Commission has not been very clear yet in its communication about the possibility of a legislative proposal. The various stakeholders positions and discussions are still reflecting the previous reality whereby the Commission was showing little appetite for legislative action instead concentrating on non-legislative consultative and research actions (as illustrated by the implementation steps taken under the IPP strategy – e.g. working groups on strategies, reporting formats, indicators and LC data collection activities).

However, regarding the 'very soft' approaches such as sectorial or product related voluntary agreements there appears to be some loss of credibility as an instrument of EU level policy. Despite the mechanism whereby the EC may sanction industry proposed voluntary agreements as part of the process of setting EuP implementing measures none have been put forward by any industry sector so far. Some sectors are in fact pulling out of existing initiatives – for example CECED (the European home appliances sector federation) recently declared its intentions to stop its own existing voluntary agreements on energy efficiency<sup>17</sup>. There is also widespread criticism of the inability of the car industry to be on track to meeting its voluntary agreed objective of reducing CO2 emissions to an average of 140 grams per km by 2008 resulting in intentions for legislative proposals to the same effect from the European Commission.

#### *Linking up current product policy tools*

Some interviewees emphasised the importance of a new initiative having a linking role between the different policy tools e.g. making use of information and/or criteria from different policy tools (e.g. criteria from existing ecolabels

<sup>16</sup> see [http://ec.europa.eu/environment/ipp/pdf/20070115\\_report.pdf](http://ec.europa.eu/environment/ipp/pdf/20070115_report.pdf)

<sup>17</sup> Top Executives Discontinue Voluntary Energy Efficiency Agreements for Large Appliances. CECED Press release 21 March 2007

to be used in green public procurement or for setting top runner criteria for example). Hence it is clear that there is awareness of the possibility of a number of parallel and inter-linked initiatives and especially those involving Ecolabel criteria, greening of procurement and top runner innovation stimulating criteria.

#### *Two visions – expansion of EuP or new legislation*

Some actors foresee an eventual expansion of the current Ecodesign for Energy Using Products Directive (EuP) directive methodology, by adding energy saving products (for instance insulation products). Concerning expansion of the current EuP directive (i.e. revision of its scope to other products than energy using products) there was concern that this would delay the implementation of setting the energy efficiency requirements.

Some interviewees saw ‘expansion’ was more likely through a new directive that mirrors the EuP one. However several respondents noted that such a development is hampered by the fact that the existing EuP directive is still new and that no implementing measures have yet been adopted and there are some concerns about broadening the work before any results have been obtained.

Several interviewees mentioned that it would be difficult to break away completely from the EuP model (for example to a broader framework – e.g. more along the line of the EEB umbrella directive model) for a variety of reasons, among which they named the EuP’s pragmatism, the fact that it can assumed to be a (partly) proven model, its focused scope to one sector of products – EEE – (instead of a broad all-encompassing scope that a broader framework might entail) is the traditional policy development approach of the Commission (i.e. piecemeal).

#### *Some key ingredients of new legislation*

Many comments focused instead on the mechanisms an eventual new legislative tool should contain rather than whether it should be a revision of EuP or sister directive or

broader framework. Examples of important mechanisms that were identified were:

- a systematic assessment process i.e. periodical ‘scanning’ of products on the market for which it would be necessary to set criteria, concerning a particular environmental aspect – e.g. water efficiency, chemicals
- the setting of minimum requirements
- compliance checking mechanisms (requiring resources from member states)
- setting of top runner levels or lead performance levels to drive innovation towards more ambitious efficiency, beyond minimum requirements
- possibility of framework that allows national authorities to request action from EU level on a particular product and impact identified by studies
- desirable to capture the products defined to give significant environmental burden, i.e. those that were defined by the EIPRO study. In particular dairy products and meat need to be dealt with.
- it is necessary to limit the scope to a number of product sectors

#### *Lack of innovation drivers*

There is frequently discussion about how to go beyond the delivery of (presumed to be) modest minimum requirements which are effectively aimed at only getting rid of the worst performing products and get into the realm of actually pushing innovation (possibly hence the support for top-runner style “dynamic benchmarks” lead performance criteria).

The concept of “dynamic benchmarking” (also called the setting of “lead performance levels”) has influential proponents, both inside the Commission and among member states. The concept is interpreted as a system where benchmarks are set based on the best performance within a product segment, making this level obligatory for all producers after a certain time. Benchmarks could be inspired or directly linked to eco labelling criteria. They could be set through completely new legislation or developed as an add-

on mechanism of the energy labelling directive.

