



COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(2008) 399

2008/xxxx (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a framework for the setting of ecodesign requirements for energy related products**

(presented by the Commission)

{SEC(2008) 2115}

{SEC(2008) 2116}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Objective

The aim of the recast of the framework Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005, establishing a framework for the setting of eco-design requirements for energy-using products (EuP) and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council<sup>1</sup>, hereafter referred to as the "Ecodesign Directive", is to incorporate the amending Directive 2008/28/EC<sup>2</sup> and to extend its scope to allow for the setting of Community ecodesign requirements also for all energy related products. In doing so, it follows the overall objective to ensure the free movement of products and improve their environmental performance, thereby protecting the environment.

Establishing a single framework for the ecodesign of energy related products will ensure efficiency and consistency by using a common methodology for setting requirements for such products at EU level. It will thus avoid the risk of overlapping national and Community initiatives.

The resulting comprehensive Ecodesign framework Directive will also be the essential building block for an integrated sustainable environmental product policy, as complemented by initiatives on labelling and incentives relating to public procurement and taxation. In addition to setting minimum requirements for the placing on the market of products, it will enable the setting of environmental performance benchmarks referring to the best performing products on the market. This is already possible under the present Ecodesign Directive for energy-using products and will hence be extended to be possible for all energy related products, providing thus for a link to incentives relating to public procurement and taxation.

#### 1.2. General context

A wide range of European policies have been launched at European and national level in the last 30 years in the areas of environmental protection and use of natural resources, including energy saving. Well developed legislation has ensured that air quality has been improving, that waste is increasingly controlled, and that emissions from industrial sources are being reduced. The Action Plan for Energy Efficiency<sup>3</sup> will deliver at least 20% saving potential in the EU annual primary energy consumption by 2020.

In addition, a range of policies and instruments have been put in place to foster more efficient products and improve information to consumers. The Ecodesign Directive establishes minimum requirements for the placing on the market of the products. The labelling schemes set by the Directive 92/75/EEC<sup>4</sup>, hereafter referred to as the "Energy Labelling Directive", the

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<sup>1</sup> (OJ L 191, 22.7.2005, p. 29).

<sup>2</sup> Directive 2008/28/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2005/32/EC establishing a framework for the setting of ecodesign requirements for energy-using products, as well as Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC, as regards the implementing powers conferred on the Commission (OJ L 81, 20.3.2008, p. 48).

<sup>3</sup> COM(2006) 545 final of 19 October 2006.

<sup>4</sup> 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 (OJ L 297, 13.10.1992, p. 16) Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

Energy Star Regulation<sup>5</sup>, the Eco-label<sup>6</sup> Regulation and other schemes developed by Member States, retailers and other economic operators provide consumers with information on the energy and environmental performance of products. Incentives and public procurement are being implemented by Member States to stimulate innovation towards better performing products. The Energy Star Regulation for office equipment obliges EU institutions and Member States to purchase office equipment to specific levels of energy efficiency.

These policies have delivered substantial progress and shown their potential. For example, the Energy Labelling Directive is estimated to have delivered one third of the 29% improvements of the energy efficiency of refrigerators between 1992 and 1999. Overall, the clear and strong evolution of the market towards higher-efficiency of the products covered by the Directive contrasts significantly with the scarce progress made beforehand.

However, a number of important obstacles are hampering these policies to reach their full impact. Overall, existing voluntary and regulatory instruments are not sufficiently connected with each other or elaborated from a single policy perspective and potential synergies between the different policy instruments are not exploited. Moreover, the fragmentation of national and regional approaches sends conflicting signals to producers and creates distortions on the Internal Market.

There is thus a need for a new policy approach, combining in an integrated action plan the potential of the different policies instruments and implementing them in a dynamic way. This will include setting ambitious standards throughout the Internal Market, ensuring that products are improved and that demand is enhanced by a systemic approach to incentives and innovation. This will be achieved by integrating existing tools and strengthening them, where necessary. This would complement existing environmental policy, such as, with regard to energy use, the energy and climate package adopted by the Commission in January 2008<sup>7</sup>.

The extension of the product scope of the Ecodesign Directive is a cornerstone of the Sustainable Consumption and Production and Sustainable Industrial Policy Communication and Action Plans (SCP/SIP), which is a joint initiative of Directorate General Enterprise and Industry, Directorate General Environment and Directorate General Energy and Transport. Another related proposal included in SCP/SIP is the revision of Energy Labelling Directive, which will look into different options regarding the labelling of an extended range of products. As such, it will discuss the "labelling side" of the product policy announced in the sustainability package. Furthermore, the Eco-label Regulation is also being revised to coherently feed into this integrated product policy by identifying the very top performing products on the market, acting as a "label of excellence".

### **1.3. Existing Community provisions**

The Community regulatory framework concerning ecodesign of energy-using products is set in the Ecodesign Directive, which introduces the requirements such products placed on the Community market must meet if they are to benefit from free movement within the Community. The Ecodesign Directive is complementary to existing Community instruments, such as REACH<sup>8</sup>, RoHS<sup>9</sup>, Energy Labelling Directive and the Directive on the restriction of

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<sup>5</sup> Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment, (OJ L 39 of 15.1.2008, p. 1).

<sup>6</sup> Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community Eco-label Award Scheme (OJ L 237 of 21.9.2000, p. 1).

<sup>7</sup> COM(2008) 30 final.

<sup>8</sup> Directive 2006/121/EC of the European Parliament and of the Council of 18 December 2006 amending Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions

use of certain hazardous substances<sup>10</sup>. An extended Ecodesign Directive will enable the setting of ecodesign requirements for, all energy related, environmentally significant products, where appropriate, to complement existing Community provisions.

#### **1.4. Consistency with other policies and rules**

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 Programme<sup>11</sup>, the Integrated Product Policy<sup>12</sup> 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 Inter-institutional Agreement on Better Law-Making.

## **2. CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **2.1. Consultations**

The consultation of stakeholders of the SCP/SIP Communication and Action Plan comprising the extension of the scope of the Ecodesign Directive was made in a public internet consultation in the autumn of 2007.

The results of the consultations were fed into the Impact assessments on the SCP/SIP Communication and Action Plan and the extension of the Ecodesign Directive.

### **2.2. Collection and use of expertise**

External expertise ZEW was used for the impact assessment.

### **2.3. Impact assessment**

The extension of the scope of the Ecodesign Directive is part of the SCP/SIP Communication and Action Plan. Another related proposal included in that package is the revision of the Energy Labelling Directive, which will look into different options regarding the labelling of an extended range of products. As such, it will discuss the “labelling side” of the product policy announced in the Action plan on the Sustainability Package.

