



COMMISSION GUIDELINES FOR VOLUNTARY
AGREEMENTS UNDER THE ECODESIGN
DIRECTIVE 2009/125/EC –

THE NEED FOR A COHERENT FRAMEWORK

Contact: Sylvia Maurer – environment@beuc.eu
Sylvia.Maurer@anec.eu

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ANEC, the European Association for the Co-ordination of Consumer Representation in Standardisation
Av. de Tervueren 32, box 27 – 1040 Brussels - +32 2 743 24 70 - www.anec.eu

BEUC, the European Consumers' Organisation
80 rue d'Arlon, 1040 Bruxelles - +32 2 743 15 90 - www.beuc.eu

Summary

- The Ecodesign Directive 2009/125/EC foresees industry voluntary agreements (VAs) under certain conditions as an alternative to legislation.
- In this position paper, we comment on draft Commission guidelines aiming to specify the minimum criteria that VAs have to meet in order to be considered as a replacement for regulation.
- We call for all measures to be based on ecodesign preparatory studies that follow a common methodology.
- We also call on the Commission to always carry out an impact assessment of the proposals.
- Although industry is responsible for achieving the aims of a VA, we consider that industry should not decide on the content and instruments of a VA alone.
- We call for higher market coverage to avoid large parts of the market still being served by inefficient products.
- To ensure transparency, we call for information about the performance of individual companies and product groups.
- We call on the Commission to require all VAs to provide for an independent audit and for sanctions.
- To ensure a long term perspective on ecodesign, we ask VAs to be updated in the light of technological progress.
- We also call on the Commission to develop criteria for assessing the failure of VAs. In case a VA should not be successful, we call on the Commission to replace a VA with regulation.

Introduction

The Ecodesign Directive 2009/125/EC foresees industry voluntary agreements (VAs) under certain conditions as an alternative to legislation.

In addition to our recently published position paper on VAs¹, ANEC and BEUC comment here on a working document from the European Commission² aiming at developing guidelines on the minimum criteria that VAs have to fulfil to be accepted as a substitute for mandatory ecodesign requirements.

ANEC and BEUC have been calling on the European Commission to develop such guidelines on VAs under the Ecodesign Directive. However, we see an urgent need to address the points set out below in the guidelines before finalising them.

1. Preparatory study for all product groups needed

The draft guidelines mention that industry should provide sufficient technical background but not necessarily with the same level of detail as preparatory studies for ecodesign regulation. Moreover, the guidelines indicate that industry may submit a proposal for a VA at any time i.e. before, during, or after a preparatory study or even in the complete absence of a preparatory study.

We call on the European Commission to require industry to carry out preparatory work for all VAs that follow the common methodology for ecodesign regulations (MEEuP). This preparatory work has to be carried out before manufacturers make a proposal for a VA as this information is needed for all stakeholders to assess the ambition and added value of a VA.

2. Commission impact assessment of VAs should be mandatory

The working document specifies that VAs need to demonstrate a high level of environmental ambition. VAs are also said to be the preferred option as self regulation is seen as more likely to deliver policy objectives more quickly and less expensively than mandatory requirements. However, the guidelines fall short of outlining measurable indicators that would allow an assessment of whether these criteria have been fulfilled.

As VAs also have to go beyond a “business as usual” scenario, it has to be specified what is meant by this criterion. Simply improving the environmental performance of products - e.g. by 1% beyond a business as usual scenario - will be insufficient to achieve the aims of the Ecodesign Directive.

We call on the Commission to establish measurable indicators that allow the possible benefits of a VA to be assessed on three crucial factors: environmental improvement, timing and costs.

¹ ANEC/BEUC (2010): Voluntary Agreements can only deliver if subject to minimum requirements – the case of VAs in the ecodesign implementation process, <http://www.anec.eu/attachments/ANEC-PT-2009-EuP-071final.pdf>

² Commission working document „Voluntary agreements under the Ecodesign Directive 2009/125/EC“. The document has been discussed at the Ecodesign Consultation Forum meeting on 26 March 2010.

