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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.11.2008
COM(2008) 778 final

2008/0222 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the indication by labelling and standard product information of the consumption of
energy and other resources by energy-related products**

(presented by the Commission)

{SEC(2008) 2862}

{SEC(2008) 2863}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Objective

The aim of the recast of Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances and repealing Directive 79/530/EEC, hereafter referred to as the "Energy Labelling Directive" or "ELD", is to extend its scope, currently restricted to household appliances, to allow for the labelling of all energy-related products including the household, commercial and industrial sectors and some non-energy using products such as windows which have a significant potential to save energy once in use or installed (means of transport are excluded).. In doing so, it follows the overall objective to ensure the free movement of products and improve their energy efficiency performance, thereby contributing to the Community objectives of strengthening the internal market, innovation, EU's competitiveness, protecting the environment and combating climate change. This would complement existing environmental policy, such as, with regard to energy use, the energy and climate package adopted by the Commission in January 2008¹.

The resulting framework Directive on labelling which also includes provisions relating to public procurement and incentives will be an essential building block for an integrated sustainable environmental product policy, promoting and stimulating the demand for better products and helping consumers to make better choices.

The recast of the Energy Labelling Directive was announced as a priority of the Energy Efficiency Action Plan² and of the Sustainable Consumption and Production and Sustainable Industrial Policy (SCP/SIP) Action Plan³. The SCP/SIP concluded that the Energy Labelling Directive should be amended to indicate, on the one hand, use phase energy consumption/savings and, on the other hand, other relevant and significant environmental parameters of the product.

General context

The SCP/SIP has shown that the limited scope of the Energy Labelling Directive ("ELD") restricts its potential to further mitigate climate change and contribute to the EU-wide target of 20% energy efficiency gains by 2020 and achieve the goals of sustainable production and consumption.

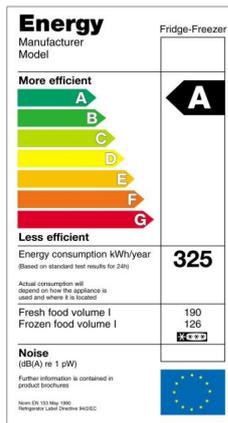
The current ELD is a framework that mandates the Commission (assisted by a Regulatory Committee) to adopt labelling implementing measures for specific household appliances⁴. The ELD requires retailers to display a comparative label showing the level of consumption of household products to consumers at the point of sales.

¹ COM(2008) 30 final.

² COM(2006)545 final of 19.10.2006

³ COM(2008) ...

⁴ Refrigerators, freezers and their combinations, washing machines, driers and their combinations, dishwashers, ovens, water heaters and hot-water storage appliances, lighting sources and air-conditioning appliances.



The labelling scheme set by the ELD provides consumers with useful and comparable information on the use of energy (and other resources such as water) of household appliances. It allows consumers to consider investing in better performing appliances which have reduced running costs and allow realising savings which more than outweigh the difference in price. The ELD also helps manufacturers to position their products on the market and reap the benefits on their investments for introducing better and more innovative products.

The impact assessment study shows that the ELD could deliver more savings in energy and reduction of environmental impacts if extended to all energy-related product groups (i.e. those products that have an impact on energy consumption during use). Some other changes can further increase the effectiveness of the ELD, such as the possibility to implement the framework through regulations or decisions instead of directives, and the possibility to set classes of efficiency under which Member States should not provide incentives or procure.

Provisions on market surveillance as already introduced under the Eco-design Directive have been added.

Existing Community provisions

The Community regulatory framework concerning labelling of energy-related products is set in the ELD, which introduces the requirements for the labelling of particular household appliances in its implementing measures. The measures (so-called "daughter directives") are adopted under the regulatory comitology process (a proposal is currently tabled for introducing the reinforced scrutiny of the Parliament). Under the ELD, the Commission has already adopted implementing Directives for 8 household appliances (refrigerators, freezers, washing machines, dishwashers, dryers, lamps, air conditioners, electric ovens).

The ELD is complementary to existing Community instruments, such as the Ecodesign Directive (setting minimum environmental standards), the Energy Star Regulation⁵ (voluntary energy labelling of office equipment) and the Eco-label Regulation⁶ (voluntary label for environmental excellence covering all environmental aspects of products throughout their life cycle).

Consistency with other policies and rules

⁵ OJ L 39, 13.2.2008

⁶ OJ L 237, 21.9.2000

The proposal is fully consistent with the objectives and aims of the Commission's Sustainable Consumption and Production / Sustainable Industrial Policy Communication and Action Plan, the European Union Sustainable Development Strategy, the Lisbon Strategy, the Community Sixth Environmental Action Programme⁷, the Integrated Product Policy⁸ and Natural Resource Strategy. The proposal also contributes to other policies such as informing and empowering consumers. The proposal is also in line with the Commission's rolling simplification programme Better Regulation: Simplification Strategy⁹ and the Inter-institutional Agreement on Better Law-Making.

2. CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

• Consultations

The consultation of stakeholders on the review of the ELD was made in a workshop on 8 February 2008 and a public consultation was launched on the impact assessment website of the Commission and on the relevant EUROPA websites between 20 December 2007 and 22 February 2008.

The results of the consultations were fed into the impact assessments on the extension of the ELD.

• Collection and use of expertise

External expertise of Europe Economics, Fraunhofer-ISI with BSR Sustainability and FfE was used for supporting the impact assessment.

• Impact assessment

The extension of the scope of the ELD is part of the Energy Efficiency Action Plan and of the SCP/SIP Communication and Action Plan. The revision looked into different options regarding the labelling of an extended range of products. The impact assessment showed that the ELD, in combination with the Ecodesign Directive, could achieve further energy savings and reduction of environmental impacts if extended to all energy-related products. Such extension could further reduce the effects of climate change and significantly contribute to the EU-wide energy efficiency targets.