The current Ecodesign Directive covers only energy-using products (excluding means of transport). For these, it can introduce mandatory minimum requirements corresponding to the performance of the product that has least life cycle cost. This guarantees that improvements in environmental performance are cost-effective. While the purchase prices of these products might rise (at least in the short term), their superior performance more than offsets this over the life span of the product by lower usage costs.

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relating to the classification, packaging and labelling of dangerous substances in order to adapt it to Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency (OJ L. L 396 of 30 December 2006).

<sup>9</sup> Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 37, 13.2.2003, p. 24.).

<sup>10</sup> Council Directive 76/769/EEC of 27 July 1976 relating to restrictions on the marketing and use of certain dangerous substances and preparations, (OJ L 262, 27.9.1976, p. 201).

<sup>11</sup> 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.).

<sup>12</sup> 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).

However, the impact assessment of the Action Plans mentioned above has shown that the limitation of the scope of the Ecodesign Directive represents an important restriction on the potential impact that the EU's Integrated Product Policy can have. The impact assessment report therefore analyses whether and how the scope of the Ecodesign Directive can be extended and what impacts that could have. The objective of the report is therefore to determine the optimal scope of such an extension.

Three options are considered:

- (1) No extension of the scope, thus only energy-using products can be covered,
- (2) Extend the scope beyond energy using products but keep the current exclusion of means of transport, and
- (3) Extend the scope to all products.

The analysis of the impacts is twofold. In a first step, it is determined whether the extension of the scope would be possible and whether there would be substantial overlap with existing legislation, such that the existing regulatory framework is deemed sufficient to address environmental impacts. The second step – in case an extension is feasible – is to analyse the potential environmental and economic impacts that an extension to that product category would have. Two studies are relied on to demonstrate the savings potential – particularly with respect to energy consumption – that could be realized by extending the scope of the ecodesign policy. The available data does not allow a precise quantification of the savings potential for all product categories but it shows for selected product types for which data exists that significant reductions of environmental impacts are possible that at the same time also lead to economic savings for businesses and final consumers.

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 while 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 products. More detailed analyses will be conducted for the impact assessments that need to be prepared for each implementing measure.

The result of the analysis is that an extension to beyond energy using products, except means of transport, would be the preferred option. Means of transport are already subject to complex regulation that in addition to safety and other aspects also addresses environmental performance (such as CO<sub>2</sub> and other pollutants emissions from cars). Means of transport should therefore remain outside the scope of the Ecodesign Directive.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Summary of the proposed action**

This proposal extends the scope of the framework Ecodesign Directive to cover other energy related products than energy-using products, making it possible to set harmonised ecodesign requirements for such products in implementing measures. Such ecodesign requirements are mandatory provisions set out to ensure that the products do not endanger the environment.

#### **3.2. Legal basis**

The legal basis of this proposal for a recast of the Ecodesign Directive 2005/32/EC is provided by Article 95 of the EC Treaty, which sets out the principles for the establishment of the internal market. The Ecodesign Directive ensures the free movement of products falling

within its scope that satisfies the environmental and energy related requirements laid down in the implementing measures adopted under the Directive.

While the proposal extends the scope beyond energy-using products, requirements on products will only be set when implementing measures are adopted.

### **3.3. 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 reason.

To leave the setting of ecodesign requirements for products to the Member States would lead to divergent national provisions and procedures having similar objectives that would generate undue costs for industry and constitute obstacles to the free movement of goods within the Community.

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.

The scope of the proposal is limited to new products placed for the first time on the Community market.

### **3.4. 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 ecodesign requirements for all energy related products in the Directive as proposed. This inclusion minimizes, for example, the costs of establishing procedures related to market surveillance for non energy-using products because such procedures already exist for enforcement of the Ecodesign Directive.

The possible increase in average production costs which may be incurred by some manufacturers and which may be transferred to users via increased prices of products is proportionate to the advantage to be gained from reduction of adverse effects on the environment and savings by users due to increased efficiency of products during the full life cycle.

### **3.5. Choice of instruments**

Proposed instruments: 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**

It appears that there are two areas in which the actions might generate administrative costs for Member States and the Commission. These are:

(a) Work for defining implementing measures of the Ecodesign Directive. The extension of the product scope of the Ecodesign Directive will broaden the choice of product groups for which implementing measures can be adopted. Among those, significant priority products, which have a significant environmental impact and potential for improvement, will be identified and listed in the Working Plan referred to in Article 16 of the Ecodesign Directive. The eventual additional budgetary needs, resulting from the extension of the product scope will be determined by the Working Plan. The potential allocation of additional resources must be compatible with existing financial programming and will be subject to the current financial and budgetary rules and procedures. The integration of the decision structures of the Ecodesign Directive and the Energy Labelling Directive and the informative role of the eco-label will provide synergies which guarantee that resources are used such that implementing measures have the biggest environmental impacts at the lowest cost for the economy.

(b) We cannot be precise about the time and costs involved but as a guideline we have assumed that amending the Ecodesign Directive would require six full time equivalent work from Commission officials and equivalent amounts of time from officials in at least 10 Member States (it is unlikely that all Member States would be involved in the detailed discussions). Given the average annual cost of a Commission official (€ 117.000), this would cost the Commission around € 702,000. This does not include any add on for overhead costs. The assignment of staff for these particular tasks from existing or additional resources

remains subject to resources availability and will be decided in the framework of the annual resources allocation procedure.

## **5. ADDITIONAL INFORMATION**

### **5.1. 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.

### **5.2. European Economic Area**

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

### **5.3. Detailed explanation**

As stated, Directive 2005/32/EC has been substantially amended by Directive 2008/28/EC. Since further amendments, relating to the extension of the product scope to include all energy related products are to be made, it should be recast<sup>13</sup> in the interests of clarity. The Commission stresses the importance of not disrupting the ongoing implementation of the present Ecodesign Directive and safeguards it by strictly limiting the proposal and scope for discussion to the extension of the product scope.

Amendments are introduced into the recitals and provisions of the Ecodesign Directive to reflect the extension of the scope to cover all energy related products.

In **Article 2**, in particular, the definition of energy related product is introduced.

In **Article 21**, relating to the review of the Directive by the Commission, it is added that, in the context of the extension of the product scope, the Commission shall also review the appropriateness of extending the scope of the Directive to non energy related products.

**Article 23** sets the provisions for implementation of the recasted Directive by Member States and defines its date of application.

The provisions of Articles 10, 12, 13, 16 to 19, 23 and 24 and Annex VI of Directive 2005/32/EC remain unchanged.

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<sup>13</sup> 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.

