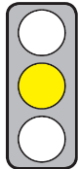


KEY ISSUES

Objective of the Directive: The Commission wants to motivate customers to buy products with a higher level of energy-efficiency by rescaling energy efficiency labelling (EU label).

Affected parties: Manufacturers, importers, traders and buyers of energy-related products.



Pro: (1) The EU label makes it easier for consumers to reduce their energy consumption in accordance with their own wishes and at the lowest possible cost.

(2) The abolition of efficiency classes A+ to A+++ improves the informational content of EU labels as consumers perceive the difference between e.g. C and B differently to that between A+ and A++.

Contra: (1) The requirement that, to begin with, rescaling must be carried out such that no product is permitted to achieve efficiency classes A and B, reduces the informational content of the EU label.

(2) The obligation to refer to the efficiency class in all advertising, places a restriction on entrepreneurial freedom without sufficient justification.

CONTENT

Title

Proposal COM(2015) 341 of 15 July 2015 for a **Regulation** of the European Parliament and of the Council setting a framework for energy efficiency labelling and repealing Directive 2010/30/EU

Brief Summary

► Context and objectives

- "Generally intelligible" labelling of energy consumption will motivate people to buy products which are "as energy efficient as possible".
- The Energy Labelling Directive of 1992 (92/75/EEC) introduced an EU label for household appliances and lighting indicating their energy efficiency by way of a scale with seven efficiency classes – from A (high) to G (low).
- The Energy Efficiency Directive of 2010 (2010/30/EU) (see [cepPolicyBrief](#)) extended
 - the scale by three additional efficiency classes A+ to A+++ applicable where "necessary for technical reasons",
 - the scope to include "energy-related products"; these are items whose use influences energy consumption, e.g. car tyres and windows.
- Some energy-related products – e.g. refrigerators – must fall into efficiency classes A+ to A+++ in order to be brought onto the market (Ecodesign-Directive 2009/125/EC, Art. 3 and 5; see [cepPolicyBrief](#)).
- The Commission wants to replace the applicable Energy Labelling Directive (2010/30/EU) with the proposed Regulation. In this regard, it particularly wants the scale on the labels (p. 5)
 - to be restricted once again to Classes A to G because efficiency classes A+ to A+++ have reduced the consumer's motivation to buy more energy efficient products, and
 - to be used to its full extent because without a comprehensive product comparison over the whole scale from A to G, the labelling is less informative.

► Scope

- The Regulation applies to goods, "systems" and services with an impact on energy consumption during use including parts incorporated therein ("energy-related products"). The Commission determines in delegated acts (Art. 290 TFEU) which of these products must display an EU label indicating the energy efficiency (Art. 1, 2 No. 11 and Art. 7 (1)).
- The Regulation does not apply to (Art. 1 (2))
 - second-hand products or
 - means of transport for persons or goods.

► EU labels and rescaling

- The EU label is a graphic diagram indicating energy consumption using a classification from A to G in seven different colours from dark green to red (Art. 2 No. 13).
- The Commission may, by means of delegated acts, introduce new EU labels for product groups which have not yet been included, or rescale existing labels (Art. 7 (1) in conjunction with Art. 12 and 13):

- The product groups selected for labelling must (Art. 12 (2)).
 - have "significant potential" for saving energy,
 - contain products which differ significantly from one another in performance level with equivalent functionality and
 - not become "significantly" more expensive as a result of labelling.
- When an EU label is introduced or rescaled, the scaling for the affected product group must be carried out in such a way that (Art. 7 (3))
 - at the moment of the introduction or rescaling, no products "are expected" to fall into energy classes A or B and
 - at least 10 years later, "a majority" of products "are expected" to achieve efficiency classes A and B.
- EU labels must be rescaled "periodically" (Art. 7 (4)).
- ▶ **Duties of suppliers and dealers**
 - Manufacturers and importers ("Suppliers", Art. 2 No. 5) must
 - supply the EU label and information sheet for products placed on the market (Art. 3 (1)),
 - produce technical documentation to enable the accuracy of the EU label to be assessed (Art 3 (1)),
 - provide dealers with both the current and the rescaled EU labels six months before the introduction of a rescaled EU label (Art. 7 (5)).
 - Dealers must (Art. 3 (2))
 - display the EU label in a visible manner on the relevant product,
 - make the product information sheet available to the customers and
 - replace the existing labels, on products on display or shown on the Internet, with the rescaled labels within one week of the introduction of a rescaled EU label (Art. 7 (5)).
 - Suppliers and dealers (Art. 3 (3))
 - must indicate the efficiency class of a product on all advertising,
 - are not permitted to use any other labels, symbols or inscriptions on products selected for labelling which do not correspond to the EU label if this may mislead the customer and
 - are not permitted to use labels which are similar to the EU label for products which have not been selected for labelling.
- ▶ **Obligations of the Member States**