Many refer to the Japanese “Top runner Programme” as the inspiration for such a system in EU. However, the knowledge about how this system is actually constructed, and its results, is weak. Also unclear is how applicable the Japanese experiences are to the EU situation.

The momentum to introduce an EU “Top Runner” model comes partially from German interest. Two different models have been raised so far:

- Adding an additional classification to the energy label that would identify the ‘lead performance level’ and setting this as a dynamic benchmark, setting a date by which it would become obligatory by law
- A new piece of legislation that would work on non-energy benchmarking as well. Possibly lifting criteria from existing eco-labels, or developing them where they do not exist e.g. on water efficiency or material efficiency.

Both would intend to make use of Public Procurement commitments (e.g. national targets of X% GPP – that could use these benchmarks as a basis for criteria defining what GPP should mean for a particular product. Both could be used to apply fiscal and financial incentives – VAT reductions, subsidies etc.

#### *Future of EU ecolabelling scheme.*

It is notable that there was little recognition of the EU Ecolabel as an innovation driver (for example in the context of the need for a top runner type mechanism. The focus on the Ecolabel scheme was mostly its potential role in providing criteria that could be used by GPP national initiatives. One interviewee saw a possibility to adapt the EU Ecolabel criteria (alongside use of other national ecolabelling criteria) to set top runner type requirements. There was not

much concern about any risks to the Ecolabel scheme from the development of new initiatives such as Top runner style tools. Some of the industry interviewees were more interested in B2B ecolabelling.

#### *Predominance of Energy and climate issues*

The predominance of greenhouse gas emissions reductions and therefore energy efficient products as an overriding priority driving the implementation of the EuP directive was noted by many interviewees and confirmed in the interviews with the relevant Commission staff. As a result many stakeholders recognised that there is clearly a need for something independent on Ecodesign concerning non-energy issues and a general trend of scepticism that the implementation of the EuP directive could be significantly re-focused to address equally non-energy issues e.g. water or resource efficiency.

Recent political scandals around toxic chemicals in toys and textiles imported from China have however raised concern for further measures on toxic chemicals in products. The events have for instance influenced the Commission to suggest a ban of CMR substances through the toys directive.

#### *Environmental objective setting – resource targets on the table*

Whilst there is in general low preparedness to introduce and apply environmental objectives beyond existing energy targets in legislation. The Ljubljana workshop<sup>18</sup> conclusions reconfirmed a political push for setting further resource targets (i.e. beyond those in the Natural Resource Thematic Strategy). While we noted some interest to set targets for certain resource uses (such as water, tropical timber, and fish stocks) no attempts has been made to concretize these targets. For other targets, such as use of toxic substances,

<sup>18</sup> EU workshop on Action towards SCP in Europe, held 27-29 September 2007

the discussions seem even more immature. We noted that the EU Commission is also apparently investigating how the footprint methodology could be improved to work as a meta-indicator.

#### *Concerns over the impacts of administrative ownership in the Commission*

On issues of administrative ownership several interviewees mentioned that it would not be a good idea to let DGs other than DG Environment have the lead on a general ecodesign framework due to a perceived lack of political prioritisation of the environmental priorities, beyond perhaps, energy. This was backed up to a certain extent by the clear absence of ideas from DGs other than DG Environment as to how to develop eco-design requirement setting on the non-energy issues (note: some other DGs did see a role for benchmarking on non-energy issues).

#### *Concern over "New Approach" implications*

There is some concern about the implications of the Commission's latest proposal (currently in first reading in the European Parliament) to establish the New Approach as a default approach in product policy (ie the approach that relies heavily on standards set by private standardisation bodies). This could theoretically limit the possibility for further EuP style legislation (i.e. legislative measures on each product setting minimum requirements).

#### *International and global perspectives*

For several interviewees WTO objections on ecodesign criteria as barriers to trade is seen as a hurdle to setting further market access requirements on products. However there are precedents of product criteria that initially raised WTO concerns but the legislation was adopted by the EU anyway. RoHs on EEE (restriction of hazardous substances in electrical and electronic equipment) is one such example.