The impact assessment report therefore analyses whether and how the scope of the ELD can be extended, for which products labelling appears to be a relevant policy instrument and what impacts that could have. The objective of the report is therefore to determine the optimal scope of such an extension. Considering that the ELD is a framework directive with no direct impact on products, the environmental, economic and social impacts can only be quantified for implementing measures adopted for specific products pursuant to the ELD.

The impact assessment considered the following options:

⁷ Sixth Community Environment Action Programme, laid down by Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 (OJ L 242, 10.9.2002, p. 1.).

⁸ Communication from the Commission to the Council and the European Parliament - Integrated Product Policy - Building on Environmental Life-Cycle Thinking, (IPP) (COM (2003) 302 final).

⁹ COMM (2005) 535 final of 25.10.2005

1. No extension of the scope and fully implement the present ELD,
2. Non-regulatory action,
3. Amend the ELD, including coverage of all energy-related products, and
4. Repeal the ELD and implement energy labelling within the Ecodesign Directive, including coverage of all energy-related products.

According to the impact assessment, the first policy option to fully implement the current framework, based on the considered priority household appliances, could lead to savings of some 22 Mtoe¹⁰ by 2020, corresponding to emission savings of about 65 Mt of CO₂. The second policy option (voluntary agreements/self commitments) would have the advantages of adding little administrative burden to the business and administrations but would fully rely on the willingness of the industry which rejected this option and giving preference to a regulatory approach under Article 95 of the Treaty which ensures a level playing field. The third option to fully exploit the current framework and extend the scope to all energy-related products involves some administrative burden for the recast but would save some €4 million in transposition costs per every upgraded or newly developed implementing measure (if regulations/decisions be used instead of directives) and could lead to, based alone on the impact of the three priority product groups considered as examples, additional savings of about 5 Mtoe, corresponding to total savings of 27 Mtoe by 2020, corresponding to some 78 Mt of CO₂ reduction. The fourth policy option, repeal the ELD and implement energy labelling within the Ecodesign Directive, could lead to equivalent savings as the previous policy option, however, due to their differences in nature the merging of these two Directives into one single legal instrument would lead to complications instead of simplification of the legal framework. Further savings would come from other product not yet considered in this impact assessment (subject to product specific impact assessments) and from the use of the energy label as a basis for harmonised public procurement and incentives.

An extended scope will allow introducing implementing measures for those non energy-using product categories that have the highest potential for improvement of environmental performance and energy efficiency whilst also leading to the highest savings during the use phase. This would not be possible under the current Directive which is restricted to energy-using household appliances. Detailed analyses will be conducted for the impact assessments that need to be prepared for each implementing measure.

The result of the impact assessment is that either full implementation of the current framework or "a fortiori" an extension from household appliances to all energy-related products through recast would be the preferred options.

3. LEGAL ELEMENTS OF THE PROPOSAL

• Summary of the proposed action

This proposal extends the scope of the framework ELD from household appliances to cover all energy-related products, leaving it to the implementing measures, after consultation of

¹⁰ Mtoe is mega tonne oil equivalent. The tonne of oil equivalent (toe) is a unit of energy, the amount of energy released by burning one tonne of crude oil, approximately 42 GJ.

stakeholders and impact assessment, to define the exact type of products to be labelled in implementing measures. Other changes relate to the possibility to implement the framework through regulations or decisions instead of directives, to the legal protection of the Community label against potential abuse, and the possibility to set classes of efficiency under which Member States should not provide incentives or procure.

- **Legal basis**

The legal basis of this proposal for a recast of Council Directive 92/75/EEC is provided by Article 95 of the EC Treaty, which sets out the principles for the establishment of the internal market. The ELD ensures the completion of a well-functioning internal market with a level playing field excluding technical barriers to trade, the free movement of products falling within its scope that satisfies the labelling requirements laid down in the implementing measures adopted under the Directive.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons.

National mandatory labelling schemes would create barriers to intra Community trade, generate undue costs for industry and constitute obstacles to the free movement of goods within the Community.

Member States are assigned appropriate responsibilities with regard to the implementation of Community legislation related to energy efficiency of products and market surveillance. This includes the Regulatory Comitology process in which Member States are represented.

Community action will better achieve the objectives of the proposal for the following reasons.

Acting at the Community level is the only way to achieve the objective of the proposal while ensuring that the requirements for products placed on the market are equal in all Member States, thereby ensuring the free movement of goods in the Community.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

This proposal does not go beyond what is necessary in order to achieve the objective, and is therefore in accordance with the principle of proportionality, as set out in Article 5 of the Treaty.

Administrative and financial burden falling upon the Community and national authorities is minimized by including the labelling requirements for all energy-related products in the Directive as proposed.

The possible increase in average production costs which may be incurred by the affected manufacturers can be transferred to users via increased prices of products, such increase is outweighed by the benefits to be gained from reduction of adverse effects on the environment

and monetary savings made by users due to increased efficiency of products during the use phase and reduced running costs.

- **Choice of instruments**

Proposed instruments: recast of directive.

The proposed instrument is in line with the Inter-institutional Agreement on Better Law-Making and consistent with the option of including the new provisions in the framework of existing Community legislation.

4. BUDGETARY IMPLICATION

There is no impact on the Community budget. Administrative expenditure will be covered by the usual annual budgetary allocation.