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↓ 2005/32 (adapted)  
⇒ new

2008/xxxx (COD)

Proposal for a

**DIRECTIVE .../... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of [...]**

**establishing a framework for the setting of ecodesign requirements for energy-using  
⇒ related ⇐ products and amending Council Directive 92/42/EEC and Directives  
96/57/EC and 2000/55/EC of the European Parliament and of the Council**

☒ (Text with EEA relevance) ☒

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty establishing the European Community, and in particular  
Article 95 thereof,  
Having regard to the proposal from the Commission,  
Having regard to the opinion of the European Economic and Social Committee<sup>14</sup>,  
Having regard to the opinion of the Committee of the Regions<sup>15</sup>,  
Acting in accordance with the procedure laid down in Article 251 of the Treaty,  
Whereas:

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↓ new

- (1) 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 Council<sup>16</sup> has been substantially amended<sup>17</sup>. Since further amendments are to be made (which are strictly limited to the extension of the scope of application of the Directive to include all energy related products), it should be recast in the interests of clarity.

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<sup>14</sup> OJ C [...].

<sup>15</sup> OJ C [...].

<sup>16</sup> OJ L 191, 22.7.2005, p. 29. Directive as amended by Directive 2008/28/EC (OJ L 81, 20.3.2008, p. 48).

<sup>17</sup> See Annex IX, Part A.

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↓ 2005/32 Recital 1  
⇒ new

- (2) The disparities between the laws or administrative measures adopted by the Member States in relation to the ecodesign of energy-using ⇒ related ⇐ products can create barriers to trade and distort competition in the Community and may thus have a direct impact on the establishment and functioning of the internal market. The harmonisation of national laws is the only means to prevent such barriers to trade and unfair competition. ⇒ The extension of the scope to all energy related products ensures that ecodesign requirements for all significant energy related products can be harmonised at Community level. ⇐

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↓ 2005/32 Recital 2  
⇒ new

- (3) Energy-using ⇒ related ⇐ products (EuPs) account for a large proportion of the consumption of natural resources and energy in the Community. They also have a number of other important environmental impacts. For the vast majority of product categories available on the Community market, very different degrees of environmental impact can be noted though they provide similar functional performances. In the interest of sustainable development, continuous improvement in the overall environmental impact of those products should be encouraged, notably by identifying the major sources of negative environmental impacts and avoiding transfer of pollution, when this improvement does not entail excessive costs.

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↓ 2005/32 Recital 3

- (4) The ecodesign of products is a crucial factor in the Community strategy on Integrated Product Policy. As a preventive approach, designed to optimise the environmental performance of products, while maintaining their functional qualities, it provides genuine new opportunities for manufacturers, for consumers and for society as a whole.

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↓ 2005/32 Recital 4

- (5) Energy efficiency improvement — with one of the available options being more efficient end use of electricity — is regarded as contributing substantially to the achievement of greenhouse gas emission targets in the Community. Electricity demand is the fastest growing energy end use category and is projected to grow within the next 20 to 30 years, in the absence of any policy action to counteract this trend. A significant reduction in energy consumption as suggested by the Commission in its European Climate Change Programme (ECCP) is possible. Climate change is one of the priorities of the Sixth Community Environment Action Programme, laid down by

Decision No 1600/2002/EC of the European Parliament and of the Council<sup>18</sup>. Energy saving is the most cost-effective way to increase security of supply and reduce import dependency. Therefore, substantial demand side measures and targets should be adopted.

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↓ 2005/32 Recital 5  
⇒ new

- (6) Action should be taken during the design phase of ~~EuPs~~ ⇒ energy related products ⇐, since it appears that the pollution caused during a product's life cycle is determined at that stage, and most of the costs involved are committed then.
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↓ 2005/32 Recital 6  
⇒ new

- (7) A coherent framework for the application of Community ecodesign requirements for ~~EuPs~~ ⇒ energy related products ⇐ should be established with the aim of ensuring the free movement of those products which comply and of improving their overall environmental impact. Such Community requirements should respect the principles of fair competition and international trade.
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↓ 2005/32 Recital 7

- (8) Ecodesign requirements should be set bearing in mind the goals and priorities of the Sixth Community Environment Action Programme, including as appropriate applicable goals of the relevant thematic strategies of that Programme.
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↓ 2005/32 Recital 8  
⇒ new

- (9) This Directive seeks to achieve a high level of protection for the environment by reducing the potential environmental impact of ~~EuPs~~ ⇒ energy related products ⇐, which will ultimately be beneficial to consumers and other end-users. Sustainable development also requires proper consideration of the health, social and economic impact of the measures envisaged. Improving the energy efficiency of products contributes to the security of the energy supply, which is a precondition of sound economic activity and therefore of sustainable development.
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↓ 2005/32 Recital 9

- (10) A Member State deeming it necessary to maintain national provisions on grounds of major needs relating to the protection of the environment, or to introduce new ones

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<sup>18</sup> OJ L 242, 10.9.2002, p. 1.

based on new scientific evidence relating to the protection of the environment on grounds of a problem specific to that Member State arising after the adoption of the applicable implementing measure, may do so following the conditions laid down in Article 95(4), (5) and (6) of the Treaty, that provides for a prior notification to and approval from the Commission.

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↓ 2005/32 Recital 10  
⇒ new

- (11) In order to maximise the environmental benefits from improved design it may be necessary to inform consumers about the environmental characteristics and performance of ~~EuPs~~ ⇒ energy related products ⇐ and to advise them about how to use products in a manner which is environmentally friendly.
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↓ 2005/32 Recital 11 (adapted)

- (12) The approach set out in the ~~Green Paper on Integrated Product Policy~~  Communication from the Commission to the Council and the European Parliament - Integrated Product Policy - Building on Environmental Life-Cycle Thinking, (IPP)<sup>19</sup> , which is a major innovative element of the Sixth Community Environment Action Programme, aims to reduce the environmental impacts of products across the whole of their life cycle. Considering at the design stage a product's environmental impact throughout its whole life cycle has a high potential to facilitate environmental improvement in a cost-effective way. There should be sufficient flexibility to enable this factor to be integrated in product design whilst taking account of technical, functional and economic considerations.
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↓ 2005/32 Recital 12

- (13) Although a comprehensive approach to environmental performance is desirable, greenhouse gas mitigation through increased energy efficiency should be considered a priority environmental goal pending the adoption of a working plan.
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↓ 2005/32 Recital 13

- (14) It may be necessary and justified to establish specific quantified ecodesign requirements for some products or environmental aspects thereof in order to ensure that their environmental impact is minimised. Given the urgent need to contribute to the achievement of the commitments in the framework of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC), and without prejudice to the integrated approach promoted in this Directive, some priority should be given to those measures with a high potential for reducing greenhouse gas emissions at low cost. Such measures can also contribute to a sustainable use of

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<sup>19</sup> COM (2003) 302 final of 18.6.2003

resources and constitute a major contribution to the 10-year framework of programmes on sustainable production and consumption agreed at the World Summit on Sustainable Development in Johannesburg in September 2002.