Concerning International activities some stakeholders (mostly coming from a chemicals background) alerted that

there are certain opportunities in the SACIM Plan of Action that could be used to push both EU initiatives and global initiatives e.g. better information on products in international trade in general.

Other NGOs such as FoE suggested that the FLEGT system of mixed Voluntary/regulative Partnership Agreements on Forest Products could be expanded to other products (especially 'highly destructive commodities' including unsustainably produced agro-fuels, fossil fuels, meat and animal feed). However, they also pointed out the fact that new legislation at the EU level to complement FLEGT Partnership Agreements is necessary (i.e. to completely exclude illegal timber from entering the European market coupled with urgent action to establish mandatory traceability labelling for timber products).

## **5.2 Opportunities**

Based on the above findings and observations, we see opportunities for further work in the following areas:

### *1. Pushing for the creation of new (framework) legislation on product eco-design*

The Commission's forthcoming action plan(s) on SCP/SIP is likely to include wording on preparation of an eco-design framework "concept". Whether this will result in a proposal for a new legislative framework, or merely revise and adapt existing laws, it is still unclear. However, our suspicion is that the Commission could be persuaded to continue with its work on new legislative elements and interviews confirmed that there is some member state interest, although this interest varies considerably as to the precise aim of the legislation. Much will depend on the positions taken by the rest of the member states and it would probably help to see a stronger discussion among member states on if and what kind of legislation they would like to see.

Likewise, if the Commission is seriously considering such legislation, then this is the right time for it to come with proactive and concrete suggestions on how to design such

legislation, how comprehensive it should be and possibly even how to address the specific products prioritised by the EIPRO study – for example meat and dairy.

#### *2. Use of gap analysis to define new areas for measures.*

Comparison of the maturity (variety of types of political instruments – i.e. just minimum requirements or also voluntary and binding benchmarks and dynamic tools) and scope of legislation in some sectors – such as electrical and electronic equipment with other product sectors shows the gaps in existing product policies. The gap analysis done in this report is of a very preliminary and superficial nature. A much deeper and more comprehensive analysis could build a strong argument for well focused product legislation. This could be coupled to active use of the EIPRO conclusions to define priority areas for new legislative and other measures. The gap analysis could also focus on the lack of innovation drivers (as opposed to minimum requirements ‘getting rid of the worst products’) in the “EU tool box” and look specifically at the coverage of different product segments.

#### *3. Proposing specific parameters for building a “lead performance” or “dynamic benchmarking system”*

There is considerable interest in a dynamic or lead performance benchmarking system along the lines of the Japanese top runner approach to push innovation beyond minimum requirements. The first EuP working document (on fluorescent lamps) is now published. This document identifies some ‘best benchmarks’, although no mechanism to make express use of these benchmarks is provided. Given the high level of interest in this concept there is an opportunity and need to define the parameters of what such a “lead performance benchmarking system” could look like in an EU context. This could help the discussion on its pros and cons to become more concrete. It is also to provide an early warning for any problems such a system could lead to – e.g. duplication of existing tools e.g. EU Ecolabel, distraction from the necessity to get rid of the worst products (minimum requirements).

#### *4. Making use of the EU Ecolabel regulation revision*

There would appear to be a general perception that the EU Ecolabel has not had the impact it should or could have. However, given a revised proposal of the regulation is expected spring 2008 alongside the presentation of the SCP action plan there is theoretically an opportunity to add top runner mechanisms to the Ecolabel Regulation (i.e. making voluntary criteria binding after a period of time) or adapt the regulation to specifically generated criteria for GPP. In the case of adapting the Ecolabel Regulation to perform Top runner functions, developing a set of parameters that would safeguard the EU Ecolabel’s other ‘voluntary lead performance functions’, or at least the ambition level of the Ecolabel criteria would be useful. These would predictably come under increased pressure to be less ambitious if it is clear that they will turn into binding requirements after a certain period of time. The EU Ecolabel faces the same pressure should it be clearly used for setting GPP criteria.

#### *5. Making use of political momentum caused by the “Chinese toxic toys” scandals*

The current political scandals around toxic chemicals in toys and textiles imported from China (most recently forcing manufacturer Mattel to product withdrawals) could provide political momentum for further steps on EU restrictions and enforcement concerning product safety. The events have influenced the Commission to suggest a ban of CMR substances through the toys directive. The establishment of an enforcement agency seems to be an achievable goal. It could also create a discussion on the necessity for the expansion of RoHS – EEE type restrictions on other products such as textiles.