The Commission should always carry out an impact assessment of VAs before accepting such proposals as a possible alternative to regulation.

3. Industry should not unilaterally decide on the content of VAs

The draft guidelines specify that the responsibility for voluntary agreements remains with industry. Although we agree that industry has the full responsibility to achieve the targets of a VA and of the ecodesign regulation on time, we do not agree that industry should decide unilaterally on the content of a VA or the instruments for its monitoring and enforcement. As the European Commission is aiming to accept VAs as an alternative to regulation, there is a need for the Commission to set minimum requirements that all VAs have to fulfil.

We call on the Commission to apply an approach of co-regulation rather than self-regulation to VAs when deciding to accept a VA as an alternative to ecodesign regulations. By co-regulation we mean a process which involves industry, the Commission and the Member States in administering and enforcing product specific requirements related to Ecodesign.

4. Market coverage needs to be at least 80%

The draft guidelines consider a VA to be representative when more than 70% of the products placed on the market will be covered by the agreement. However, we see an urgent need for a higher percentage to be achieved by a VA as otherwise large parts of the market could still be served by inefficient products.

We call on the European Commission to specify in the criterion on representativeness that:

- at least 90% of all economic operators selling products in the EU market must commit themselves to the VA
- at least 80% of the number of products placed on the market must be in the scope of the VA
- the requirements must apply to each product group that is subject to the VA and not to the sum of different product groups³ that are considered in a VA.

5. Transparency of monitoring reports

The document specifies that stakeholders must have access to relevant information such as annual reports and meetings of the monitoring/steering body. However, it has to be ensured that stakeholders will have access to all information that is relevant for effective and meaningful monitoring.

We call on the European Commission to ensure that stakeholders will have access to monitoring information that allows the performance of single companies, and of single product types, to be assessed.

³ For instance the VA on imaging equipment considers different types of products such as printers, scanners and faxes. The requirements for achieving Energy Star compliance must therefore apply to each of the product groups and not to the three product groups combined.

Annual reports should be circulated to all members of the Consultation Forum and should be publicly available.

6. Choice of instruments should not be left to industry alone

We strongly disagree with the Commission's proposal to indicate a list of possible instruments that could be applied to enhance the credibility of a VA and to leave the final choice of instruments to industry. Such an approach is not acceptable as certain elements must be part of all VAs, regardless of the product group, in order to guarantee a minimum of credibility.

We call on the Commission to set out a binding list of instruments that have to be part of all VAs. As a minimum, all VAs must provide for

- an independent audit and
- sanctions including the naming and shaming of non-compliant companies, expulsion of non-compliant signatories from the scheme, and fines.

7. Requirements on long term improvement needed

The draft guidelines specify that VAs need to have staged objectives. However, the document is unclear what will happen to a VA when the last stage has been achieved. As there is a need to improve the sustainability of products on a long term basis, the Commission should ensure that there will be a follow up before the VA achieves its last stage.

We call on the European Commission to require all VAs to be revised in the light of technological progress and to set new requirements before the last stage will be achieved.

8. Guidelines need to specify criteria for assessing failure of VAs

The draft guidelines currently fall short of identifying assessment criteria in which cases a VA will be considered as being a failure. Without such assessment criteria, it will be likely that no further action will be taken or that important time to further reduce the negative environmental impact of products will be lost.

We call on the Commission to establish a non-exhaustive list of criteria for assessing the potential failure of VAs. Among these criteria, there should be at least the following:

- interim targets have not been achieved
- progress cannot be assessed due to non-transparent or insufficient monitoring
- no initiative has been taken by manufacturers to further develop the VA after the last stage of objectives has been put into practice
- several signatories unilaterally withdraw from the VA
- the VA ceases to exist

9. Commission needs to take action in case a VA fails

The current draft guidelines contain only procedures for recognising a VA by the European Commission, e.g. through publishing a VA in the Official Journal. However, we see a need also to specify procedures for withdrawing support from VAs that do not deliver the intended results on time.

We call on the European Commission to specify in the guidelines procedures how and when a VA will be replaced with binding regulation.

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