5. ADDITIONAL INFORMATION

- **National provisions**

Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive and its implementing measures.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation**

Since a number of substantial amendments, relating to the extension of the product scope to include all energy-related products are to be made, the ELD should be recast¹¹ in the interests of clarity. The Commission stresses the importance of not disrupting the ongoing implementation of the present ELD by limiting the proposal to changes that do not affect implementing measures under preparation.

Amendments are introduced into the recitals and provisions of the ELD to reflect the extension of the scope to cover all energy-related products and aim at increasing the effectiveness of the Directive.

In **Article 1**, the scope for household appliances is replaced by energy-related products and a list of exemptions is provided for which the Directive is not applicable.

In **Article 2**, the definition of energy-related product and fiche are introduced and the wording mirrors the definition used in the draft proposal extending the Eco-design Directive.

¹¹ The relevant rules on recasting of Community legislation apply, namely the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, Official Journal C 077, 28/03/2002 p.1, and Rules 80 A of the European Parliament Rules of procedure.

In **Article 3**, the responsibilities of Member States are set and new provisions are introduced for compliance checking. Enforcement is strengthened and co-operation and exchange of information between Member States are included (as set out in the Eco-design Directive). Member States are required to submit a report every two years to the Commission on their enforcement activities and the level of compliance.

In **Article 4**, it is made clear that the information requirements also apply to built-in and installed products.

In **Article 5**, respective responsibilities for suppliers to properly display labels and provide fiches with products are clarified and a new provision is added under which the technical documentation shall be available electronically if requested by market surveillance authorities of the Member States.

In **Article 6**, the responsibilities for dealers to properly display labels and make fiche and other accompanying literature available are clarified.

In **Article 7** labelling requirements are extended to cover distance selling.

In **Article 8** provisions are introduced on free movement of products complying with the applicable implementing measure.

In **Article 9**, provisions on public procurement in line with Directive 2004/18/EC¹² and incentives related to the uptake of energy performing products are introduced.

In **Article 10** the wording has been amended to reflect the comitology procedure under Decision 1999/468/EC.

In **Article 11**, the content of implementing measures is extended to set common criteria for having implementing measures to include where appropriate minimum labelling classes and other relevant performance level(s) for public procurement and incentives, and set the duration of label classification(s) and the elements of the label content for advertising by means of distance selling.

In **Article 12** a clause is inserted on penalties applicable to infringements of the provisions of the Directive by the Member States, in line with similar provisions already applicable under the Ecodesign Directive.

Article 13 sets the provisions for implementation of the recast Directive by Member States and defines its date of application.

Article 14 repeals Council Directive 92/75/EEC.

Annex I Part A lists the repealed Directive and its successive amendment and **Part B** lists the time-limits for transposition into national law.

An **Annex II** contains the correlation table.

¹² OJ L 134, 30.4.2004

↓ 92/75/EEC (adapted)

⇒ new

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the indication by labelling and standard product information of the consumption of energy and other resources by ~~household appliances~~ ⇒ energy-related products ⇐

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Economic Community, and in particular Article ~~100a~~ ⇔ 95 ⇔ thereof,

Having regard to the proposal from the Commission¹³,

Having regard to the opinion of the European Economic and Social Committee¹⁴,

Having regard to the opinion of the Committee of the Regions¹⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁶,

Whereas:

↓ new

- (1) Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances¹⁷ has been substantially amended¹⁸. Since further amendments have to be made, it should be recast in the interests of clarity.
- (2) The scope of Council Directive 92/75/EEC is restricted to household appliances; the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan¹⁹ has shown that the extension of the scope of the Directive to energy-related products which have an impact on energy consumption during use, could reinforce

¹³ OJ C [...], [...], p. [...].

¹⁴ OJ C [...], [...], p. [...].

¹⁵ OJ C [...], [...], p. [...].

¹⁶ OJ C [...], [...], p. [...].

¹⁷ OJ L 297, 13.10.1992, p 16.

¹⁸ See Annex I part A.

¹⁹ COM(2008) 397/3.

potential synergies between existing legislative measures, and in particular with Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council²⁰, and bring additional energy savings and environmental gains.

↓ 92/75/EEC Recital 1 (adapted)

~~Whereas measures should be taken progressively to achieve the internal market by 31 December 1992;~~

↓ 92/75/EEC Recital 2 (adapted)

~~Whereas certain Member States already have their own voluntary schemes for energy labelling and the provision of other energy consumption information for household appliances; whereas one Member State has formally proposed introducing its own compulsory labelling scheme, and other Member States are considering such introduction; whereas the existence of a number of compulsory national schemes would create barriers to intra-Community trade;~~

↓ 92/75/EEC Recital 3 (adapted)

~~Whereas Article 130r of the Treaty requires prudent and rational utilization of natural resources; whereas the rational use of energy is one of the principal means by which this objective can be achieved and environmental pollution reduced;~~

↓ 92/75/EEC Recital 4 (adapted)

⇒ new

- (3) The provision of accurate, relevant and comparable information on the specific energy consumption of household appliances ⇒ energy-related products ⇐ may influence the public's ⇒ end-user's ⇐ choice in favour of those appliances ⇒ products ⇐ which consume ⇒ or indirectly result in consuming ⇐ less energy ⇒ and other essential resources during use ⇐, thus prompting manufacturers to take steps to reduce the consumption of the appliances ⇒ energy and other essential resources of the products ⇐ which they manufacture; it will ⊗ should ⊗ also, indirectly, encourage the efficient use of these appliances ⇒ products ⇐. In the absence of this information, the operation of market forces alone will fail to promote the rational use of energy ⇒ and other essential resources ⇐ for these appliances ⇒ products ⇐.

