

POSITION (EU) No 9/2010 OF THE COUNCIL AT FIRST READING

with a view to the adoption of 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 (recast)

Adopted by the Council on 14 April 2010

(Text with EEA relevance)

(2010/C 123 E/03)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After having consulted the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(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 appliances ⁽³⁾ has been substantially amended ⁽⁴⁾. Since further amendments have to be made, it should be recast in the interests of clarity.

(2) The scope of Directive 92/75/EEC is restricted to household appliances. The Commission Communication of 16 July 2008 on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan has shown that the extension of the scope of Directive 92/75/EEC to energy-related products which have a significant direct or indirect impact on energy consumption during use could reinforce potential synergies between existing legislative measures, and in particular Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy related products ⁽⁵⁾. This Directive should not prejudice the application of

Directive 2009/125/EC. Together with that Directive and other Union instruments, this Directive forms part of a broader legal framework and, in the context of a holistic approach, brings about additional energy savings and environmental gains.

(3) The Presidency conclusions of the European Council of 8 and 9 March 2007 emphasised the need to increase energy efficiency in the Union so as to achieve the objective of saving 20 % of the Union's energy consumption by 2020, set targets for the EU-wide development of renewable energies and the reduction of greenhouse gas emissions and called for a thorough and rapid implementation of the key areas identified in the Commission Communication of 19 October 2006 entitled 'Action Plan for Energy Efficiency: Realising the Potential'. The action plan highlighted the enormous energy savings opportunities in the products sector.

(4) Improving the efficiency of energy-related products through informed consumer choice benefits the EU economy overall.

(5) The provision of accurate, relevant and comparable information on the specific energy consumption of energy-related products should influence the end-user's choice in favour of those 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 energy and other essential resources of the products which they manufacture. It should also, indirectly, encourage the efficient use of these products in order to contribute to the EU's 20 % energy efficiency target. 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 products.

(6) It should be recalled that Union and national legislation exists which gives certain rights to consumers with respect to purchased products, including compensation or exchange of the product.

(7) The Commission should provide a priority list of energy-related products that could be covered by a delegated act under this Directive. Such a list could be included in the Working Plan referred to in Directive 2009/125/EC.

⁽¹⁾ OJ C 228, 22.9.2009, p. 90.

⁽²⁾ Position of the European Parliament of 5 May 2009 (not yet published in the Official Journal), position of the Council at first reading of ... (not yet published in the Official Journal), position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...

⁽³⁾ OJ L 297, 13.10.1992, p. 16.

⁽⁴⁾ See Annex I Part A.

⁽⁵⁾ OJ L 285, 31.10.2009, p. 10.