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↓ 2005/32 Recital 14

⇒ new

- (15) ⇒ Where appropriate and ⇐ ~~As~~ as a general principle, the energy consumption of ~~EuPs~~ ⇐ energy related products ⇐ in stand-by or off-mode should be reduced to the minimum necessary for their proper functioning.
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↓ 2005/32 Recital 15

- (16) While the best-performing products or technologies available on the market, including on international markets, should be taken as reference, the level of ecodesign requirements should be established on the basis of technical, economic and environmental analysis. Flexibility in the method for establishing the level of requirements can make swift improvement of environmental performance easier. Interested parties involved should be consulted and cooperate actively in this analysis. The setting of mandatory measures requires proper consultation of the parties involved. Such consultation may highlight the need for a phased introduction or transitional measures. The introduction of interim targets increases the predictability of the policy, allows for accommodating product development cycles and facilitates long term planning for interested parties.
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↓ 2005/32 Recital 16

- (17) Priority should be given to alternative courses of action such as self-regulation by the industry where such action is likely to deliver the policy objectives faster or in a less costly manner than mandatory requirements. Legislative measures may be needed where market forces fail to evolve in the right direction or at an acceptable speed.
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↓ 2005/32 Recital 17

- (18) Self-regulation, including voluntary agreements offered as unilateral commitments by industry, can provide for quick progress due to rapid and cost-effective implementation, and allows for flexible and appropriate adaptation to technological options and market sensitivities.
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↓ 2005/32 Recital 18

- (19) For the assessment of voluntary agreements or other self-regulation measures presented as alternatives to implementing measures, information on at least the following issues should be available: openness of participation, added value, representativeness, quantified and staged objectives, involvement of civil society,

monitoring and reporting, cost-effectiveness of administering a self-regulatory initiative, sustainability.

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↓ 2005/32 Recital 19

- (20) Chapter 6 of the Commission's 'Communication on Environmental Agreements at Community level within the Framework of the Action Plan on the Simplification and Improvement of the Regulatory Environment' could provide useful guidance when assessing self-regulation by industry in the context of this Directive.
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↓ 2005/32 Recital 20

- (21) This Directive should also encourage the integration of ecodesign in small and medium-sized enterprises (SMEs) and very small firms. Such integration could be facilitated by wide availability of and easy access to information relating to the sustainability of their products.
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↓ 2005/32 Recital 21

⇒ new

- (22) ~~EuPs~~ ⇒ Energy related products ⇐ complying with the ecodesign requirements laid down in implementing measures to this Directive should bear the 'CE' marking and associated information, in order to enable them to be placed on the internal market and move freely. The rigorous enforcement of implementing measures is necessary to reduce the environmental impact of regulated ~~EuPs~~ ⇒ energy related products ⇐ and to ensure fair competition.
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↓ 2005/32 Recital 22

- (23) When preparing implementing measures and its working plan the Commission should consult Member States' representatives as well as interested parties concerned with the product group, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations.
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↓ 2005/32 Recital 23

- (24) When preparing implementing measures, the Commission should also take due account of existing national environmental legislation, in particular concerning toxic substances, which Member States have indicated that they consider should be preserved, without reducing the existing and justified levels of protection in the Member States.

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↓ 2005/32 Recital 24

- (25) Regard should be given to the modules and rules intended for use in technical harmonisation Directives set out in Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives<sup>20</sup>.
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↓ 2005/32 Recital 25

- (26) Surveillance authorities should exchange information on the measures envisaged within the scope of this Directive with a view to improving surveillance of the market. Such cooperation should make the utmost use of electronic means of communication and relevant Community programmes. The exchange of information on environmental life cycle performance and on the achievements of design solutions should be facilitated. The accumulation and dissemination of the body of knowledge generated by the ecodesign efforts of manufacturers is one of the crucial benefits of this Directive.
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↓ 2005/32 Recital 26

- (27) A competent body is usually a public or private body, designated by the public authorities, and presenting the necessary guarantees for impartiality and availability of technical expertise for carrying out verification of the product with regard to its compliance with the applicable implementing measures.
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↓ 2005/32 Recital 27

- (28) Noting the importance of avoiding non-compliance, Member States should ensure that the necessary means are available for effective market surveillance.
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↓ 2005/32 Recital 28

- (29) In respect of training and information on ecodesign for SMEs, it may be appropriate to consider accompanying activities.
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↓ 2005/32 Recital 29

- (30) It is in the interest of the functioning of the internal market to have standards which have been harmonised at Community level. Once the reference to such a standard has been published in the *Official Journal of the European Union*, compliance with it
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<sup>20</sup> OJ L 220, 30.8.1993, p. 23.

should raise a presumption of conformity with the corresponding requirements set out in the implementing measure adopted on the basis of this Directive, although other means of demonstrating such conformity should be permitted.

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↓ 2005/32 Recital 30

- (31) One of the main roles of harmonised standards should be to help manufacturers in applying the implementing measures adopted under this Directive. Such standards could be essential in establishing measuring and testing methods. In the case of generic ecodesign requirements harmonised standards could contribute considerably to guiding manufacturers in establishing the ecological profile of their products in accordance with the requirements of the applicable implementing measure. These standards should clearly indicate the relationship between their clauses and the requirements dealt with. The purpose of harmonised standards should not be to fix limits for environmental aspects.
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↓ 2005/32 Recital 31

- (32) For the purpose of definitions used in this Directive it is useful to refer to relevant international standards such as ISO 14040.
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↓ 2005/32 Recital 32

- (33) This Directive is in accordance with certain principles for the implementation of the new approach as set out in the Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards<sup>21</sup> and of making reference to harmonised European standards. The Council Resolution of 28 October 1999 on the role of standardisation in Europe<sup>22</sup> recommended that the Commission should examine whether the New Approach principle could be extended to sectors not yet covered as a means of improving and simplifying legislation wherever possible.
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↓ 2005/32 Recital 33 (adapted)

- (34) This Directive is complementary to existing Community instruments such as 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<sup>23</sup>, Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme<sup>24</sup>, Regulation (EC) No ~~2422/2001~~ of the European Parliament and of the Council of ~~6 November 2001~~ on a Community energy efficiency labelling programme for office

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<sup>21</sup> OJ C 136, 4.6.1985, p. 1.

<sup>22</sup> OJ C 141, 19.5.2000, p. 1.

