Ecodesign: placing on the market of an energy-related product integrated into another energy-related product

Question on placing on the market vs. making available

The European Commission’s discussion paper on ‘ecodesign for energy-related products integrated into other energy-related products’ of 26 March 2015 states the following: “the only way of having a “neutral” approach that does not lead to unintended barriers to trade is applying the motor requirements not only when the placing on the market is a B2B transaction but also when the motor is first made available in the EU incorporated into a final product.”

This is however not in line with the first example of section 5.1 of this paper: “the responsibility for compliance of the motor should be applied to the motor manufacturer, as the motor was placed on the EEA market when it was sold to the washing machine manufacturer. The washing machine manufacturer “makes it available” when selling it incorporated into the washing machine to the distributor or the consumer.”

This statement also goes beyond the definitions in the New Legislative Framework for “placing on the market” and “making available”. It results in duplicating the costs in stock control, administration and conformance declarations without providing any additional energy saving in situations where both the component manufacturer and appliance manufacturers are based in the EEA (and the component does not leave the EEA).

EHI proposal on placing on the market vs. making available

1. Where the component manufacturer and the appliance manufacturer are both located within the EEA:

To avoid the duplication of costs in stock control, administration and conformance declarations, EHI proposes that:

- The component manufacturer (i.e. the original equipment manufacturer, OEM) selling the “original equipment” (component) to the final product manufacturer is the person placing the original equipment on the market, if the component is assembled without modification or rebranding into the final product.

- The final product manufacturer then makes the original equipment available (as in “making available”) as a component integrated within the final product, but this is not the first time the original equipment (component) has been made available, so it cannot be the act of “placing on the market”.

This is in line with the Blue Guide recommendation that products made available on the EU market must comply with the applicable Union harmonisation legislation at the moment of placing on the market.

It is also in line with the European Court of Justice’s clarification of the term ‘placing on the market’ in case C-319/13, Ratzke*: placing on the market means when a product is dispatched for the first time by the manufacturer with a view to the distribution in the sales chain (cf. point 41). This means that the moment from which the requirements of the

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1 Ratzke case C-319/13, ECJ judgement of 3 April 2014.
ecodesign Regulation apply is the moment from which the product exits the warehouse of the component manufacturer (OEM).

Therefore, the component manufacturer (OEM) has to fulfil any legal requirement that might apply at the moment he places the component on the EU market. It should not be on the final product manufacturer integrating the component to be responsible for the ecodesign performance of the component, when the component is assembled without modification or rebranding into the final product.

Example with the Fan Regulation:

In 2013, the EU fan manufacturer sells a fan compliant to Tier 1 with DoC and CE mark to an equipment manufacturer.

In 2015, the equipment manufacturer sells its final product to customer, which contains the fan compliant to Tier 1. DoC and CE mark of the final product uses the DoC and CE mark of the purchased fan in 2013.

The equipment manufacturer should not be held responsible for the compliance to Tier 2 in this case because the fan was already placed on the market in 2013.

2. Where an appliance manufacturer imports a component into the EEA and integrates it into a final product:

In this case, to make sure the ecodesign minimum requirements are fulfilled, EHI agrees that:

when the component is made available within a final product and the component has not first been made available within the EEA as an individual component, the energy-related product legislation applicable to the component should apply to the component integrated within the final product.

The final product manufacturer has, in fact, imported the component (within the final product) and in doing so has made the component available within the EEA for the first time which is placing on the market at which point the ecodesign legislative requirements should apply.

This approach is consistent with the Blue Guide in relation to the obligations of an importer (see section 3.3).