- (8) Information plays a key role in the operation of market forces and it is therefore necessary to introduce a uniform label for all products of the same type, to provide potential purchasers with supplementary standardised information on those products' costs in terms of energy and the consumption of other essential resources and to take measures to ensure that potential end-users who do not see the 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 existing layout of the label should be retained as the basis to inform end-users about the energy efficiency of products. Energy consumption of and other information concerning the products should be measured in accordance with harmonised standards and methods.
- (9) As pointed out in the Commission's Impact Assessment accompanying its proposal for this Directive, the energy labelling scheme has been followed as a model in different countries around the world.
- (10) Member States should regularly monitor compliance with this Directive, and include the relevant information in the report that they are obliged to submit every four years to the Commission under this Directive, with special regard to the responsibilities of suppliers and dealers.
- (11) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products⁽¹⁾ contains general provisions on market surveillance relating to the marketing of products. In order to achieve its aims, this Directive provides for more detailed provisions in this respect. Those provisions are consistent with Regulation (EC) No 765/2008.
- (12) A completely voluntary scheme would lead to only some products being labelled, or supplied with standard product information, with the risk that this might result in confusion or even misinformation for some end-users. The present scheme should therefore ensure that for all the products concerned, the consumption of energy and other essential resources is indicated by labelling and standard product fiches.
- (13) Energy-related products have a direct or indirect impact on the consumption of a wide variety of forms of energy during use, electricity and gas being the most important. This Directive should therefore cover energy-related products having a direct or indirect impact on the consumption of any form of energy during use.
- (14) Energy-related products which have a significant direct or indirect impact on consumption of energy or, where relevant, of essential resources during use and which afford adequate scope for increased efficiency should be covered by a delegated act, when provision of information through labelling may stimulate end-users to purchase more efficient products.
- (15) In order to meet the Union climate change and energy security objectives and, given that the total energy consumed by products is expected to continue to rise in the longer term, the delegated acts under this Directive could, where relevant, also highlight on the label the high total energy consumption of the product.
- (16) 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 another. To refer to performance classes as levels for particular products, as set out in delegated acts under this Directive, may reduce fragmentation of public procurement and incentives and facilitate the uptake of efficient products.
- (17) 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 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) in respect of such incentives and should not cover taxation and fiscal matters. Member States are free to decide on the nature of such incentives.
- (18) The promotion of energy efficient products through labelling, public procurement and incentives should not be to the detriment of the overall environmental performance and the functioning of such products.
- (19) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of labelling and standard product information of the consumption of energy and other essential resources by energy-related products during use. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (20) The Commission should regularly submit to the European Parliament and the Council a synthesis, covering the EU and each Member State separately, of the reports on enforcement activities and the level of compliance submitted by Member States under this Directive.

⁽¹⁾ OJ L 218, 13.8.2008, p. 30.

(21) The Commission should be responsible for adapting the label classifications with the aim of ensuring predictability for the industry and comprehension for consumers.

(22) To a varying extent according to the product concerned, technological development and the potential for additional significant energy savings could make further product differentiation necessary and justify a review of the classification. Such review should include in particular the possibility of rescaling. This review should be carried out as expeditiously as possible in the case of products which, due to their very innovative characteristics, can make a significant contribution to energy efficiency.

(23) When the Commission reviews progress and reports on the implementation of the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan in 2012, it will in particular analyse whether further action to improve the energy and environmental performance of products is needed, including *inter alia* the possibility to provide consumers with information on the carbon footprint of products or the products' environmental impact during their life cycle.

(24) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 92/75/EEC. The obligation to transpose the provisions which are unchanged arises under the Directive 92/75/EEC.

(25) When Member States implement the provisions of this Directive, they should endeavour to refrain from adopting measures that could impose unnecessarily bureaucratic and unwieldy obligations on the market participants concerned, in particular small and medium-sized enterprises.

(26) 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 Directive 92/75/EEC.

(27) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive establishes a framework for the harmonisation of national measures on end-user information, particularly by means of labelling and standard product information, on the consumption of energy and where relevant of other essential resources during use, and supplementary information concerning energy-related products, thereby allowing end-users to choose more efficient products.

2. This Directive shall apply to energy-related products which have a significant direct or indirect impact on the consumption of energy and, where relevant, on other essential resources during use.

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 products.

Article 2

Definitions

For the purpose of this Directive:

- (a) 'energy-related product' or '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 Union, 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;
- (b) 'fiche' means a standard table of information relating to a product;
- (c) 'other essential resources' means water, chemicals or any other substance consumed by a product in normal use;
- (d) 'supplementary information' means other information concerning the performance and features of a product which relate to, or are helpful in evaluating, its use of energy or other essential resources based on measurable data;