#### *6. Exploring the ‘necessity to have product information’ avenue*

There is already some thinking going on about how to increase the information available to consumers on products, for example the KEMI (SE) is developing research in this

area. At the same time the EC IPP Working group on Product Information Strategies specifically called for stronger action in this area. There could be some further assessment of different legislative approaches – REACH, Norwegian right to information model, cosmetics directives among others.

#### *7. Assessment of the delivery of the IPP strategy to date*

Due to the focus on a ‘new’ policy process the Marrakech process and the SCP action plan the delivery (or lack of it) of the IPP strategy implementation has been rather forgotten. An assessment of stakeholders and authorities opinions on this front would perhaps help to provide clear political momentum for some further policy actions

#### *8. Investigating and overviewing “Best available legislation” internationally*

When acting for strengthened legislation, proven efficiency of legislation from other countries can be a very valuable tool. By doing research on, and compare, existing legislation, it might be possible to point out “best available legislation”. (Compare to concept of “Best Available Technology”) A comparison between chemical laws in US, Canada and the EU has e.g. been conducted by the NGO Environmental Defence in US. The report<sup>19</sup> can serve as an inspiration for an analysis into the field of eco-design legislation. Exercises of this nature have been done in the consultation leading up to the revision of the EU Ecolabel Regulation, but we are not aware of a similar targeted EU exercise on product eco-design legislation.

#### *9. Commission Communication on Resource Targets*

If the logic that any new initiative to ‘force products to go green’ will only work with a framework of targets on resource efficiency alongside hazardous chemicals priorities and energy efficiency priorities then giving evidence based input to the Commissions work on a possible new Communication on Resource targets is an important opportunity.

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<sup>19</sup> Denison, R: “Not That Innocent – a comparative analysis of Canadian, European union and United States policies on industrial chemicals”; Environmental Defence, April 2007

# Annex 1: Questionnaire

The points A-C below are overlapping in scope, but give a conceptual division of actions. Based on the options, what are i) the most desirable way(s) forward, disregarding political/administrative obstacles that could hinder accomplishment, and ii) the most administratively/politically feasible way forward?

*A. Expanding scope and effective implementation of EuP (expanding use of 'existing eco-design instruments')*

- Making sure progressive criteria are established to drive the development (just implementing what we have)
- Adding more focus on non-energy criteria (in particular resource efficiency, toxicology criteria)
- Adding energy saving products (requires a mirror directive?)
- Adding non-energy using products (mirror directive)

*B. Creating a General legislative framework for Eco-Design*

- The EEB proposal for an Environmentally Sound Product Directive
- Different models of producer responsibility (responsibility just for implementing measures or a general responsibility for all products and aspects)
- Environmental target setting – to frame/drive non-energy criteria setting and product prioritisation
- Possible use of “dynamic benchmarking” [“Lead performance benchmarking”, an EU version of “Top Runner mechanism”]

*C. Making better use of other legislative instruments*

- Waste and producer responsibility – Waste stream recycling legislation / Waste Framework Directive
- RoHS, IPR, etc – expanding model to other product sectors
- Other legislation that could drive the development forward (e.g. REACH, Construction Products Directive)?

Use of environmental targets: Existing energy targets (Kyoto and EU's energy efficiency targets) are important drivers for development under the EuP directive. However, there is a lack of similar clear objectives for other environmental issues, such as resource use and toxicity.

- How can new and existing environmental objectives be established to drive the setting of minimum requirements?
- Which targets can be used for non-energy objectives?
- How can targets be integrated into a new framework directive?

## Annex 2: List of interviewees

### *EU Commission*

Anne France Woestyn, Bettina Lorz, DG Environment  
Pierre Henry, ETAP, DG Environment  
Daniel Deybe, DG Enterprise  
Robert Nuij, DG SANCO

### *NGOs*

Doreen Fedrigo, EEB  
Franz Fiala, Austrian Consumers Organisation  
Michael Warhurst, FoE  
Sylvia Lorek, ANPED

### *Industry*

Viktor Sundberg, Electrolux  
Danielle Freilich, Fed. of Swedish Construction  
Industries

### *Academics/Experts*

Freider Rubik, IOW, Germany  
Ludwig Kramer – EU lawyer/lecturer  
Naoko Tojo, iiee, Sweden  
Tomas Lindquist, iiee, Sweden