↓ 92/75/EEC Recitals 5 and 6 (adapted)

⇒ new

- (4) Information plays a key role in the operation of market forces and it is therefore necessary to introduce a uniform label for all appliances ⇒ products ⇐ of the same

²⁰ OJ L 191, 22.7.2005, p. 29.

type, to provide potential purchasers with supplementary standardized information on those ~~appliances'~~ ⇒ products' ⇐ costs in terms of energy and the consumption of other ⇒ essential ⇐ resources and to take measures to ensure that potential ~~purchasers~~ ⇒ end-users ⇐ who do not see the ~~appliance~~ ⇒ product ⇐ displayed, and thus have no opportunity to see the label, are also supplied with this information ⇒ ; in order to be efficient and successful, the label should be easily recognisable to end-users, simple and concise ⇐. To this end the energy consumption of and other information concerning ~~each type of appliance~~ ⇒ the products ⇐ should be measured in accordance with harmonized standards and methods ~~and the application of these standards and methods must be monitored at the marketing stage.~~

↓ 92/75/EEC Recital 7 (adapted)

~~Whereas Directive 79/530/EEC²¹ sought to promote these aims in the case of household appliances; whereas, however, only one implementing Directive for electric ovens has been adopted and few Member States have introduced this label; whereas it is therefore now necessary to learn from the experience acquired and to strengthen the provisions of that Directive; whereas Directive 79/530/EEC must therefore be replaced and Directive 79/531/EEC²² applying to those electric ovens should be revised and subsequently integrated into the present scheme;~~

↓ new

(5) Member States should monitor compliance with this Directive with special regard to the responsibilities of suppliers and dealers.

↓ 92/75/EEC Recital 8 (adapted)
⇒ new

(6) A completely voluntary scheme would lead to only some ~~appliances~~ ⇒ products ⇐ being labelled, or supplied with standard product information, with the risk that this might result in confusion for some ~~consumers~~ ⇒ end-users ⇐ . The present scheme should therefore ensure that for all the ~~appliances~~ ⇒ products ⇐ concerned, the ~~energy~~ consumption ⊗ of energy ⊗ ⇒ and other essential resources ⇐ is indicated by labelling and standard product fiches ~~are provided.~~

↓ 92/75/EEC Recital 9 (adapted)
⇒ new

(7) ~~Household appliances use~~ ⇒ Energy-related products have an impact on the consumption of ⇐ a wide variety of forms of energy ⇒ during use ⇐, ~~with~~ electricity and gas being the most important. This Directive ~~must~~ ⇒ should ⇐ therefore ~~in principle~~ cover ~~appliances using~~ ⇒ energy-related products having an impact on the consumption of ⇐ any form of energy.

²¹ OJ No L 145, 13. 6. 1979, p. 1.

²² OJ No L 145, 13. 6. 1979, p. 7.

↓ 92/75/EEC Recital 10 (adapted)

~~Whereas Council Directive 86/594/EEC of 1 December 1986 on airborne noise emitted by household appliances²³ provides for an indication of noise emission to be included on energy labels, where appropriate; whereas provision must therefore be made for the incorporation of any other information and labelling covered by Community schemes;~~

↓ 92/75/EEC Recital 11 (adapted)

⇒ new

- (8) Only ~~those types of appliances whose aggregate~~ ⇒ energy-related products which have a significant impact on consumption of ⇐ energy ⇒ or, where relevant, of essential resources during ⇐ use ~~is significant~~ and which afford adequate scope for increased efficiency ~~need~~ ⊗ should ⊗ be ~~included~~ ⇒ covered by an implementing measure, when provision of information through labelling may stimulate end-users to purchase more efficient products ⇐ .
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↓ new

- (9) A number of Member States have public procurement policies in place which require contracting authorities to procure energy efficient products. A number of Member States also have put in place incentives for energy efficient products. The criteria for products to be eligible for public procurement or incentives can substantially differ from one Member State to the other. To refer to performance classes as levels for particular products as set out in implementing measures to the Directive, may reduce fragmentation of public procurement and incentives and facilitate the uptake of efficient products;
- (10) When laying down public procurement provisions in implementing measures under this Directive, proportionate thresholds in terms of value and volume of public procurement should be set, taking into account the administrative burden and enforceability of procurement rules for the Member States;
- (11) Incentives which Member States may provide for the promotion of efficient products might constitute state aid. This Directive does not prejudice the outcome of any future state aid procedure that may be undertaken in accordance with Articles 87 and 88 of the Treaty in their respect;
- (12) The promotion of energy efficient products through labelling, public procurement and incentives should not be to the detriment of their overall environmental performance;
- (13) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission²⁴;

²³ OJ No L 344, 6.12.1986, p. 24.

²⁴ OJ L 184, 17.7.1999; p. 23.

(14) Power should be conferred on the Commission to adopt implementing measures in respect of labelling and standard product information of the consumption of energy and other essential resources by energy-related products. Since those measures are of general scope and are designed to amend non-essential elements of this Directive by supplementing it, they shall be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC;

(15) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(16) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directive set out in Annex I, Part B,

↓ 92/75/EEC (adapted)
⇒ new

HAVE ADOPTED THIS DIRECTIVE:

Article 1

⊠ Scope ⊠

1. ~~The purpose of this Directive is to enable~~ ⇒ This Directive establishes a framework for ⇐ the harmonization of national measures on ~~the publication~~ ⇒ end-user information ⇐, particularly by means of labelling and of product information, ~~of information~~ on the consumption of energy and of other essential resources, and ~~additional~~ ⊠ supplementary ⊠ information concerning ~~certain types of household appliances~~ ⇒ energy-related products ⇐, thereby allowing ~~consumers~~ ⇒ end-users ⇐ to choose more ~~energy~~ efficient ~~appliances~~ ⇒ products ⇐.