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

- (e) 'direct impact' means the impact of products that actually consume energy during use;
- (f) 'indirect impact' means the impact of products that do not consume energy, but contribute to energy conservation during use;
- (g) 'dealer' means a retailer or other person who sells, hires, offers for hire-purchase or displays products to end-users;
- (h) 'supplier' means the manufacturer or its authorised representative in the Union or the importer who places or puts into service the product on the Union market. In their absence, any natural or legal person who places on the market or puts into service products covered by this Directive shall be considered a supplier;
- (i) 'placing on the market' means making a product available for the first time on the Union market with a view to its distribution or use within the Union, whether for reward or free of charge and irrespective of the selling technique;
- (j) 'putting into service' means the first use of a product for its intended purpose in the Union;
- (k) 'unauthorised use of the label' means the use of the label, other than by Member State authorities or EU institutions, in a manner not provided for in this Directive or a delegated act.
- (d) appropriate measures are taken in order to encourage the relevant national or regional authorities responsible for implementing this Directive to co-operate and provide each other and the Commission with information in order to assist the application of this Directive. The administrative co-operation and exchange of information shall take the utmost advantage of electronic means of communication, shall be cost-effective and may be supported by relevant EU 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 delegated acts for the label and the fiche, the supplier shall be obliged to make the product compliant with those requirements under effective and proportionate 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 and measures aimed at ensuring compliance within a precise time-frame, taking into account the damage caused.

Where non-compliance continues, the Member State concerned 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 on placing the product on the market, the Commission and the other Member States shall be immediately informed.

3. Every four years, the Member States shall submit a report to the Commission including details about their enforcement activities and the level of compliance in their territory.

The Commission may specify the details of the common content of these reports, through the setting of guidelines.

4. The Commission shall regularly provide a synthesis of those reports to the European Parliament and the Council for information.

Article 3

Responsibilities of Member States

1. Member States shall ensure that:
- (a) all suppliers and dealers established in their territory fulfil the obligations laid down in Articles 5 and 6;
- (b) with respect to products covered by this Directive, the display of other labels, marks, symbols or inscriptions which do not comply with the requirements of this Directive and of the relevant delegated acts is prohibited, if such display is likely to mislead or confuse end-users with respect to the consumption of energy or, where relevant, other essential resources during use;
- (c) the introduction of the system of labels and fiches concerning energy consumption or conservation is accom-

*Article 4***Information requirements**

Member States shall ensure that:

- (a) information relating to the consumption of electric energy, other forms of energy and where relevant other essential resources during use, and supplementary information is, in accordance with delegated acts under this Directive, brought to the attention of end-users by means of a fiche and a label related to products offered for sale, hire, hire-purchase or displayed to end-users directly or indirectly by any means of distance selling, including the internet;
- (b) the information referred to in point (a) is provided in respect of built-in or installed products only where required by the applicable delegated act;
- (c) any advertisement for a specific model of energy-related products covered by a delegated act under this Directive includes, where energy-related or price information is disclosed, a reference to the energy efficiency class of the product;
- (d) any technical promotional material concerning energy-related products which describes the specific technical parameters of a product, namely, technical manuals and manufacturers' brochures, whether printed or online, is provided to end-users with the necessary information regarding energy consumption or shall include a reference to the energy efficiency class of the product.

*Article 5***Responsibilities of suppliers**

Member States shall ensure that:

- (a) suppliers placing on the market or putting into service products covered by a delegated act supply a label and a fiche in accordance with this Directive and the delegated act;
- (b) suppliers produce technical documentation which is sufficient to enable the accuracy of the information contained in the label and the fiche to be assessed. That technical documentation shall include:
 - (i) a general description of the product;
 - (ii) where relevant, the results of design calculations carried out;
 - (iii) test reports, where available, including those carried out by relevant notified organisations as defined under other Union legislation;

- (iv) where values are used for similar models, the references allowing identification of those models.

To this end suppliers may use documentation already established in accordance with requirements laid down in relevant Union legislation;

- (c) suppliers make the technical documentation available for inspection purposes for a period ending five years after the last product concerned was 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 within 10 working days on receipt of a request by the competent authority of a Member State or the Commission;
- (d) in respect of labelling and product information, suppliers provide the necessary labels free of charge to dealers.

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

- (e) in addition to the labels, suppliers provide a product fiche;
- (f) suppliers include a product fiche in all product brochures. Where product brochures are not provided by the supplier, the supplier provides fiches with other literature provided with the product;
- (g) suppliers are responsible for the accuracy of the labels and fiches that they supply;
- (h) suppliers are considered to have given consent to the publication of the information provided on the label or in the fiche.

