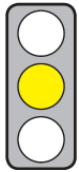


Status: 12.12.2008

MAIN ISSUES

Objectives of the Directive: The Directive aims to extend the obligation on labelling energy and resource consumption of products to all “energy-related products”.

Parties Concerned: Suppliers and dealers of “energy-related products”, consumers, public institutions



Pros: The extension of labelling obligations will facilitate the acquisition of information for purchasing decisions.

Cons: (1) Commercial customers with extensive expertise do not need the product information prescribed by the Directive.

(2) The obligation to consider only energy- and resource-efficient products in public procurement is to be rejected for reasons of disproportionality.

CONTENT

Title

Proposal COM(2008) 778 of 13. November 2008, for a **Directive** of the European Parliament and the Council on **the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products**

Abstract

► Object and aims

- The proposed Directive is to revise Directive 92/75/EEC and expand its scope. The Directive governs the labelling of household appliances and lighting sources with regard to their energy consumption.
- Standardised and clear labelling is to facilitate better recognition for end consumers regarding the impact of the use of “energy-related” products on energy consumption and “other essential resources” [Recital 3 and Art. 11 (1)]. This is intended to induce manufacturers to design their products in a more energy- and resource-efficient way.
- Labelling is done using a standardised label and an information sheet (“fiche”), which must be provided to end customers when the product is sold (Art. 4 and 6).

► Products subject to the Directive

- The Directive is to govern products whose use has a “significant impact on the consumption of energy and, where relevant, other essential resources” [“energy-related products” Art. 1 (2)]. “Other essential resources” means “water, chemicals or any other substance consumed by a product in normal use” (Art. 2, 3rd indent).
- “Energy-related products” are
 - energy-powered products (e.g. lighting sources, television sets) and
 - products which have an impact on energy consumption (e.g. windows, shower heads; Art. 2, 1st indent)
- The Directive also applies to parts which are designed for incorporation into a product governed by the Directive. However, this is only applicable if
 - they are marketed and/or taken into service as individual parts and
 - can be assessed independently as to their environmental performance. (Art. 2, 1st indent)
- The Directive does not apply to
 - second-hand products
 - any means of transport for persons or goods [Art. 1 (3)].

► “Implementing measures”

- The Commission can define specific requirements for the labelling and information sheets of specific product groups by means of “implementing measures”. This can be effected using Regulations, provided a committee consisting of representatives of the Member States agrees and further provided that the Council and the Parliament do not contradict [regulatory procedure with scrutiny; Art. 11 (1) and Art. 10 (2)].
- If EU-wide Ecodesign requirements apply to a specific product group, they form the basis for the environmental aspects taken into consideration for labelling [Art. 11 (3) in conjunction with Annex I of the Ecodesign Directive 2005/32/EC].

- A product group can be made subject to an “implementing measure” if
 - there is significant potential for saving energy and other essential resources and
 - the products available within a specific product group show a wide disparity in “appropriate performance levels” (e.g. electricity or water consumption). [Art. 11 (2) lit. a and b]
- Prerequisites for “implementing measures” are
 - an impact assessment with regard to the environment, end users and manufacturers, particularly small and medium sized enterprises (SMEs), and
 - the consultation of stakeholders. [Art. 11 (3)]

► **Obligations of suppliers and dealers**

- Suppliers are manufacturers, importers or their authorised agents in the Community who market the relevant product in the Community (Art. 2, 7th indent).
- Suppliers who sell or take into service a product governed by an implementing measure must
 - supply the relevant label and information sheet free of charge together with the product [Art. 5 (1), (4) and (5)],
 - be able to provide technical documentation which allows the accuracy of the information provided on the label and the information sheet to be tested [Art. 5 (2)], and
 - maintain records of technical documentation for five years after the manufacturing of a product has ended and keep them ready for inspection. [Art. 5 (3)]
- Suppliers are responsible for the accuracy of the information provided on the label and the information sheet [Art. 5 (7)].
- Dealers must attach the label in a specific position on a displayed product and hand over the information sheet to the buyer [Art. 6 (1) and (2)].
- For products offered by mail order (e.g. catalogue, internet) the end consumer must be informed of the information on the label and the information sheet prior to the purchase (Art. 7).

► **Consequences of non-compliance with the provisions**

- In case of non-compliance with the EU requirements for the label and the information sheet, Member States can demand the supplier to make the product compliant with those requirements [Art. 3 (2)].
- Where non-compliance continues, the Member States shall take a decision which may restrict or prohibit placing the product in question on the market and/or putting it into service or ensure that it is withdrawn from the market [Art. 3 (2)].