2. This Directive shall apply to ⇒ energy-related products which have a significant impact on the consumption of energy and, where relevant, on other essential resources during use ⇐ ~~the following types of household appliances, even where these are sold for non-household uses:~~

~~refrigerators, freezers and their combinations,~~

~~washing machines, driers and their combinations,~~

~~dishwashers,~~

~~ovens,~~

~~water heaters and hot-water storage appliances,~~

~~lighting sources,~~

~~air-conditioning appliances.~~

~~2. Further types of household appliances may be added to the list in this Article in accordance with Article 9 (b).~~

↓ 92/75/EEC (adapted)
⇒ new

3. This Directive shall not apply to

⇒ (a) second-hand products; ⇐

⇒ (b) any means of transport for persons or goods; ⇐

(c) the rating plate or its equivalent affixed for safety purposes to ~~such appliances~~
⇒ products ⇐.

Article 2

⊠ Definitions ⊠

4. For the purpose of this Directive:

- ⇒ "energy-related product", hereinafter referred to as "product", means any good having an impact on energy consumption during use, which is placed on the market and/or put into service in the Community, including parts intended to be incorporated into energy-related products covered by this Directive which are placed on the market and/or put into service as individual parts for end-users and of which the environmental performance can be assessed independently; ⇐
- ⇒ "fiche" means a standard table of information relating to a product; ⇐
- "other essential resources" means water, chemicals or any other substance consumed by ~~an appliance~~ ⇒ a product ⇐ in normal use;
- "supplementary information" means other information concerning the performance ⇒ and features ⇐ of ~~an appliance~~ ⇒ a product ⇐, which ~~relates~~ ⇒ relate ⇐ to, or ~~is~~ ⇒ are ⇐ helpful in evaluating, its use of energy or other essential resources;
- "significant environmental aspects" means those aspects identified as significant for an energy-related product in an implementing measure adopted pursuant to Directive 2005/32/EC with respect to that product;
- "dealer" means a retailer or other person who sells, hires, offers for hire-purchase or displays ~~household appliances~~ ⇒ products ⇐ to end-users;
- "supplier" means the manufacturer ⇒ , importer ⇐ or its authorized representative in the Community or the person who places the product on the Community market.

~~information sheet means a standard table of information relating to the appliance in question.~~

~~5. There shall be no obligation to label or to provide fiches in respect of models of appliances of which production has ceased before the relevant implementing directive comes into effect, or second-hand appliances.~~

↓ 92/75/EEC (adapted)
⇒ new

Article ~~7~~3

⊗ Responsibilities of Member States ⊗

1. Member States shall take all necessary measures to ensure that:

- (a) all suppliers and dealers established in their territory fulfil their obligations ~~under~~ ⇒ as referred to in Articles 5 and 6 of ⇐ this Directive;
- (b) ⇒ with respect to products covered by this Directive, ⇐ ⊗ the display of other labels, marks, symbols or inscriptions ~~relating to energy consumption~~ which do not comply with the requirements of this Directive and of the relevant implementing ⊗ directives ⇒ measures ⇐ is prohibited. ~~This prohibition shall not apply to Community or national environmental labelling schemes;~~ ⊗ if ⊗ this ⊗ such display ⊗ is likely to mislead or confuse consumers ⊗ end-users° ⊗ ⇒ with respect to the consumption of energy or, where relevant, other essential resources ⇐;
- (c) the introduction of the system of labels and fiches concerning energy consumption ⇒ or conservation ⇐ is accompanied by educational and promotional information campaigns aimed at encouraging more responsible use of energy by ~~private consumers~~ ⇒ end-users ⇐.

↓ new

- (d) appropriate measures are taken in order to encourage the authorities responsible for implementing this Directive to co-operate with each other and provide each other with information in order to assist the functioning of this Directive.

The administrative co-operation and exchange of information shall take the utmost advantage of electronic means of communication and may be supported by relevant Community programmes. Such co-operation shall guarantee the security and confidentiality of processing and the protection of sensitive information provided during that procedure, where necessary. The Commission shall take appropriate measures in order to encourage and contribute to the cooperation between Member States referred to in this point.

2. Where a Member State ascertains that a product does not comply with all the relevant requirements set out in this Directive and its implementing measures for the label and the fiche, the supplier shall be obliged to make the product compliant with those requirements under the conditions imposed by the Member State.

Where there is sufficient evidence that a product may be non-compliant, the Member State concerned shall take the necessary preventive measures.

Where non-compliance continues, the Member State shall take a decision restricting or prohibiting the placing on the market and/or putting into service of the product in question or ensuring that it is withdrawn from the market. In cases of withdrawal of the product from the market or prohibition to place the product on the market, the Commission and the other Member States shall be immediately informed.

3. Every two years, the Member States shall submit a report to the Commission detailing their enforcement activities and the level of compliance in their territory.

The Commission may specify the details of the common content of these reports. Such measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 10(2).

↓ 92/75/EEC (adapted)
⇒ new

Article ~~24~~

⊗ Information requirements ⊗

⇒ Member States shall ensure that: ⇐

(1) ~~1.1~~ Information relating to the consumption of electric energy, other forms of energy and other essential resources, and supplementary information ~~shall be~~ ⊗ is ⊗ ⇐, in accordance with implementing measures pursuant to this Directive, ⇐ brought to ⊗ the attention of ⊗ consumers ⇐ end-users ⇐ by means of a fiche and a label related to ~~household appliances~~ ⇐ products ⇐ offered for sale, hire, hire-purchase or displayed to end-users ⇐ directly or indirectly by any means of distance selling including the internet ⇐.