*Article 6***Responsibilities of dealers**

Member States shall ensure that:

- (a) dealers display labels properly, in a visible and legible manner, and make the fiche available in the product brochure or other literature that accompanies products when sold to end-users;

(b) whenever a product covered by a delegated act is displayed, dealers attach an appropriate label, in the clearly visible position specified in the applicable delegated act, and in the relevant language version.

Article 7

Distance selling and other forms of selling

Where products are offered for sale, hire or hire-purchase by mail order, by catalogue, through the internet, telemarketing or by any other means which imply that the potential end-user cannot be expected to see the product displayed, delegated acts shall make provision to ensure that potential end-users are provided with the information specified on the label for the product and in the fiche before buying the product. Delegated acts shall, where appropriate, specify the way in which the label or the fiche or the information specified on the label or in the fiche shall be displayed or provided to the potential end-user.

Article 8

Free movement

1. Member States shall not prohibit, restrict or impede the placing on the market or putting into service, within their territories of products which are covered by and comply with this Directive and the applicable delegated act.

2. Unless they have evidence to the contrary, Member States shall consider labels and fiches as complying with the provisions of this Directive and the delegated acts. Member States shall require suppliers to provide evidence within the meaning of Article 5 concerning the accuracy of the information supplied on their labels or fiches when they have reason to suspect that such information is incorrect.

Article 9

Public procurement and incentives

1. Where a product is covered by a delegated act, contracting authorities which conclude public works, supply or service contracts as referred to in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts⁽¹⁾, which are not excluded by virtue of Articles 12 to 18 thereof, shall endeavour to procure only such products which comply with the criteria of having the highest performance levels and belonging to the highest energy efficiency class. Member States may also require the contracting authorities to procure only products fulfilling those criteria. Member States may make the application of those criteria subject to cost-effectiveness, economical feasibility and technical suitability and sufficient competition.

2. Paragraph 1 shall apply to contracts having a value equal to or greater than the thresholds laid down in Article 7 of Directive 2004/18/EC.

3. Where Member States provide any incentives for a product covered by a delegated act they shall aim at the highest performance levels including the highest class of energy efficiency laid down in the applicable delegated act. Taxation and fiscal measures do not constitute incentives for the purpose of this Directive.

4. Where Member States provide incentives for products, both for end-users using highly efficient products and for industries which promote and produce such products, they shall express the performance levels in terms of classes as defined in the applicable delegated act, except where they impose higher performance levels than the threshold for the highest energy efficiency class in the delegated act. Member States may impose higher performance levels than the threshold for the highest energy efficiency class in the delegated act.

Article 10

Delegated acts

1. The Commission shall lay down details relating to the label and the fiche by means of delegated acts in accordance with Articles 11, 12 and 13, relating to each type of product in accordance with this Article.

Where a product meets the criteria listed in paragraph 2, it shall be covered by a delegated act in accordance with paragraph 4.

Provisions in delegated acts regarding information provided on the label and in the fiche on the consumption of energy and other essential resources during use shall enable end-users to make better informed purchasing decisions and shall enable market surveillance authorities to verify whether products comply with the information provided.

Where a delegated act 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 emphasise 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 Union market, the products shall have a significant potential for saving energy and, where relevant, other essential resources;

⁽¹⁾ OJ L 134, 30.4.2004, p. 114.

(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 Union 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 delegated act, the Commission shall:

(a) take into account those environmental parameters set out in Annex I, Part 1, to Directive 2009/125/EC which are identified as significant in the relevant implementing measure adopted under Directive 2009/125/EC and which are relevant for the end-user during use;

(b) assess the impact of the act on the environment, end-users and manufacturers, including small and medium-sized enterprises (SMEs), in terms of competitiveness including on markets outside the Union, innovation, market access and costs and benefits;

(c) carry out appropriate consultation with stakeholders;

(d) set implementing date(s), any staged or transitional measures or periods, taking into account in particular possible impacts on SMEs or on specific product groups manufactured primarily by SMEs.