### *Member states*

Ulf Jaekel, MoE, Germany  
The Swedish Chemicals Agency (KEMI)  
Bengt Davidsson, Swedish EPA  
Johanna Lissinger Peitz, MoE, Sweden  
Gunilla Blomquist, MoE, Sweden  
Bob Ryder, Defra, UK

### *Round table meeting, Stockholm 22 Oct, 2007*

#### **Participants:**

Bengt Elenius, Swedish Consumer Agency  
Per Bergman, Swedish Chemicals Agency  
Gunilla Blomquist, Ministry of Environment  
Anne-Marie Johansson, Swedish Chemicals Agency  
Bengt Davidsson, Swedish EPA  
Johanna Lissinger Peitz, Ministry of Environment  
Pär Lindahl, Ministry of Enterprise, Energy and  
Communications  
Mona Blomdin Persson, Swedish Chemicals Agency  
Jan Bertoft, Swedish Consumers' Organisation  
Carl Dalhammar, The International Institute for  
Industrial Environmental Economics, Lund University  
Mikael Karlsson, Swedish Society for Nature  
Conservation  
Eva Eiderström, Swedish Society for Nature Conservation  
Emma Lindberg, Swedish Society for Nature  
Conservation  
Per Rosander, EnviroAction  
Viktor Sundberg, Electrolux  
Tomas Dahlman, Electrolux

## Annex 3: Product design relevant Directives and Regulations

### *Ecodesign of Energy Using Products (EuP) Directive*<sup>20</sup>

#### *Other energy performance directives*

The EuP (2005/32) directive is currently being implemented. The Directive sets up two procedures to requirements on products that have been identified as requiring action. The first is a generic procedure whereby measures are adopted by the Commission without setting limit values, but it should (obligatory) require manufacturers to perform LCAs and compare the resulting ecological profile to a benchmark defined by the Commission. It may also set certain information requirements. The second is a procedure for setting 'specific requirements' – for example minimum (precise and quantified) energy performance requirements. Both can result in the Commission publishing so called implementing measures (IM) in the form of a Commission Decision – that will restrict access to the EU market for products that do not respect the requirements.

A DG Enterprise methodological study was done in 2005<sup>21</sup> and studies to assess the most significant potentials for improvement are being undertaken on 15 products with another five to be started in 2007<sup>22</sup>. The DGs responsible for implementation are DG TREN (lead) and DG ENT (support), thus the political emphasis is very much on the fast delivery of some IMs setting energy performance requirements (most likely based on the Least Life Cycle Cost methodology – i.e. including use phase energy performance) above other environmental requirements. No consultation forum meeting has yet been convened to discuss specific IMs on a specific product.<sup>23</sup>

There are also a specific energy performance directive that impact design – on boilers, fridges and freezers and

fluorescent lighting ballasts. These have been incorporated as into the EuP as IMs. The theoretical revision date for the EuP directive is July 2010.

The energy labelling of appliances directive<sup>24</sup>, is apparently also under scrutiny for potential review or revision – or rather – adaptation to new needs for promoting ecodesign. All 8 categories of products (household appliances) covered have their own Commission directives establishing the label requirements. The labelling appliances (mother) directive and the (daughter) Commission directives do not have automatic revision dates so there is no fixed timetable for their revision.

Via an agreement between the USA and the EU the use of the American Energy Star voluntary label (for office appliances – computers, computer monitors, photocopiers, printers, digital duplicators, faxes, franking machines, multifunction devices and scanners.) is also 'regulated' in the EU. This agreement was renewed December 2006 for five years. The energy star agreement functions separately from the energy appliances labelling and the EuP directive however.

The directive on energy performance of buildings<sup>25</sup> set (some) minimum standards and creates obligatory certification for the energy performance of new and renovated buildings.

- *General Product Safety Directive, GPSD (evaluation)*
- *The New Approach Directive (revision)*
- *The Toys Safety Directive (revision)*

There is an ongoing review of the GPSD but a revision as a result of this is not foreseen. The scrutinized issues has to do with implementation – surveillance and enforcement.