~~2. Details relating to the label and the fiche shall be defined by directives relating to each type of appliance adopted pursuant to this Directive in accordance with Article 9.~~

⇒ (2) the information referred to in paragraph 1 shall be provided in respect of built-in or installed products only where required by the applicable implementing measure; ⇐

~~3. Technical documentation shall be established which shall be sufficient to enable the accuracy of the information contained in the label and the fiche to be assessed. It shall include:~~

- ~~– a general description of the product;~~
- ~~– the results of design calculations carried out, where these are relevant;~~
- ~~– test reports, where available, including those carried out by relevant notified organizations as defined under other Community legislation;~~

- ~~where values are derived from those obtained for similar models, the same information for these models.~~

~~4. The supplier shall establish the technical documentation described in paragraph 3. To this end it may use documentation already required on the basis of relevant Community legislation. The supplier shall make this documentation available for inspection purposes for a period ending five years after the last product has been manufactured.~~

Article ~~35~~

~~⊗~~ Responsibilities of suppliers ~~⊗~~

⇒ Member States shall ensure that: ⇐

- (1) ~~1. All~~ suppliers placing on the market ⇐ or putting into service ⇐ ~~household appliances specified in the~~ ⇐ products ⇐ ~~⊗~~ covered by an ~~⊗~~ implementing directives ⇐ measure ⇐ shall supply a label ⇐ and a fiche ⇐ in accordance with this Directive ⇐ and the implementing measure ⇐. ~~The labels used shall in all respects comply with this Directive and with the implementing directives.~~

↓ 92/75/EEC, Art. 2 (adapted)
⇒ new

- (2) ~~3.~~ ~~⊗~~ suppliers establish a ~~⊗~~ ~~Technical~~ documentation ~~shall be established~~ which shall be sufficient to enable the accuracy of the information contained in the label and the fiche to be assessed. ~~⊗~~ The technical documentation ~~⊗~~ shall include:

- (a) a general description of the product,
- (b) the results of design calculations carried out, where these are relevant,
- (c) test reports, where available, including those carried out by relevant notified organizations as defined under other Community legislation,
- (d) where values are ~~derived from those obtained~~ ⇐ used ⇐ for similar models, the ~~same information for these~~ ⇐ references allowing identification of those ⇐ models.

~~4. The supplier shall establish the technical documentation described in paragraph 3. To this end ~~⊗~~ suppliers ~~⊗~~ may use documentation already required on the basis of ~~⊗~~ established in accordance with requirements laid down in ~~⊗~~ relevant Community legislation.~~

- (3) ~~The~~ suppliers shall make ~~this~~ ~~⊗~~ the technical ~~⊗~~ documentation available for inspection purposes for a period ending five years after the last product ⇐ concerned ⇐ has been manufactured.

⇒ Suppliers make available an electronic version of the technical documentation on request to the market surveillance authorities of the Member States and to the Commission. ⇐

↓ 92/75/EEC, Art. 4 (adapted)

(4) ~~(b) the supplier shall supply the necessary labels free of charge, to dealers referred to in paragraph (a). Suppliers are free to choose their own system for delivery of labels. However, where a dealer sends a request for labels, the supplier must ensure that the requested labels are delivered promptly.~~ ☒ in respect of labelling and product information, suppliers supply the necessary labels free of charge. ☒

☒ Without prejudice to the suppliers' choice of system for delivery of labels, suppliers promptly deliver labels on request from dealers. ☒

↓ 92/75/EEC (adapted)

⇒ new

(5) ~~2. In addition to the labels, suppliers shall provide a product fiche~~ ⇒ with each product ⇐.

(6) ~~This fiche shall be contained~~ ☒ suppliers include a product fiche ☒ in all product brochures. Where ~~these~~ ☒ product brochures ☒ are not provided by the supplier, ~~he shall supply~~ ☒ the supplier supplies ☒ fiches with other literature provided with the ~~appliance~~ ⇒ product ⇐. ~~The fiches used shall in all respects comply with this Directive and with the implementing directives.~~

(7) ~~3. Suppliers shall be~~ ☒ are ☒ responsible for the accuracy of the labels and fiches that they supply.

(8) ~~4. The suppliers shall be deemed~~ ☒ are considered ☒ to have given ~~his~~ consent to the publication of the information given on the label or ☒ in ☒ the fiche.

Article 46

☒ *Responsibilities of dealers* ☒

↓ new

Member States shall ensure that:

(1) dealers display labels properly and make the fiche available in the product brochure or other literature that accompanies products when sold to end-users.

↓ 92/75/EEC (adapted)

⇒ new

(2) ~~In respect of labelling and product information, the following provisions shall apply:~~ (a) whenever an ~~appliance~~ ⇒ product ⇐ specified in an implementing ~~directive~~ ⇒ measure ⇐ is displayed, dealers shall attach an appropriate label, in the clearly visible position specified in the ~~relevant~~ ☒ applicable ☒ implementing ~~directive~~ ⇒ measure ⇐, and in the relevant language version.

~~(b) the supplier shall supply the necessary labels free of charge, to dealers referred to in paragraph (a). Suppliers are free to choose their own system for delivery of labels. However, where a dealer sends a request for labels, the supplier must ensure that the requested labels are delivered promptly.~~

Article ~~5~~7

~~Distance selling~~

Where ~~the relevant appliances~~ ⇒ products ⇐ are offered for sale, hire or hire-purchase by mail order, by catalogue, ⇐ via internet ⇐ or by ⇐ any ⇐ other means which imply that the potential customer ⇐ end-user ⇐ cannot be expected to see the appliance ⇒ product ⇐ displayed, ~~the implementing directives~~ ⇒ measures ⇐ shall make provision to ensure that potential customers ⇐ end-users ⇐ are provided with the essential information specified in ⇐ on ⇐ the label ⇐ and in ⇐ the fiche before buying an appliance ⇒ the product ⇐.