<sup>23</sup> OJ L 297, 13.10.1992, p. 16. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>24</sup> OJ L 237, 21.9.2000, p. 1.

equipment ~~⊗~~ 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment ~~⊗~~<sup>25</sup>, Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE)<sup>26</sup>, Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment<sup>27</sup> and ~~Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations~~ ~~⊗~~ Directive 2006/121/EC of the European Parliament and of the Council of 18 December 2006 amending Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances in order to adapt it to Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency ~~⊗~~<sup>28</sup>. Synergies between this Directive and the existing Community instruments should contribute to increasing their respective impacts and building coherent requirements for manufacturers to apply.

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↓ 2005/32 Recital 34 (adapted)

~~Since Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels<sup>29</sup>, Directive 96/57/EC of the European Parliament and of the Council of 3 September 1996 on energy efficiency requirements for household electric refrigerators, freezers and combinations thereof<sup>30</sup> and Directive 2000/55/EC of the European Parliament and of the Council of 18 September 2000 on energy efficiency requirements for ballasts for fluorescent lighting<sup>31</sup> already contain provisions for the revision of the energy efficiency requirements, they should be integrated into the present framework.~~

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↓ 2005/32 Recital 35 (adapted)

~~Directive 92/42/EEC provides for a star rating system intended to ascertain the energy performance of boilers. Since Member States and the industry agree that the star rating system has proved not to deliver the expected result, Directive 92/42/EEC should be amended to open the way for more effective schemes.~~

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<sup>25</sup> OJ L 332, 15.12.2004 ~~⊗~~ 39 of 13.2.2008 ~~⊗~~, p. 1.

<sup>26</sup> OJ L 37, 13.2.2003, p. 24. Directive as ~~⊗~~ last ~~⊗~~ amended by Directive 2003/108/EC (OJ L 345, 31.12.2003, p. 106) ~~⊗~~ 2008/34/EC (OJ L 81, 20.3.2008, p. 65) ~~⊗~~.

<sup>27</sup> OJ L 37, 13.2.2003, p. 19. ~~⊗~~ Directive as last amended by Directive 2008/35/EC (OJ L 81, 20.3.2008, p. 67). ~~⊗~~

<sup>28</sup> OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 2004/98/EC (OJ L 305, 1.10.2004, p. 63) ~~⊗~~ 396 of 30.12.2006, p. 850 ~~⊗~~.

<sup>29</sup> OJ L 167, 22.6.1992, p. 17. Directive as last amended by Directive 2004/8/EC of the European Parliament and of the Council (OJ L 52, 21.2.2004, p. 50).

<sup>30</sup> OJ L 236, 18.9.1996, p. 36.

<sup>31</sup> OJ L 279, 1.11.2000, p. 33.

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↓ 2005/32 Recital 36 (adapted)

~~The requirements laid down in Council Directive 78/170/EEC of 13 February 1978 on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot water distribution in new non-industrial buildings<sup>32</sup> have been superseded by provisions of Directive 92/42/EEC, Council Directive 90/396/EEC of 29 June 1990 on the approximation of the laws of the Member States relating to appliances burning gaseous fuels<sup>33</sup> and Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings<sup>34</sup>. Directive 78/170/EEC should therefore be repealed.~~

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↓ 2005/32 Recital 37 (adapted)

~~Council Directive 86/594/EEC of 1 December 1986 on airborne noise emitted by household appliances<sup>35</sup> lays down the conditions under which publication of information on the noise emitted by such appliances may be required by Member States, and defines a procedure to determine the level of noise. For harmonisation purposes noise emissions should be included in an integrated assessment of environmental performance. Since this Directive provides for such an integrated approach, Directive 86/594/EEC should be repealed.~~

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↓ 2005/32 Recital 38

(35) 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 Commission<sup>36</sup>.

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↓ 2008/28 Recital 5

(36) The Commission should be empowered to amend or repeal Directives 92/42/EEC, 96/57/EC and 2000/55/EC. Such amendment or repeal must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

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<sup>32</sup> ~~OJ L 52, 23.2.1978, p. 32. Directive as amended by Directive 82/885/EEC (OJ L 378, 31.12.1982, p. 19).~~

<sup>33</sup> ~~OJ L 196, 26.7.1990, p. 15. Directive as amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).~~

<sup>34</sup> ~~OJ L 1, 4.1.2003, p. 65.~~

<sup>35</sup> ~~OJ L 344, 6.12.1986, p. 24. Directive as amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).~~

<sup>36</sup> ~~OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).~~

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↓ 2008/28 Recital 6 (adapted)  
⇒ new

- (37) In addition, the Commission should be empowered to adopt implementing measures laying down ecodesign requirements for defined energy ~~using~~ ⇒ related ⇐ products, including the introduction of implementing measures during the transitional period, and including where appropriate provisions on the balancing of the various environmental aspects. Since those measures are of general scope and are designed to amend non-essential elements of ☒ this ☒ Directive ~~2005/32/EC~~ by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny.

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↓ new

- (38) The Commission should, on the basis of the experience from applying the Directive, review its operation and effectiveness and assess the appropriateness of extending its scope beyond energy related products. Within the review the Commission should consult Member States' representatives as well as concerned interested parties.

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↓ 2005/32 Recital 39

- (39) Member States should determine the penalties to be applied in the event of infringements of the national provisions adopted pursuant to this Directive. Those penalties should be effective, proportionate and dissuasive.

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↓ 2005/32 Recital 40

- (40) It should be remembered that paragraph 34 of the Interinstitutional agreement on better law-making<sup>37</sup> states that the Council 'will encourage the Member States to draw up, for themselves and in the interests of the Community, their own tables which will, as far as possible, illustrate the correlation between directives and the transposition measures and to make them public.'

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↓ 2005/32 Recital 41

- (41) Since the objective of the proposed action, namely to ensure the functioning of the internal market by requiring products to reach an adequate level of environmental performance, cannot be sufficiently achieved by Member States acting alone and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality,

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<sup>37</sup> OJ C 321, 31.12.2003, p. 1.

as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

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↓ 2005/32 Recital 42 (adapted)

~~The Committee of the Regions was consulted but did not deliver an opinion,~~

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↓ new

(42) 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.

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

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↓ 2005/32

⇒ new

HAVE ADOPTED THIS DIRECTIVE:

### *Article 1*

#### **Subject matter and scope**

1. This Directive establishes a framework for the setting of Community ecodesign requirements for energy-using related products with the aim of ensuring the free movement of those products within the internal market.
2. This Directive provides for the setting of requirements which the energy-using related products covered by implementing measures must fulfil in order for them to be placed on the market and/or put into service. It contributes to sustainable development by increasing energy efficiency and the level of protection of the environment, while at the same time increasing the security of the energy supply.
3. This Directive shall not apply to means of transport for persons or goods.
4. This Directive and the implementing measures adopted pursuant to it shall be without prejudice to Community waste management legislation and Community chemicals legislation, including Community legislation on fluorinated greenhouse gases.