<sup>20</sup> Directive 2005/32/EC

<sup>21</sup> MEEUP study, see [http://ec.europa.eu/enterprise/eco\\_design/finalreport1.pdf](http://ec.europa.eu/enterprise/eco_design/finalreport1.pdf)

<sup>22</sup> The first meeting of the Consultation Forum was convened in June 07 (working document on public street lighting discussed). Next meeting foreseen for 19 Oct (working document on standby to be discussed).

<sup>23</sup> After the discussions on working documents impact assessment studies are due to be launched on the preferred policy options, to be followed by drafting of an actual IM after internal EC inter-service consultation. Submission to other bodies like WTO is also foreseen. Publication of the first IMs are aiming for end 2008.

<sup>24</sup> Directive 92/75/EEC

<sup>25</sup> Directive 2002/91/EC

There is no thinking in the relevant DG (SANCO) as to the revision of the GPSD to include product environmental safety (ie environmental soundness).

The Commission (DG ENT as lead DG) has proposed a new package of measures intended to “strengthen the framework within which the goods are manufactured and traded, building upon existing mechanisms, to ensure that safe products circulate”. The package consists of the following main elements:

- **Regulations** – a) setting out the requirements (rules for Member States) for accreditation and market surveillance relating to the marketing of products<sup>26</sup> and b) on the application of certain national technical rules (ie not covered by EC legislation) to products lawfully marketed in another Member State and repealing Decision 3052/95/EC
- **Decision** on a common framework for the marketing of products<sup>27</sup> – This decision constitutes a common legal framework for future legislation on industrial products.

There is some concern among NGOs that this common framework might be interpreted as a requirement that the New Approach (delegation of technical criteria to private standardisation bodies) act as the model for any future regulation in the product field (covering not only safety but also other subjects such as health and environment). This could be understood as a step towards the New Approach becoming the model for any rulemaking in future (e.g. in the services field). This could pre-empt a shift of relevant decision making from the political level to private almost entirely industry controlled bodies. Obviously, this wouldn't be acceptable from a public interest and environmental perspective.

The Commission will propose a revision of the toys safety directive by the end of the year. According to media reports, the revision will propose banning carcinogenic, mutagenic and reprotoxic (CMR) substances in toys. According to EU officials<sup>28</sup>, it has not yet been decided whether, or to what extent, the law will move away from the “New approach” domain into product regulation.

– *European Eco labelling directive (Revision)*

A Commission proposal of a revised EU Ecolabel directive is expected in April 2008. The revision of the Ecolabel do not foresee that the basic role of the Ecolabel will change – i.e. a voluntary ‘label of excellence’ (although its ambition level is contested by NGOs). Revision is most likely to focus on resources and procedural issues –i.e. outsourcing of the scheme to run the scheme as much as possible outside the Commission services, try to increase the budget available for implementing background studies etc...

Overall the key elements of the revision are: a mechanism for selecting priority product groups, more efficient process for developing Eco-label criteria, a flexible decision-making process involving stakeholders and simplification of the operation of the scheme. It is possible that the revision will foresee a wider product policy framework within which it will sit and it will make reference to this framework somehow. The issue of how this framework resolves the Ecolabel's access to product performance/ingredients data is relevant to the Ecolabel being able to set credible criteria on some product groups (e.g. recently the detergents industry set up a boycott on national detergent companies giving the Ecolabel their product formulations to prevent strict criteria setting.)

<sup>26</sup> COM(2007) 37 final

<sup>27</sup> COM(2007) 53 final

<sup>28</sup> ENDS Europe Daily, 4 Oct 2007

- *The REACH Regulation (implementation)*
- *The Restrictions Directive<sup>29</sup> (replacement by REACH)*

REACH entered into force on 1 June 2007. The regulation sets requirements primarily for individual chemicals and mixtures/preparations. Its implications on products (= "articles" in REACH terminology<sup>30</sup>) are mainly indirect: As individual chemicals become subject to REACH requirements (like testing for hazardous properties and exposure reporting for various uses), the chemicals in EU-made products will gradually become better known and controlled.<sup>31</sup>

Beyond this notion, chemicals in products are in general not covered by REACH. However, REACH does introduce certain requirements on the suppliers of products. For instance, there exists an obligation to give information about which Substances of Very High Concern (SVHC) are included in a product. This right-to-know is primarily granting info to professional users of the product, while general consumers will only be given information "upon request". This is obviously far away from any formal eco-design requirements, but could indirectly affect product design; when info becomes publicly available on the content of product, it will increase the incentive for manufacturers and importers to eliminate hazardous substances. Sufficient info should be provided to assure a safe use of the product, at a minimum the name of the chemical.<sup>32</sup>

This requirement will become mandatory around 2009-2010, but might initially only cover about 100 SVHC. The number of substances is likely to grow as more SVHCs are defined and listed.