Member States

 - are not permitted to restrict or impede the placing on the market of labelled products which comply ("compliance") with the requirements of the Regulation (Art. 4 (1)) and
 - must implement "educational and promotional information campaigns" in order to encourage "more responsible use" of energy by consumers (Art. 4 (4)).
- ▶ **Market surveillance measures**
 - Where market surveillance authorities believe that a product subject to labelling does not meet the requirements of the Regulation, the supplier must take corrective action or withdraw the product from the market (Art. 6 (1) and (2)).
 - Where this does not take place, the market surveillance authorities must (Art. 6 (5))
 - "restrict or prohibit" the sale and
 - notify the Commission and the other Member States without delay.
 - The Commission and the Member States may raise an objection within 60 days (Art. 6 (8)). If the Commission considers the national measure (Art. 6 (12))
 - to be justified, all other Member States must withdraw the product from the market,
 - to be unjustified, the Member State must withdraw the measure.
- ▶ **Product database**
 - The Commission shall establish a product database in which suppliers must lodge, in particular, the following information prior to placing a product onto the market (Art. 3 (1), Art. 8, Annex 1):
 - supplier's name, EU label and product information sheet (publicly accessible) and
 - supplier's address, technical documentation, test reports on compliance (only available to market surveillance authorities and Commission).
 - The Commission can introduce additional obligations for suppliers and dealers by way of delegated acts (Art. 12 (3)).

Main Changes to the Status Quo

- ▶ Until now, energy efficiency labelling was regulated by way of a Directive, now it is in a Regulation.
- ▶ Until now, the provisions on energy efficiency labelling were only for physical items. Now they will apply to goods, systems and services.
- ▶ Until now, the efficiency scale could be extended by classes A+ to A+++ where this was necessary "for technical reasons". Now this extension will no longer be possible.
- ▶ Until now, the efficiency class only had to be mentioned in advertising if the energy consumption or price was indicated. Now it will have to be indicated in all advertising.

- ▶ New will be that, on the introduction or rescaling of an EU label, the scaling for the affected product group must be carried out such that, at the moment of the introduction or rescaling, no products "are expected" to fall into energy classes A or B and "at least" 10 years later, "a majority" of products "are expected" to achieve efficiency classes A and B.
- ▶ New will be that rescaling must be carried out "periodically".
- ▶ New will be the establishment of a product data base.

Statement on Subsidiarity by the Commission

Energy efficiency labelling must be regulated at EU level in order to ensure a level playing field for the manufacturers and dealers of labelled products.

Policy Context

The EU wants to increase energy efficiency by 20% by 2020 and by 27% by 2030 (see [cepCompass EU Climate and Energy Policy](#), p. 6 et seq. and p. 112 et seq.). In February 2015, the Commission submitted a Strategy for an Energy Union [COM(2015) 80; see [cepPolicyBrief](#)] in which it announced the revision of the Energy Efficiency Labelling Directive (2010/30/EU) [COM(2015) 80 Annex 1, p. 7].

Legislative Procedure

15 July 2015	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	Energy (leading)
Committees of the European Parliament:	Industry, Research and Energy (leading), Rapporteur: Darion Tamburrano (EFD, I)
Federal Ministries:	Economy (leading)
Committees of the German Bundestag:	Economic Affairs and Energy (leading); EU Affairs; Consumer Protection; Environment
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

Formalities

Legislative competence:	Art. 194 TFEU (Energy)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

Information about relevant product characteristics facilitates rational buying decisions. **The EU label**, with its uniform scale of energy efficiency classes, provides a clear indication of how each product affects energy consumption by comparison with similar products. It thus **makes it easier for consumers to reduce their energy consumption in accordance with their own wishes and at the lowest possible cost**.