↓ 92/75/EEC (adapted)
⇒ new

Article 8

~~Free movement~~

1. ~~Where the provisions of this Directive and of the implementing directives are satisfied,~~ Member States shall neither ⇐ not ⇐ prohibit, nor restrict ⇒ or impede ⇐ the placing on the market ⇒ or putting into service, within their territories, ⇐ of the household appliances ⇒ products ⇐ ⇐ which are ⇐ covered by ⇐ and comply with the applicable ⇐ implementing directive ⇒ measure ⇐.

2. Unless they have evidence to the contrary, Member States shall ~~deem~~ ⇐ consider ⇐ labels and fiches to comply with the provisions of this Directive and the implementing directives ⇒ measures ⇐. They ⇐ Member States ⇐ may ⇒ shall ⇐ require suppliers to furnish ⇐ provide ⇐ evidence within the meaning of Article ~~3(2)~~ 5 concerning the accuracy of the information supplied on their labels or fiches when they have reason to suspect it is incorrect.

*Article 9****Public procurement and incentives***

1. Contracting authorities which conclude public supply, works or services contracts as referred to in Directive 2004/18/EC of the European Parliament and of the Council²⁵, which are not excluded by virtue of Articles 12 to 18 of that Directive, shall not procure products which do not meet the minimum performance levels laid down in the applicable implementing measure.

2. The criteria for setting minimum performance levels for public procurement in implementing measures shall be the following:

- (a) cost-effectiveness in relation to public finance,
- (b) the relevance of the products for public procurement,
- (c) the likelihood of stimulating market transformation towards better performing products,
- (d) the need to ensure sufficient competition.

3. Paragraph 1 shall apply to contracts having a value exclusive of value-added tax (VAT) estimated to be equal or greater than EUR 15000. Implementing measures may set the threshold at a higher value than EUR 15000 exclusive of VAT, taking into account normal purchase prices and volumes.

4. Member States shall not provide incentives to products which do not meet the minimum performance levels laid down in the applicable implementing measure.

5. When Member States publicly procure or provide incentives for products, they shall express the performance levels in terms of classes as defined in the applicable implementing measure.

Article 9

~~The measures relating to the establishment and operation of the scheme shall be adopted and adapted to technical progress in accordance with the procedure set out in Article 10. These measures are:~~

- ~~(a) the implementing directives;~~

²⁵ OJ L 134, 30.04.2004, p. 114.

~~(b) the addition of further household appliances to the list in Article 1 (1) where significant energy savings are likely to be achieved.~~

↓ 1882/2003 Art. 3 and Annex III.32 (adapted)

Article 10

⊠ Committee procedure ⊠

~~1. The Commission shall be assisted by a committee.~~

~~2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC²⁶ shall apply, having regard to the provisions of Article 8 thereof.~~

~~The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.~~

~~3. The Committee shall adopt its rules of procedure.~~

↓ new

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

↓ 92/75/EEC (adapted)

Article ~~12~~11

⊠ Implementing measures ⊠

↓ new

1. Details relating to the label and the fiche shall be laid down in implementing measures. Those implementing measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 10(2), relating to each type of product in accordance with this Article.

When a product meets the criteria listed under paragraph 2, it shall be covered by an implementing measure in accordance with paragraph 4.

Provisions in implementing measures regarding information provided on the label and in the fiche on the consumption of energy and other essential resources during use shall enable end-

²⁶ ~~Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).~~

users to make better informed purchasing decisions and shall enable market surveillance authorities to verify whether products comply with the information provided.

When an implementing measure lays down provisions with respect to both energy efficiency and consumption of essential resources of a product, the design and content of the label shall emphasize the energy efficiency of the product.

2. The criteria referred to in paragraph 1 are the following:

- (a) according to most recently available figures and considering the quantities placed on the Community market, the products shall have a significant potential for saving energy and, where relevant, other essential resources;
- (b) products with equivalent functionality available on the market shall have a wide disparity in the relevant performance levels;
- (c) the Commission shall take into account relevant Community legislation and self-regulation, such as voluntary agreements, which are expected to achieve the policy objectives more quickly or at lesser expense than mandatory requirements;

3. In preparing a draft implementing measure, the Commission shall:

- (a) take into account those environmental parameters set out in Annex I, part 1, to Directive 2005/32/EC which are identified as significant in the relevant implementing measure adopted under Directive 2005/32/EC and which are relevant for the end-user during use;
- (b) assess the impact of the measure on environment, end-users and manufacturers, including SMEs, in terms of competitiveness including on markets outside the Community, innovation, market access and costs and benefits;
- (c) carry out appropriate consultation with stakeholders;
- (d) set implementing date(s), any staged or transitional measure or periods, taking into account in particular possible impacts on SMEs or on specific product groups manufactured primarily by SMEs.