4. The delegated acts shall specify in particular:

(a) the exact definition of the type of 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 5;

(d) the design and content of the label referred to in Article 4, which as far as possible shall have uniform design characteristics across product groups and shall in all cases be clearly visible and legible. The format of the label shall retain as a basis the classification using letters from A to G; the steps of the classification shall correspond to significant energy and cost savings from the end-user perspective.

Three additional classes may be added to the classification if required by technological progress. Those additional classes will be A+, A++, and A+++ for the most efficient class. In principle the total number of classes will be limited to seven, unless more classes are still populated.

The colour scale shall consist of no more than seven different colours from dark green to red. The colour code of only the highest class shall always be dark green. If there are more than seven classes, only the red colour can be duplicated.

The classification shall be reviewed in particular when a significant proportion of products on the internal market achieves the two highest energy efficiency classes and when additional savings may be achieved by further differentiating products.

Detailed criteria for a possible reclassification of products are, where appropriate, to be determined on a case-by-case basis in the relevant delegated act;

(e) the location where the label shall be fixed to the product displayed and the 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, the delegated acts 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(c). The information on the label shall also be included on the fiche;

(g) 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;

(h) the duration of label classification(s), where appropriate, in accordance with point (d);

(i) the level of accuracy in the declarations on the label and fiches;

(j) the date for the evaluation and possible revision of the delegated act, taking into account the speed of technological progress.

Article 11

Exercise of the delegation

1. The powers to adopt the delegated acts referred to in Article 10 shall be conferred on the Commission for a period of five years beginning on ... (*). The Commission shall make a report in respect of the delegated powers not later than six months before the end of the five-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 12.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 12 and 13.

Article 12

Revocation of the delegation

1. The delegation of powers referred to in Article 10 may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 13

Objections to delegated acts

1. The European Parliament or the Council may object to the delegated act within a period of two months from the date of notification.

At the initiative of the European Parliament or the Council that period shall be extended by two months.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and enter into force on the date stated therein.

(*) The date of entry into force of this Directive.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period, if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Article 14

Evaluation

Not later than 31 December 2014, the Commission shall review the effectiveness of this Directive and of its delegated acts and submit a report to the European Parliament and the Council.

On that occasion, the Commission shall also assess:

- (a) the contribution of point (c) of Article 4 to the aim of this Directive;
- (b) the effectiveness of Article 9(1);
- (c) in the light of technical evolution and the understanding by consumers of the label layout, the need for amending point (d) of Article 10(4).

Article 15

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and its delegated acts, including unauthorised use of the label, 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 Member States shall notify the Commission without delay of any subsequent amendment affecting those provisions.

Article 16

Transposition

1. Member States shall bring into force, by ... (**). 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.

They shall apply those provisions from ... (***)

(**) 12 months after the date of entry into force of this Directive.
(***) 12 months and 30 days after the date of entry into force of this Directive.

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 to the effect that references in existing laws, regulations and administrative provisions to Directive 92/75/EEC 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.

Article 17

Repeal

Directive 92/75/EEC, as amended by the Regulation indicated in Annex I, Part A, is repealed with effect from ... (*), without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of that Directive set out in Annex I, Part B.

References to Directive 92/75/EEC shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 18

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*.

Points (d), (g) and (h) of Article 5 shall apply from ... (*).

Article 19

Addressees

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

The President

...

For the Council

The President

...

(*) 12 months and 31 days after the date of entry into force of this Directive.