### *Article 2*

#### **Definitions**

For the purposes of this Directive the following definitions shall apply:

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↓ 2005/32 (adapted)

⇒ new

1. 'Energy-using related product' or ~~EuP~~  $\boxtimes$ , hereinafter referred to as 'product',  $\boxtimes$  means a product  $\Rightarrow$  any good having an impact on energy consumption during use  $\Leftarrow$  which, ~~once~~  $\boxtimes$  is  $\boxtimes$  placed on the market and/or put into service  $\Rightarrow$  in the European Union  $\Leftarrow$ , ~~is dependent on energy input (electricity, fossil fuels and renewable energy sources) to work as intended, or a product for the generation, transfer and measurement of such energy, including parts dependent on energy input and intended to be incorporated into an EuP~~  $\Rightarrow$  energy related products  $\Leftarrow$  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;

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↓ 2005/32

⇒ new

2. 'Components and sub-assemblies' means parts intended to be incorporated into ~~EuPs~~  $\Rightarrow$  products  $\Leftarrow$ , and which are not placed on the market and/or put into service as individual parts for end-users or the environmental performance of which cannot be assessed independently;

3. 'Implementing measures' means measures adopted pursuant to this Directive laying down ecodesign requirements for defined ~~EuPs~~  $\Rightarrow$  products  $\Leftarrow$  or for environmental aspects thereof;

4. 'Placing on the market' means making ~~an EuP~~  $\Rightarrow$  a product  $\Leftarrow$  available for the first time on the Community market with a view to its distribution or use within the Community whether for reward or free of charge and irrespective of the selling technique;

5. 'Putting into service' means the first use of ~~an EuP~~  $\Rightarrow$  a product  $\Leftarrow$  for its intended purpose by an end-user in the Community;

6. 'Manufacturer' means the natural or legal person who manufactures ~~EuPs~~  $\Rightarrow$  products  $\Leftarrow$  covered by this Directive and is responsible for their conformity with this Directive in view of their being placed on the market and/or put into service under the manufacturer's own name or trademark or for the manufacturer's own use. In the absence of a manufacturer as defined in the first sentence or of an importer as defined in point 8, any natural or legal person who places on the market and/or puts into service products covered by this Directive shall be considered a manufacturer;

7. 'Authorised representative' means any natural or legal person established in the Community who has received a written mandate from the manufacturer to perform on his behalf all or part of the obligations and formalities connected with this Directive;

8. 'Importer' means any natural or legal person established in the Community who places a product from a third country on the Community market in the course of his business;

9. 'Materials' means all materials used during the life cycle of ~~an EUP~~ ⇒ a product ⇐;

10. 'Product design' means the set of processes that transform legal, technical, safety, functional, market or other requirements to be met by ~~an EUP~~ ⇒ a product ⇐ into the technical specification for that ~~EUP~~ ⇒ product ⇐;

11. 'Environmental aspect' means an element or function of ~~an EUP~~ ⇒ a product ⇐ that can interact with the environment during its life cycle;

12. 'Environmental impact' means any change to the environment wholly or partially resulting from ~~an EUP~~ ⇒ a product ⇐ during its life cycle;

13. 'Life cycle' means the consecutive and interlinked stages of ~~an EUP~~ ⇒ a product ⇐ from raw material use to final disposal;

14. 'Reuse' means any operation by which ~~an EUP~~ ⇒ a product ⇐ or its components, having reached the end of their first use, are used for the same purpose for which they were conceived, including the continued use of ~~an EUP~~ ⇒ a product ⇐ which is returned to a collection point, distributor, recycler or manufacturer, as well as reuse of ~~an EUP~~ ⇒ a product ⇐ following refurbishment;

15. 'Recycling' means the reprocessing in a production process of waste materials for the original purpose or for other purposes but excluding energy recovery;

16. 'Energy recovery' means the use of combustible waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;

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↓ 2005/32 (adapted)

17. 'Recovery' means any of the applicable operations provided for in Annex II B to Council Directive ~~75/442/EEC of 15 July 1975~~ ⊗ 2006/12/EC of the European Parliament and of the Council of 5 April 2006 ⊗ on waste<sup>38</sup>;

18. 'Waste' means any substance or object in the categories set out in Annex I to Directive ~~75/442/EEC~~ ⊗ 2006/12/EC ⊗ which the holder discards or intends or is required to discard;

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↓ 2005/32

⇒ new

19. 'Hazardous waste' means any waste which is covered by Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste<sup>39</sup>;

20. 'Ecological profile' means a description, in accordance with the implementing measure applicable to the ~~EUP~~ ⇒ product ⇐, of the inputs and outputs (such as materials, emissions and waste) associated with ~~an EUP~~ ⇒ a product ⇐ throughout

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<sup>38</sup> OJ L 194, 25.7.1975, p. 39 ⊗ 114, 27.4.2006, p. 9 ⊗. Directive as last amended by Regulation (EC) No 1882/2003.

<sup>39</sup> OJ L 377, 31.12.1991, p. 20. Directive as amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

its life cycle which are significant from the point of view of its environmental impact and are expressed in physical quantities that can be measured;

21. 'Environmental performance' of ~~an EuP~~ ⇒ a product ⇐ means the results of the manufacturer's management of the environmental aspects of the ~~EuP~~ ⇒ product ⇐, as reflected in its technical documentation file;

22. 'Improvement of the environmental performance' means the process of enhancing the environmental performance of ~~an EuP~~ ⇒ a product ⇐ over successive generations, although not necessarily in respect of all environmental aspects of the product simultaneously;

23. 'Ecodesign' means the integration of environmental aspects into product design with the aim of improving the environmental performance of the ~~EuP~~ ⇒ product ⇐ throughout its whole life cycle;

24. 'Ecodesign requirement' means any requirement in relation to ~~an EuP~~ ⇒ a product ⇐, or the design of ~~an EuP~~ ⇒ a product ⇐, intended to improve its environmental performance, or any requirement for the supply of information with regard to the environmental aspects of ~~an EuP~~ ⇒ a product ⇐;

25. 'Generic ecodesign requirement' means any ecodesign requirement based on the ecological profile as a whole of ~~an EuP~~ ⇒ a product ⇐ without set limit values for particular environmental aspects;

26. 'Specific ecodesign requirement' means a quantified and measurable ecodesign requirement relating to a particular environmental aspect of ~~an EuP~~ ⇒ a product ⇐, such as energy consumption during use, calculated for a given unit of output performance;

27. 'Harmonised standard' means a technical specification adopted by a recognised standards body under a mandate from the Commission, in accordance with the procedure laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>40</sup>, for the purpose of establishing a European requirement, compliance with which is not compulsory.