► **Public procurement**

- Contracting authorities who award public supply, works or service contracts amounting to at least €15,000 are to be no longer allowed to procure any products which do not meet specific “minimum performance levels”. These are laid down in the applicable implementing measure [Art. 9 (1)]
- Exempt from this provision are contracts particularly in the areas of water, energy and traffic supply, postal services as well as contracts subject to confidentiality [Art. 9 (1) in conjunction with Art. 12 – 18 of Directive 2004/18/EC].
- Member States must not offer any incentives for the purchase of products which do not comply with the minimum performance levels laid down in the applicable implementing measure [Art. 9 (4)].

Changes Compared to the Status Quo

- To date, the Directive has only applied to the following energy-powered products: refrigerators and freezers, washing machines and driers, dishwashers, ovens, water heaters and hot-water storage appliances, lighting sources and air-conditioning appliances. The revised Directive will cover all “energy-related products” (Art. 1).
- To date, the Directive does not include any provision on public procurement. Now, public contracting institutions are to be obligated to only purchase products which meet specific minimum performance levels (Art. 9).
- To date, product labelling has been governed by implementing directives which had to be transposed to national law. This is now able to be effected in the form of implementing regulations which have immediate effect.

Statement on Subsidiarity

The Commission believes that national labelling provisions could create barriers for the internal market. It believes that only standardised regulation at EU level will guarantee identical labelling requirements in all Member States.

Political Background

With its proposal for a Directive, the Commission intends to contribute to the implementation of the “Action Plan for Sustainable Consumption and Production and Sustainable Industrial Policy” [COM(2008) 397]. The

plan's objective is to increase the environmental performance of products. The proposal is closely related to the recast of the Ecodesign Directive [COM(2008) 399; cf. [CEP Policy Brief](#)], which lays down binding provisions for the design of products, and the Communication on Public Procurement for a Better Environment [COM(2008) 400; cf. [CEP Policy Brief](#)]. The Commission has presented a proposal for a Directive on the Energy Performance of Buildings [COM(2008) 780] at the same time as the present proposal.

Status of legislation

13.11.08 Adopted by the Commission
Open Adoption by the European Parliament and the Council, publication in the Official Journal, commencement

Options for Influencing the Political Process

Leading Directorate-General:	DG Energy and Transport
Committees of the European Parliament::	Industry, Research and Energy (in charge), rapporteur Podimata Anni (PSE); Legal Affairs
Committees of the German Bundestag:	Economics and Technology
Decision Mode of the Council:	Qualified majority (approval by a majority of Member States and at least 255 of 345 votes; Germany: 29 votes)

Formalities

Provision conferring authority:	Art. 95 TEC (Internal Market)
Legislative authority:	Concurrent legislative powers
Procedure:	Art. 251 TEC (Co-decision)

ASSESSMENT

Economic Impact

Ordoliberal Assessment

Providing information about relevant product characteristics to consumers facilitates sensible purchasing decisions. **A concise indication of the energy consumption** and of other key values **on standardised labels has been proven to be a valid measure** for large-sized household appliances and lighting sources. A standardised scheme of energy efficiency classes provides clear information on how much energy a product uses compared to similar products. Depending on the product group, there are also requirements to provide more specific information e.g. on noise. **In order to optimize individual energy consumption it is reasonable to consider** not only energy-powered but **all energy-related products** since this is the only way to enable the consideration of all important influence factors. **An extension to energy-related products in general is therefore a welcome development.**

For commercial customers with extensive expertise, concise labelling is however unnecessary as buyers of e.g. tool machines gather comprehensive product information prior to the purchase in any case. Therefore **the Directive should not apply to products designed for professional customers with extensive expertise**. This could prevent unnecessary administrative burdens. Manufacturers are free to promote low energy consumption products on their own.

Impact on Efficiency and Individual Freedom of Choice

Labelling helps consumers to choose the products which have the features they prefer. So the consumption of energy is reduced according to consumers' decisions and where this can be done at a low cost.