ANNEX I

PART A

Repealed Directive with its successive amendment*(referred to in Article 17)*

Council Directive 92/75/EEC
(OJ L 297, 13.10.1992, p. 16)

Regulation (EC) No 1882/2003
(OJ L 284, 31.10.2003, p. 1)

Only point (32) of Annex III

PART B

List of time-limits for transposition into national law*(referred to in Article 16)*

Directive	Deadline for transposition
92/75/EEC	1 January 1994

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) points (a) and (b)
Article 1(3)	Article 1(3) point (c)
—	Article 2 points (a) and (b),
Article 1(4), first and second indents	Article 2 points (g) and (h)
Article 1(4), third indent	—
Article 1(4), fourth indent	Article 2 point (c)
Article 1(4), fifth indent	Article 2 point (d)
—	Article 2 points (e), (f), (i), (j) and (k)
Article 1(5)	—
Article 2(1)	Article 4 point (a)
—	Article 4 point (b), (c) and (d)
Article 2(2)	—
Article 2(3)	Article 5 point (b)
Article 2(4)	Article 5 points (b) and (c)
Article 3(1)	Article 5 point (a)
Article 3(2)	Article 5 points (e) and (f)
Article 3(3)	Article 5 point (g)
Article 3(4)	Article 5 point (h)
—	Article 6 point (a)
Article (4) point (a)	Article 6 point (b)
Article (4) point (b)	Article 5 point (d)
Article 5	Article 7
Article 6	—
Article 7 point (a)	Article 3(1) point (a)
Article 7 point (b)	Article 3(1) point (b)
Article 7 point (c)	Article 3(1) point (c)
—	Article 3(1) point (d)
—	Article 3(2), (3) and (4)
Article 8(1)	Article 8(1)
Article 8(2)	Article 8(2)
Article 9	—

Directive 92/75/EEC	This Directive
—	Article 9
Article 10	—
—	Article 10(1), (2) and (3)
Article 11	—
Article 12 point (a)	Article 10(4) point (a)
Article 12 point (b)	Article 10(4) point (b)
Article 12 point (c)	Article 10(4) point (c)
Article 12 point (d)	Article 10(4) point (d)
Article 12 point (e)	Article 10(4) point (e)
Article 12 point (f)	Article 10(4) point (f)
Article 12 point (g)	—
—	Article 10(4) point (g), (h), (i) and (j)
—	Articles 11, 12, 13, 14, 15
Article 13	Article 17
Article 14	Article 16
—	Article 18
Article 15	Article 19
—	Annex I
—	Annex II

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 17 November 2008, the European Commission submitted a recast proposal for a Directive on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products to the Council and the European Parliament with Art. 95 as legal basis ⁽¹⁾.
2. The European Economic and Social Committee adopted its opinion on 24 March 2009 ⁽²⁾. The Committee of the Regions did not yet deliver an opinion.
3. The European Parliament adopted its opinion in first reading on 5 May 2009 ⁽³⁾, approving 60 amendments.
4. On 14 April 2010, the Council adopted its position at first reading in accordance with Article 294 of the TFEU.

II. OBJECTIVE OF THE PROPOSAL

Together with two other proposals ⁽⁴⁾ this proposal is part of the Energy Efficiency Package tabled by the Commission in November 2008.

The main aim of the recast proposal is the extension of the scope of the current Directive 92/75/EEC, 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 for energy savings once in use or installed. It follows in particular the overall objective to improve the energy efficiency performance of those products, thereby contributing to the Community objectives of protecting the environment and combating climate change, in line with the EU's climate/energy policy goals for 2020 as regards greenhouse gas emissions.

III. ANALYSIS OF THE COUNCIL POSITION AT FIRST READING

1. In view of the tight timetable required in order to reach early agreement on this proposal as called for by the European Council, the Council aimed from the start at identifying elements that would be acceptable to both Parliament and Council, rather than drawing up a complete agreed Council position before entering into negotiations with Parliament. In order to make rapid progress while taking into account the date of entry into force of the Treaty on the Functioning of the EU, it was agreed to proceed in two steps:

- Reaching agreement on the substance of the Directive. Following consultations with the EP, this first step was concluded in November 2009. This agreement was confirmed by Coreper on 19 November 2009 and, on the level of the EP ITRE committee, by means of a letter of its Chairman, dated 2 December 2009.