The EU label with its graphic diagram is not, however, necessary for commercial buyers who have a high level of specialist knowledge. Firstly, buyers e.g. of machine tools will in any case make sure they have all the information they need. Secondly, commercially used products are only comparable with each other to a very limited degree due to the often high level of specificity. Commercial products which are intended for commercial buyers with a high level of specialist knowledge and are not available in ordinary wholesale and retail outlets, should therefore be exempt from the Regulation.

The EU should define the scope more precisely and clarify which services will in future be subject to the labelling obligation and how exactly the energy efficiency of services is to be determined. What is meant by "systems" in the context of the Regulation should likewise be clarified.

The abolition of efficiency classes A+ to A+++ improves the informational content of EU labels because consumers perceive the difference between e.g. Class C and B differently to that between A+ and A++. This is firstly because Class A already suggests that the highest level has already been reached. Secondly, Classes A to A+++ seem like subdivisions of Class A.

The requirement that the rescaling of EU labels must be such that, at the beginning, no product is "expected" to achieve efficiency classes A and B, on the one hand ensures that, for a certain period of time, future increases in efficiency can be indicated. On the other hand, however, it **reduces the informational content of the EU label** as not all product groups are expected to show additional increases in efficiency.

The periodic rescaling of EU labels has the effect that consumers can always compare the energy consumption of the models within a product group using the same graphic diagram. However, it also means that over the course of time a product's classification will change so that a product in efficiency class A may drop to e.g. efficiency class D following a rescaling. All EU labels should therefore have a clearly visible implementation date in order to ensure transparency.

Effective market surveillance, including the power to prohibit sales, makes breaches of the law more difficult. This may strengthen competition in the internal market because companies are subject to the same framework conditions when it comes to labelling, launching and marketing their products. There is, however, no guarantee that market surveillance will be uniform for the EU or comprehensive because the capacity and willingness to do this differs from one Member State to another. This problem is intensified by the continual increase in new mandatory product requirements, such as those issued under the Ecodesign Directive.

Impact on Efficiency and Individual Freedom of Choice

The obligation for suppliers and dealers **to indicate the efficiency class in all advertising** for the product, **restricts entrepreneurial freedom without sufficient justification.** Buyers in any case get to see the EU label after seeing the advertising and before buying.

Consumers can compare the energy consumption of competing products via the planned publicly accessible product database.

Impact on Growth and Employment

Negligible.

Impact on Europe as a Business Location

The Regulation has a neutral impact on Europe as a business location because it also applies to products manufactured outside the EU if these are placed on the market in the EU.

Legal Assessment

Legislative Competency

Unproblematic. The EU is empowered to issue measures to increase energy efficiency (Art. 194 TFEU). In addition, varying labelling requirements issued by the Member States would confuse consumers and significantly obstruct the free movement of goods in the EU. The EU is therefore also permitted to adopt uniform regulations in order to ensure the functioning of the internal market (Art. 114 TFEU).

Subsidiarity

Unproblematic. Uniform rules on labelling can only be issued at EU level.

Proportionality with Respect to Member States

Although a Directive, which allows the Member States scope to decide on the form of implementation (Art. 288 (3) TFEU), is, by comparison with a directly applicable Regulation (Art. 288 (2) TFEU), the "milder form of legislation, only a Regulation can ensure that the rules on labelling are uniform across the EU. Thus the change from a Directive to a Regulation is proportional.

Compatibility with EU Law in other Respects

In view of the potential burdens, authorising the Commission to determine "obligations of suppliers and dealers in relation to product data bases" does not relate to "non-essential elements" (Art. 290 (1) TFEU) especially since the Regulation does not provide for any criteria about the nature of the potential obligations. The blanket authorisation is therefore questionable from a legal perspective.

Impact on German Law

If the Commission's proposal is adopted as a directly applicable Regulation, any implementation into German law - Energy Consumption Labelling Act and Ordinance - would be obsolete.

Conclusion

The EU label makes it easier for consumers to reduce their energy consumption in accordance with their own wishes and at the lowest possible cost. The abolition of efficiency classes A+ to A+++ improves the informational content of EU labels as consumers perceive the difference between e.g. class C and B differently to that between A+ and A++. The requirement that, to begin with, rescaling must be carried out such that no product is permitted to achieve efficiency classes A and B, reduces the informational content of the EU label. The obligation to refer to the efficiency class in all advertising, places a restriction on entrepreneurial freedom without sufficient justification.