In addition, **a clear indication of the energy consumption will further the aim of emissions trading**. The EU Emissions trading scheme requires that all companies involved must hold tradable emission permits for the CO₂ emissions generated by them. The overall number of emission permits is limited EU-wide. The adaptive reactions triggered by this cause a limitation of overall emissions at the lowest possible costs while making energy consumption more expensive. Labelling could help users to easily identify energy saving potential. The proposed Directive is closely oriented toward the provisions of the Ecodesign Directive (2005/32/EC) and its revised proposal [COM(2008) 399]. This Directive, whose scope is also to be expanded considerably, prescribes detailed design provisions for many products, and threatens to result in an over-regulation of the entire production process [cf. [CEP-Policy Brief](#)]. Notwithstanding this general criticism, we welcome the orientation of the labelling obligation toward the Ecodesign Directive since this will limit additional administrative burdens.

Impact on Growth and Employment

The Directive and the related implementing measures are unlikely to create an excessive cost burden and will therefore not have any negative impact on growth and employment.

Impact on Europe as a Business Location
Unproblematic.

Legal Assessment

Legal Competence

The competence to pass standardised EU-wide provisions to label the energy and resource consumption of products is based on Art. 95 TEC. This allows the EU to adapt legal and administrative provisions which obstruct the internal market.

It is, however, not clear to what extent prohibiting public services from procuring products below a “minimum performance level” serves the effective functioning of the internal market (e.g. reducing trade barriers). It therefore cannot be based on Art. 95 TEC. The exclusive purpose of this provision is the reduction of the consumption of energy and resources. Art. 175 (1) TEC would be relevant as the legal basis for any environmental purpose of the Directive.

Subsidiarity

National mandatory labelling schemes would constitute obstacles to the free movement of goods within the Community. Therefore, an EU-wide regulation is considered to be an appropriate measure. Such a regulation can only be adopted at EU level so as not to violate the principle of subsidiarity according to Art. 5 (2) TEC.

However, **the prohibition on authorities to procure products below a standardised EU-wide “minimum performance level” is not compatible with the principle of subsidiarity.** It is not clear why the objective of procuring energy- and resource-efficient products in the public sector could not be realised equally well by the Member States.

Proportionality

The prohibition on authorities to procure products below a standardised EU-wide “minimum performance level” also infringes on the principle of proportionality: For one, it does not promote the reduction of trade barriers. In addition, so far as the objective of the Directive is to save energy and further resources, binding provisions – especially in the form of a prohibition – are not necessary. Numerous instruments (e.g. emission rights trading) have been created to promote the efficient use of energy and other resources. In addition, contracting authorities are obligated to prevent the waste of any public funds by national law in general. The law stipulates that they must not only review the procurement costs but also the operating costs of a product when considering the cost-effectiveness of an offer. As a result, the contracting authorities of Member States should be in charge of deciding how much weight they want to place on energy efficiency and the conservation of resources as part of their procurement decisions. For this, labelling provisions are sufficient as decision-making aids. In the light of these arguments, the procurement prohibition is neither necessary at EU level nor is it in line with the principle of proportionality, since it would mean a massive intervention into the budgetary sovereignty of the Member States.

Compatibility with EU law

No other conflicts with EU law can be ascertained.

Compatibility with German law

The proposal made by the Commission would require adaptations of the German Energy Consumption Labelling Act (EnVKG) and the related Act on Energy Consumption Declaration (EnVKV). In addition, the procurement prohibition would have to be integrated into German public procurement law. This refers specifically to Articles 97-129 of the Law against Restraints of Competition (GWB), the Ordinance on the Public Procurement of Contracts (VgV) passed in this respect, and the Contract Procedures for Building Works (VOB/A; for the consideration of environmental characteristics cf. Art. 25 No. 3 Sec. 3), the Procurement Regulations for Public Supplies and Services (VOL/A; cf. Part 2 Art. 25a No. 1 Sec. 1) and the Procurement Regulations for the Award of Independent Contractor Services (VOF; cf. Art. 16 Sec. 3).

Alternative Policy Options

The provisions on public procurement should be deleted without replacement. Products which are designed for commercial users with extensive expertise should be exempted from the labelling obligation.

Possible Future EU Options

Apart from the implementing measures no follow-up action is to be foreseen.

Conclusion

The extension of the labelling obligation to “energy-related” products provides end consumers with important information for their purchasing decisions. The information provided by labelling will further the aim of emissions trading. However, a compact form of information is generally not necessary for commercial users with extensive expertise, so products designed for this target group should be exempted from the labelling obligation. The provisions for public procurement should be deleted without replacement since they are disproportionate. The Directive should be adopted with the respective modifications.