⁽¹⁾ doc. 15906/08

⁽²⁾ OJ C 228, 22.9.2009, p. 90.

⁽³⁾ doc. 9322/09

⁽⁴⁾ The other two proposals in this package are:

- draft Directive of the European Parliament and of the Council on the energy performance of buildings (recast) (2008/0223 COD);
- Regulation (EC) No 1222/2009 of the European Parliament and of the Council on the labelling of tyres with respect to fuel efficiency and other essential parameters (OJ L 342 of 22.12.2009, p. 46).

- Reaching agreement on the modifications resulting from the entry into force of the TFEU, concerning notably the adaptation of the legal basis and the comitology provisions. Following consultations with the EP, this second step was concluded in March 2010, relying to the extent possible on horizontal solutions, notably as regards the consultation of experts, the EP, Council and Commission statement on Article 290 and the Commission statement on recess periods. This agreement was confirmed by Coreper on 24 March 2010 and, on the level of the EP ITRE committee, by means of a letter of its Chairman, dated 25 March 2010.

2. The Council position incorporates the two agreements recalled above. Its main elements are:

Provisions on the label and the label layout:

The Council has based the format of the label on the current label layout with the classes A to G, allowing at the same time for three additional classes, with the total number of classes being limited to seven, and providing for a clear marking of the corresponding colours on the label. When a new class is added, the colour scale will move. In this way, a clearly visible and legible label layout, well comprehensible for the consumer, is guaranteed, as requested by the EP in the first part of its amendment 70. Moreover, the Council has laid down that the details of a possible reclassification of products are to be determined on a case-by-case basis in the relevant delegated acts. Finally, in a review clause, the Commission is asked to assess, by the end of 2014, the need for amending the provisions on the label layout in the light of technical evolution and the understanding by consumers of the label layout.

In line with amendment 52, the Council has also ensured that measures can be taken against unauthorised use of the label.

Provisions on advertisement

The Council has partly followed the EP in its amendment 32 and has made the inclusion of the energy efficiency class in advertisements mandatory for all cases where energy-related or price information is disclosed. Regarding mandatory information on energy consumption or a reference to the energy efficiency class of the product in technical promotional material, the Council has fully accepted EP amendment 33.

Provision on public procurement

The Council has provided for the possibility for Member States to require their contracting authorities to procure only products fulfilling the energy efficiency criteria, *i.e.* belonging to the highest energy efficiency class and having the highest performance levels, responding in this way partly to amendment 40.

* * *

In addition to the above main elements, and with a view to reaching an early agreement, the Council examined every amendment of the European Parliament. Wherever possible, amendments were accepted, either in full or partially; sometimes the spirit of an amendment was addressed in another article or in a recital. Thus, in its position, the Council has

- Accepted fully (sometimes with redrafting), partly or in spirit the following 40 amendments: 1, 2, 72, 4, 53 + 64, 7, 74, 8 - 11, 54 + 65, 17 - 19, 21 - 23, 25 - 33, 35, 36, 56 + 68, 38, 40, 43, 70 (first part), 50 - 52;
- Not been able to accept the following 21 amendments: 3, 5, 12 - 15, 20, 59, 24, 66, 67, 39, 41 - 42, 69, 76, 45, 47, 70 (second part), 58 + 71.

Statement by the European Parliament, the Council and the Commission on Article 290 TFEU

The European Parliament, the Council and the Commission declare that the provisions of this Directive shall be without prejudice to any future position of the institutions as regards the implementation of Article 290 TFEU or individual legislative acts containing such provisions.

Commission Statement

The European Commission takes note that except in cases where the legislative act provides for an urgency procedure, the European Parliament and the Council consider that the notification of delegated acts shall take into account the periods of recess of the institutions (winter, summer and European elections), in order to ensure that the European Parliament and the Council are able to exercise their prerogatives within the time limits laid down in the relevant legislative acts, and is ready to act accordingly.