The **restrictions directive** is currently the main legal entity for restrictions to the marketing of hazardous substances. For instance, all carcinogenic, mutagenic and repro-toxic substances in category 1&2 are banned in chemi-

cal products for sale to individual consumers. REACH incorporate much of the content of the Restrictions directive and the latter will hence be removed 1 June 2009. It's unclear what impact the Restriction Procedure (RP) in REACH will have.

- *The RoHS Directive (review)*

A review of the directive was launched in March 2007. The Commission has stated that the review is aimed at "increasing the environmental benefit, removing the implementation and enforcement problems and making the directive cost-effective". Legislative proposals will be tabled in 2008 and the new rules should be in place around 2010, according to the plan.

Among changes being considered are extending the directive to other hazardous substances and materials and other product sectors such as medical equipment. The commission is also considering how RoHS and WEEE directive can be more clearly separated to prevent significant inconsistencies and administrative costs.

The ban on dangerous substances could be extended to other chemicals. Other possible changes include modified exemption criteria that would allow firms to claim a waiver from the ban if they can prove substitutes would be too costly.

- *Waste framework directive (revision)*

There are various direct and indirect eco-design drivers coming from the area of waste legislation.

**Specific waste /product directives** (such as on cars, packaging, electronics and batteries). The most specific requirements are to do with the phasing out of heavy metals (packaging, cars electronics and batteries) and POPs (elec-

<sup>29</sup> 76/769/EEC

<sup>30</sup> i.e. "an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition, REACH article 3:para 3

<sup>31</sup> The shortcomings in this system are however large; thorough testing and reporting of exposure scenarios is for instance only required for substances used in larger volumes.

<sup>32</sup> The information requirement is only obligatory if the SVHC substance is present in concentrations above 0.1 %. There is also a risk that the requirement will be interpreted in such a way that info has only to be provided in exceptional cases. Thus, it is doubtful whether the requirements will have the stated effect.

tronics – via RoHS). There are also general requirements on recyclability, both indirectly through recycling targets (new targets likely to force car manufacturers to find material recycling destinations for plastics) or through generic requirements in the law<sup>33</sup>. They also work through specific standards. For example on packaging – CEN standards on recyclability, compostability and prevention.

**The waste framework directive** is also being revised at the moment (second reading started Autumn of 2007) with proposals from the European Parliament and Council to strengthen certain aspects that are relevant to design – namely waste prevention requirements (resource efficiency) and generalisation of the Producer responsabilisation approach (only existing for specific waste streams so far). The European Parliament has demanded a future Commission proposal on ecodesign legislation under the measures for prevention<sup>34</sup> and obligations on member states for producer responsibility<sup>35</sup>. One of the options for implementing this being the imposition of eco-design of products to avoid their generating waste. The Council does not fully support the EP on prevention but defends a parallel article on extended PR – namely that member states ‘may’ take ‘appropriate measures to encourage the design of products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products’.

#### *Waste Directives, EPR legislation*

There are also various levels of design drivers (recyclability, durability, material choices) via Producer responsabilisation for the end-of-life treatment of the products, ranging from collective responsibility of cars to individual responsibility

(in theory a stronger design incentive) of electronic products. When there is green-dot style (differentiated material type tariffs) used to satisfy the producer responsibility requirements placed on packaging manufacturers there is also some design pressure potential. The Commission is currently undertaking studies to assess the various aspects that need to be revised in the WEEE Directive, among them the question whether industry should have collective or individual responsibility for collecting waste<sup>36</sup>. The packaging directive is also due to be revised soon but there is mixed political support for this (previously the Commission resisted revision, not clear now).

#### **Others – Construction Products Directive**

The Construction Products Directive (CPD) is being assessed for revision by the Commission at the moment but apparently the intention is again to focus merely on surveillance and enforcement mechanisms.