↓ 92/75/EEC (adapted)

⇒ new

4. The implementing ~~directives~~ ⇒ measures ⇐ shall specify ☒ in particular ☒:

- (a) the exact definition of the type of ~~appliances~~ ⇒ products ⇐ to be included;
- (b) the measurement standards and methods to be used in obtaining the information referred to in Article 1 (1);
- (c) ☒ the ☒ details of the technical documentation required under Article ~~2(3)5~~;
- (d) the design and content of the label referred to in Article ~~24~~, which as far as possible shall have uniform design characteristics ☒ across product groups ☒;

- (e) the location where the label shall be fixed to the appliance ⇒ product displayed and the information and manner in which the label and/or information are to be provided in the case of offers for sale as covered by Article 7 ⇐. Where appropriate, they ⊗ the implementing measures ⊗ may provide for the label to be attached to ⇒ the product ⇐ or printed on the packaging ⇒ , or for the details of the labelling requirements for printing in catalogues, for distance selling and internet sales ⇐;
- (f) the content and where appropriate the format and other details concerning the fiche or further information specified in Articles 4 and 5(3). The information on the label shall also be included on the fiche;
-

↓ new

- ~~(g) the information to be provided in the case of offers for sale covered by Article 5, and the manner in which it is to be provided.~~
- (g) for relevant products, the minimum performance levels and, where appropriate, a threshold higher than EUR 15 000 exclusive of VAT for the purposes of Article 9(1) and (3);
- (h) for relevant products, the minimum performance levels for the purposes of Article 9(4);
- (i) the specific content of the label for advertising, including, as appropriate, the energy class and other relevant performance level(s) of the given product in a legible and visible form;
- (j) the duration of label classification(s), where appropriate;
- (k) the level of accuracy in the declarations on the label and fiches;
- (l) the date for the evaluation and possible revision of the implementing measure, taking into account the speed of technological progress.

Article 12

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and its implementing measures and shall take the necessary measures to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. The Member States shall notify these provisions to the Commission by the date specified in Article 13(1) at the latest and shall notify it without delay of any subsequent amendment affecting them.

~~Article 13~~

~~Directive 79/530/EEC is hereby repealed, with effect from 1 January 1994.~~

~~Directive 79/531/EEC shall be considered as implementing this Directive for electric ovens; however Member States may refrain from its compulsory introduction, until a date set in a revised implementing directive concerning ovens passed in accordance with the procedure laid down in Article 10.~~

~~Article 14~~

~~⊗ Transposition ⊗~~

~~1. Member States shall adopt the provisions necessary to comply with this Directive by 1 July 1993. They shall immediately notify the Commission of these measures.~~

~~They shall bring these provisions into force by not later than 1 January 1994.~~

~~2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.~~

~~3. Member States shall communicate to the Commission the main provisions of domestic law which they adopt in the field covered by this Directive.~~



1. Member States shall bring into force, by [*²⁷] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [...].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

²⁷ A date corresponding to 12 months after entry into force.

Article 14

Repeal

Council Directive 92/75/EEC, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003²⁸ indicated in Annex I, Part A, is repealed with effect from [*²⁹], without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directive set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 15

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Articles [*³⁰] shall apply from [*³¹].

↓ 92/75/EEC (adapted)

Article ~~15~~16

⊗ Addressees ⊗

This Directive is addressed to the Member States.

Done at [...].

For the European Parliament
The President
[...]

For the Council
The President
[...]

²⁸ OJ L 284, 31.10.2003, p. 1.

²⁹ A day after the date set out in the second subparagraph of Article 13(1) of this Directive.

³⁰ Deemed unchanged articles under recast in the final version.

³¹ A day after the date set out in the second subparagraph of Article 13(1) of this Directive.



ANNEX I

Part A

Repealed Directive with its successive amendment

(referred to in Article 14)

Council Directive (OJ L 297, 13.10.1992, p.16)	92/75/EEC	
Regulation (EC) No (OJ L 284, 31.10.2003, p.1)	1882/2003	Only point (32) of Annex III

Part B

List of time-limits for transposition into national law

(referred to in Article 13)

Directive	Deadline for transposition
92/75/EEC	1 January 1994
2009/[*]/EC	-

ANNEX II

CORRELATION TABLE

Directive 92/75/EEC	This Directive
Article 1(1), introductory wording, first sentence	Article 1(1)
Article 1(1), introductory wording, second sentence	Article 1(2)
Article 1(1), first to seventh indent	-
Article 1(2)	-
-	Article 1(3)(a) and (b)
Article 1(3)	Article 1(3)(c)
-	Article 2, first and second indent
Article 1(4), first and second indents	Article 2, fifth and sixth indent
-	Article 2, first indent
Article 1(4), third indent	-
Article 1(4), fourth indent	Article 2, third indent
Article 1(4), fifth indent	Article 2, fourth indent
Article 1(5)	-
Article 2(1)	Article 4(1)
Article 2(2)	-
Article 2(3)	Article 5(2)
Article 2(4)	Article 5(2)-(3)
Article 3(1)	Article 5(1)
Article 3(2)	Article 5(5)-(6)
Article 3(3)	Article 5(7)
Article 3(4)	Article 5(8)
Article (4)(a)	Articles 5(4) and 6(2)

Article (4)(b)	-
Article 5	Article 7
Article 6	-
Article 7(a)	Article 3(1)(a)
Article 7(b)	Article 3(1)(b)
Article 7(c)	Article 3(1)(c)
Article 8(1)	Article 8(1)
Article 8(2)	Article 8(2)
Article 9(a)	-
Article 9(b)	-
Article 10(1)	Article 10(1)
Article 10(2)	Article 10(2)
Article 10(3)	-
Article 11	-
Article 12(a)	Article 11(4)(a)
Article 12(b)	Article 11(4)(b)
Article 12(c)	Article 11(4)(c)
Article 12(d)	Article 11(4)(d)
Article 12(e)	Article 11(4)(e)
Article 12(f)	Article 11(4)(f)
Article 12(g)	-
Article 13	Article 14
Article 14	Article 13
Article 15	Article 16
-	Article 3(1)(d)
-	Article 3(2)
-	Article 3(3)

-	Article 4(2)
-	Article 6(1)
-	Article 9
-	Article 11(1)-(3)
-	Article 11(4)(g)-(l)
-	Article 12
-	Article 15
-	Annex I
-	Annex II