### *Article 3*

#### **Placing on the market and/or putting into service**

1. Member States shall take all appropriate measures to ensure that ~~EuPs~~ ⇒ products ⇐ covered by implementing measures may be placed on the market and/or put into service only if they comply with those measures and bear the CE marking in accordance with Article 5.

2. Member States shall designate the authorities responsible for market surveillance. They shall arrange for such authorities to have and use the necessary powers to take the appropriate measures incumbent upon them under this Directive. Member States shall define the tasks, powers and organisational arrangements of the competent authorities which shall be entitled:

(i) to organise appropriate checks on ~~EuP~~ ⇒ product ⇐ compliance, on an adequate scale, and to oblige the manufacturer or its authorised representative to recall non-compliant ~~EuPs~~ ⇒ products ⇐ from the market in accordance with Article 7;

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<sup>40</sup> OJ L 204, 21.7.1998, p. 37. ~~Directive as last amended by the 2003 Act of Accession~~

(ii) to require the provision of all necessary information by the parties concerned, as specified in implementing measures;

(iii) to take samples of products and subject them to compliance checks.

3. Member States shall keep the Commission informed about the results of the market surveillance, and where appropriate the Commission shall pass on such information to the other Member States.

4. Member States shall ensure that consumers and other interested parties are given an opportunity to submit observations on product compliance to the competent authorities.

#### *Article 4*

##### **Responsibilities of the importer**

Where the manufacturer is not established within the Community and in the absence of an authorised representative, the obligation:

- to ensure that the ~~EuP~~ ⇒ product ⇐ placed on the market or put into service complies with this Directive and the applicable implementing measure,
  - to keep the declaration of conformity and the technical documentation available,
- shall lie with the importer.

#### *Article 5*

##### **Marking and declaration of conformity**

1. Before ~~an EuP~~ ⇒ a product ⇐ covered by implementing measures is placed on the market and/or put into service, a CE conformity marking shall be affixed and a declaration of conformity issued whereby the manufacturer or its authorised representative ensures and declares that the ~~EuP~~ ⇒ product ⇐ complies with all relevant provisions of the applicable implementing measure.

2. The CE conformity marking consists of the initials ‘CE’ as shown in Annex III.

3. The declaration of conformity shall contain the elements specified in Annex VI and shall refer to the appropriate implementing measure.

4. The affixing of markings on ~~an EuP~~ ⇒ a product ⇐ which are likely to mislead users as to the meaning or form of the CE marking shall be prohibited.

5. Member States may require the information to be supplied pursuant to Annex I, Part 2 to be in their official language(s) when the ~~EuP~~ ⇒ product ⇐ reaches the end-user.

Member States shall also authorise the provision of this information in one or more other official Community language(s).

When applying the first subparagraph, Member States shall take into account in particular:

(a) whether the information can be supplied by harmonised symbols or recognised codes or other measures;

(b) the type of user anticipated for the ~~EuP~~ ⇒ product ⇐ and the nature of the information which is to be provided.

## Article 6

### Free movement

1. Member States shall not prohibit, restrict or impede the placing on the market and/or putting into service, within their territories, on grounds of ecodesign requirements relating to those ecodesign parameters referred to in Annex I, Part 1 which are covered by the applicable implementing measure, of ~~an EuP~~ ⇒ a product ⇐ that complies with all the relevant provisions of the applicable implementing measure and bears the CE marking in accordance with Article 5.
2. Member States shall not prohibit, restrict or impede the placing on the market and/or putting into service, within their territories, of ~~an EuP~~ ⇒ a product ⇐ bearing the CE marking in accordance with Article 5 on grounds of ecodesign requirements relating to those ecodesign parameters referred to in Annex I, Part 1 for which the applicable implementing measure provides that no ecodesign requirement is necessary.
3. Member States shall not prevent the display, for example at trade fairs, exhibitions and demonstrations, of ~~EuPs~~ ⇒ products ⇐ which are not in conformity with the provisions of the applicable implementing measure, provided that there is a visible indication that they may not be placed on the market and/or put into service until brought into conformity.

## Article 7

### Safeguard clause

1. Where a Member State ascertains that ~~an EuP~~ ⇒ a product ⇐ bearing the CE marking referred to in Article 5 and used in accordance with its intended use does not comply with all the relevant provisions of the applicable implementing measure, the manufacturer or its authorised representative shall be obliged to make the ~~EuP~~ ⇒ product ⇐ comply with the provisions of the applicable implementing measure and/or with the CE marking and to end the infringement under conditions imposed by the Member State.

Where there is sufficient evidence that ~~an EuP~~ ⇒ a product ⇐ might be non-compliant, the Member State shall take the necessary measures which, depending on the gravity of the non-compliance, can go as far as the prohibition of the placing on the market of the ~~EuP~~ ⇒ product ⇐ until compliance is established.

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 ~~EuP~~ ⇒ product ⇐ in question or ensure that it is withdrawn from the market.

In cases of prohibition or withdrawal from the market, the Commission and the other Member States shall be immediately informed.

2. Any decision by a Member State pursuant to this Directive which restricts or prohibits the placing on the market and/or the putting into service of ~~an EuP~~ ⇒ a product ⇐ shall state the grounds on which it is based.

Such decision shall be notified forthwith to the party concerned, who shall at the same time be informed of the legal remedies available under the laws in force in the Member State concerned and of the time limits to which such remedies are subject.

3. The Member State shall immediately inform the Commission and the other Member States of any decision taken pursuant to paragraph 1, indicating the reasons therefore, and, in particular, whether non-compliance is due to:

- (a) failure to satisfy the requirements of the applicable implementing measure;
- (b) incorrect application of harmonised standards as referred to in Article 10(2);
- (c) shortcomings in harmonised standards as referred to in Article 10(2).

4. The Commission shall enter into consultation with the parties concerned without delay and may draw upon technical advice from independent external experts.

Following that consultation, the Commission shall immediately inform the Member State which took the decision and the other Member States of its views.

Where the Commission considers that the decision is unjustified, it shall immediately inform the Member States to that effect.

5. Where the decision referred to in paragraph 1 is based on a shortcoming in a harmonised standard, the Commission shall immediately initiate the procedure set out in Article 10(2), (3) and (4). The Commission shall at the same time inform the Committee referred to in Article 19(1).