<sup>33</sup> Eg in cars – “MS shall encourage manufacturers to integrate an increasing quantity of recycled material in vehicles and other products, in order to develop the markets for recycled materials”

<sup>34</sup> New article 4a on prevention ..” the Commission shall submit to the European Parliament and the Council proposals for” .... “by 2010, the formulation of a product eco-design policy addressing both the generation of waste and the presence of hazardous substances in waste, with a view to promoting technologies focusing on durable, re-usable and recyclable products;”

<sup>35</sup> New article 3b – “Member States and the Community shall, in order to reinforce producer responsibility, take measures to hold producers or importers responsible for the waste which is generated as a result of their product being placed on the market, .. by inter alia, ... by requiring producers to use materials and product design which help to avoid or reduce the generation of waste and to render the waste generated less damaging”

<sup>36</sup> The EEB and a coalition of proactive business actors are campaigning together to defend article 8 in the revision, i.e the IPR article. See e.g report “Lost in transposition”, commissioned by the group <http://www.eeb.org/activities/waste/Lost-in-transposition-WEEE-280906.pdf>

## Annex 4: Responses to consultation on SCP/SIP plan

DG Environment presented an overview on the results of the online consultation of the background document at an informal stakeholder feedback meeting in Brussels on the 2nd of October 2007. Notes taken at the meeting by Doreen Fedrigo, EEB

### **Klaus Koegler (Head of Unit G4 – Sustainable production and Consumption, DG Environment):**

- Political context of SCPAction Program: Thematic strategy on sustainable use of natural resources (2005), renewed EU SDS (2006), Spring Summit (2007)
- SDS explicitly calls for SCPAP
- Existing EU building blocks: Lisbon strategy, SDS (presented first) – growth has to be supported and underpinned by sustainable consumption and production patterns
- 3 major pillars on which SCP needs to be based (to steer economy towards SCP patterns):
  - Production – processes need to be compatible with environmental and social constraints and concerns
  - Products – how do we design, use, dispose of the products we use every day
  - Consumption – patterns and behaviour in using the products available to us
- Not starting from scratch, so building on existing mechanisms: IPPC, EMAS, ETAP, eco-design, EuP, ecolabel, standards, fair trade, energy star, CSR, GPP, information

### **Herbert Aichinger (adviser to Timo Makela – Director of Directorate G – DG Environment)**

- Analysis on consultation responses so far (not comprehensive or very deep yet)
- First flavour of consultation:
  - 400 responses, with majority from industry associations, NGOs and consumer orgs, public bodies and individual companies (SMEs, etc.)

- Overall support of the concept of SCP-AP, including need for high ambition in objectives
- Others said address SD as a whole, not just environmental issues – social and economic too
- Core element is changing consumption patterns
- Emphasis on market-based instruments – appeal to use a variety of instruments
- Consumer information is an essential element of the AP – simple, targeted and focused information
- Products – overall support for strengthening eco-design approach in general, support for extending EuP to non-EuP, creating dynamic requirements for evolving product design
- Use experience from EuP to base broader product policy on, let it be implemented for a while before assessing and reviewing, look at successes of EuP to help improve other product policy in future
- Improvement of product performance at all points of lifecycle
- EPDs – use these and don't create other information provision mechanisms
- Extend FLEGT to other products
- Standardisation – general support but make it more dynamic and quicker
- Targets: overall support for resource efficiency target proposed by Commission, but comments that the target is difficult to achieve (3% improvement per year) and consider competitiveness issues in regards resource efficiency improvements
- Eco-innovation: support of environmental technology valuation (ETV) scheme, EMAS overhaul supported and use as an instrument to improve sustainability
- Labelling – improve coherence of existing labels before creating new ones; more advice and support needed for SMEs (SME support programme to be announced in next couple of days by Commission to help achieve this)

- Consumption – support for environmental agreement with retailers, but negative comments about need to make it value-chain focused, not public authorities or local or national level etc
- Retailer Logo – no support for this
- Guidelines on sustainable product parameters – support for this, but use CSR as starting point
- MBIs – support for reduced VAT on ecological products, taxation too but this should be handled at member states level
- Ecolabel – full support for revised system
- Support for looking into misleading advertising/ false green claims
- Support for GPP, with some support for making it mandatory
- Overwhelming support on communication/awareness raising campaign, but need to see at which level best value would come
- Recommendations from Lubijania meeting:
  - Main outcome on GPP
  - Getting prices right – VAT particularly for ecolabelled products, benchmarked products, etc
  - Clear targets on resource efficiency and energy efficiency