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EUROPEAN COMMISSION

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294 (6) of the Treaty on the Functioning of the European Union

concerning the

**Council's position at first reading on the adoption of an amended 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 (recast)**

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council 13 November 2008
COM(2008)0778 - 2008/0222(COD)

Date of the opinion of the European Economic and Social Committee: 24 March 2009

Date of the opinion of the European Parliament, first reading: 5 May 2009

Date of the opinion of the Committee of the Regions: 19 March 2010

Date of adoption of the Council's position at first reading: [14] April 2010

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The aim of the recast of the "Energy Labelling Directive" or "ELD" is to extend its scope (currently limited to household appliances) also to products in the commercial and industrial sectors. It also extends the scope to energy-related products that allow for energy savings when in use, although they do not consume energy themselves. This aligns the scope with the recently extended scope of the Ecodesign Directive. In doing so, it follows the overall objective to ensure the free movement of products and improve their energy (and other essential resources) consumption, thereby protecting the environment and contributing to CO2 emissions reduction. The resulting framework Directive on labelling will also be a building block for an integrated sustainable environmental product policy, by including initiatives on incentives and public procurement. The proposal has the form of a recast.

3. COMMENTS ON THE COUNCIL POSITION

3.1. General comments on the Council Position

The text of the negotiated Council Position is, in substance and to a large extent, in line with the Commission's proposal and therefore can be supported.

3.2. Agreement on Council Position at first reading stage

The negotiated Council Position is the result of inter-institutional negotiations in two stage process. The first stage covered the technical substance of the proposal and the second the adaptation of the proposal to the Lisbon Treaty as regards its legal basis and comitology provisions.

As for the technical substance, on 2 December 2009 the chairman of the ITRE Committee, Mr Herbert Reul, confirmed Parliament's agreement to the text as agreed at the final political trilogue on 17 November 2009 and endorsed by Coreper on 19 November 2009.

As to the adaptation to Lisbon Treaty, the compromise reached was endorsed by Coreper on 24 March 2010 and confirmed by Parliament's ITRE Committee chairman Mr Reul on 25 March.

The negotiated Council position was formally adopted by written procedure on [14] April 2010.

The main subjects of negotiation on which an agreement was reached are as follows

- *Change of legal basis* (preamble): due to the entry into force of the Lisbon Treaty, Council and Parliament agreed to change the legal basis to Article 194 TFEU, taking into account that the aim of the Directive is essentially to achieve energy savings. Considering that position and that the aim of the Directive is to promote energy efficiency whilst keeping the internal market aspects of 114 TFEU, Commission can agree on the change of legal basis of its proposal from 114 TFEU to 194 TFEU and is including it in the addendum to its Communication (2009)665final.
- *Delegated acts*: due to the entry into force of the Lisbon Treaty, Council and Parliament agreed on the provisions regarding the delegated acts referred to in articles 10, 11, 11a and 11b. A Commission statement will be attached to clarify that notification of delegated acts shall take into account the periods of recess in institutions (Annex 1). A joint Council, Parliament and Commission statement will also be attached indicating that the provisions of this Directive do not constitute a precedent as regards the implementation of Article 290 TFEU (Annex II)
- *Extension of scope* (article 1(1)-(2)): the scope is extended to cover all energy-related products of the household, commercial and industrial sector, as proposed by the Commission.
- *Unauthorised use of label* (article 2): language is inserted to clarify what constitutes legitimate and illegitimate use of the label.
- *Market surveillance* (article 3): market surveillance provisions are reinforced to provide better enforcement on the Directive.
- *Advertising requirements* (article 4(a)-(b)): a new provision is inserted requiring that the energy efficiency class must be shown in any advertisement which contains energy related information or the price of those products covered by delegated acts.
- *Public procurement* (article 9(1)-(2)): Member States are encouraged to use the highest energy efficiency class for procurement (subject to cost-effectiveness, economic feasibility, technical suitability and sufficient competition).

- *Incentives* (article 9(3)-(4)): Similarly to procurement, Member States are encouraged to apply the highest energy efficiency class or even aim higher by applying the highest performance levels when providing incentives for their citizens. Taxation and fiscal measures are excluded as incentives from this Directive.

- *Label Layout* (article 11(4)(d)): Three more classes (A+, A++, A+++) can be added to the A-G scale which remains the basis. There could be a review by the Commission when a significant proportion of products will be in the two highest energy efficiency classes (A++/+++), and further differentiation is justified. A Commission statement will be attached to clarify what is meant by "a significant proportion of products". A recital will indicate that at the time (by 2014) of reviewing the framework Directive, the label review will consider the option of rescaling.

4. CONCLUSION

The Council Position meets the aims of the Commission's initial proposal. The Commission therefore supports the text.

ANNEX I

Commission statements

concerning the 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 (recast)

Art. 1 (2)

"When setting out the priority list of energy-related products referred to in Recital [3a], the Commission will give due attention also to energy-related construction products, taking into account in particular the potential energy savings that could be achieved through the labelling of some of those products, given that buildings account for 40 % of total energy consumption in the EU."

Art. 11 (2)

"When proposing new implementing measures under the recast Directive, the Commission shall ensure that overlapping legislation is avoided and that overall consistency in the EU-legislation on products is maintained."

Art. 11 (4)(d)

Significant proportion of products for the review of label classification

"The Commission considers that the proportion of products in the two highest energy efficiency classes is considered to be significant when it can be estimated that

- either the number of models available on the internal market which achieve class A+++ or A++ is about one third or more of the total number of relevant models available,
- or the share of the annual sales of products in the internal market which achieve class A+++ or A++ is about one third or more,
- or both."

Consumer information

"The Commission supports the use of Community instruments such as the Intelligent Energy-Europe Programme to contribute to:

- initiatives that raise end-users' awareness on the benefits of energy labelling
- initiatives that monitor the market evolution and the technological development leading to more energy efficient products, in particular by identifying the best performing models in the various product groups and making the information available to all interested parties, such as consumer organisations, industry and environmental NGOs with the view of large dissemination towards consumers.

Such monitoring could also serve as an indicator for the review of Labelling and/or Ecodesign measures under Directives 1992/75/EEC and 2005/32/EC. "

Recess period

"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."

ANNEX II

Institutional statement

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."