6. The Member States and the Commission shall take the necessary measures to guarantee confidentiality with regard to information provided during that procedure, where justified.

7. The decisions taken by Member States pursuant to this Article shall be made public, in a transparent way.

8. The Commission's opinion on those decisions shall be published in the *Official Journal of the European Union*.

#### Article 8

#### Conformity assessment

1. Before placing ~~an EuP~~ ⇒ a product ⇐ covered by implementing measures on the market and/or putting such ~~an EuP~~ ⇒ a product ⇐ into service, the manufacturer or its authorised representative shall ensure that an assessment of the ~~EuP's~~ ⇒ product's ⇐ conformity with all the relevant requirements of the applicable implementing measure is carried out.

2. The conformity assessment procedures shall be specified by the implementing measures and shall leave to manufacturers the choice between the internal design control set out in Annex IV and the management system set out in Annex V. When duly justified and proportionate to the risk, the conformity assessment procedure shall be specified among relevant modules as described in Decision 93/465/EEC.

If a Member State has strong indications of probable non-compliance of ~~an EuP~~ ⇒ a product ⇐, that Member State shall as soon as possible publish a substantiated assessment of the ~~EuP's~~ ⇒ product's ⇐ compliance which may be conducted by a competent body in order to allow timely corrective action, if any.

If ~~an EuP~~ ⇒ a product ⇐ covered by implementing measures is designed by an organisation registered in accordance with Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)<sup>41</sup> and the design function is included within the scope of that registration, the management system of that organisation shall be presumed to comply with the requirements of Annex V to this Directive.

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<sup>41</sup> OJ L 114, 24.4.2001, p. 1.

If ~~an EuP~~ ⇒ a product ⇐ covered by implementing measures is designed by an organisation having a management system which includes the product design function and which is implemented in accordance with harmonised standards the reference numbers of which have been published in the *Official Journal of the European Union*, that management system shall be presumed to comply with the corresponding requirements of Annex V.

3. After placing ~~an EuP~~ ⇒ a product ⇐ covered by implementing measures on the market or putting it into service, the manufacturer or its authorised representative shall keep relevant documents relating to the conformity assessment performed and declarations of conformity issued available for inspection by Member States for a period of 10 years after the last of that ~~EuP~~ ⇒ product ⇐ has been manufactured.

The relevant documents shall be made available within 10 days upon receipt of a request by the competent authority of a Member State.

4. Documents relating to the conformity assessment and declaration of conformity referred to in Article 5 shall be drawn up in one of the official languages of the Community.

#### Article 9

##### Presumption of conformity

1. Member States shall regard ~~an EuP~~ ⇒ a product ⇐ bearing the CE marking referred to in Article 5 as conforming to the relevant provisions of the applicable implementing measure.

2. Member States shall regard ~~an EuP~~ ⇒ a product ⇐ for which harmonised standards have been applied, the reference numbers of which have been published in the *Official Journal of the European Union*, as conforming to all the relevant requirements of the applicable implementing measure to which such standards relate.

3. ~~EuPs~~ ⇒ Products ⇐ which have been awarded the Community eco-label pursuant to Regulation (EC) No 1980/2000 shall be presumed to comply with the ecodesign requirements of the applicable implementing measure insofar as those requirements are met by the eco-label.

4. For the purposes of the presumption of conformity in the context of this Directive, the Commission, acting in accordance with the procedure referred to in Article 19(2), may decide that other eco-labels fulfil equivalent conditions to the Community eco-label pursuant to Regulation (EC) No 1980/2000. ~~EuPs~~ ⇒ Products ⇐ which have been awarded such other eco-labels shall be presumed to comply with the ecodesign requirements of the applicable implementing measure, insofar as those requirements are met by that eco-label.

#### Article 10

##### Harmonised standards

1. Member States shall, to the extent possible, ensure that appropriate measures are taken to enable interested parties to be consulted at national level on the process of preparing and monitoring harmonised standards.

2. Where a Member State or the Commission considers that harmonised standards the application of which is presumed to satisfy specific provisions of an applicable implementing measure do not entirely satisfy those provisions, the Member State concerned or the Commission shall inform the Standing Committee set up under Article 5 of Directive 98/34/EC to that effect, giving the reasons. The Committee shall issue an opinion as a matter of urgency.

3. In the light of that Committee's opinion, the Commission shall decide to publish, not to publish, to publish with restriction, to maintain or to withdraw the references to the harmonised standards concerned in the *Official Journal of the European Union*.

4. The Commission shall inform the European standardisation body concerned and, if necessary, issue a new mandate with a view to revision of the harmonised standards concerned.

#### *Article 11*

##### **Requirements for components and sub-assemblies**

Implementing measures may require manufacturers or their authorised representatives placing components and sub-assemblies on the market and/or putting them into service to provide the manufacturer of ~~an EuP~~ ⇒ a product ⇐ covered by implementing measures with relevant information on the material composition and the consumption of energy, materials and/or resources of the components or sub-assemblies.

#### *Article 12*

##### **Administrative cooperation and exchange of information**

1. Member States shall ensure that appropriate measures are taken in order to encourage the authorities responsible for implementing this Directive to cooperate with each other and provide each other and the Commission with information in order to assist the operation of this Directive and in particular, assist in the implementation of Article 7.

The administrative cooperation and exchange of information shall take utmost advantage of electronic means of communication and may be supported by relevant Community programmes.

Member States shall inform the Commission of the authorities responsible for applying this Directive.

2. The precise nature and structure of the exchange of information between the Commission and Member States shall be decided in accordance with the procedure referred to in Article 19(2).

3. The Commission shall take appropriate measures in order to encourage and contribute to the cooperation between Member States referred to in this Article.

#### *Article 13*

##### **Small and medium-sized enterprises**

1. In the context of programmes from which SMEs and very small firms can benefit, the Commission shall take into account initiatives which help SMEs and very small firms to integrate environmental aspects including energy efficiency when designing their products.

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↓ 2008/28 Art. 1 pt. 1
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21a. Guidelines covering specificities of SMEs active in the product sector affected may accompany an implementing measure. If necessary, and in accordance with paragraph 1,

further specialised material may be produced by the Commission for facilitating implementation of this Directive by SMEs.

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↓ 2005/32  
⇒ new

32. Member States shall ensure, in particular by strengthening support networks and structures, that they encourage SMEs and very small firms to adopt an environmentally sound approach as early as at the product design stage and to adapt to future European legislation.

#### *Article 14*

### **Consumer information**

In accordance with the applicable implementing measure, manufacturers shall ensure, in the form they deem appropriate, that consumers of ~~EuPs~~ ⇒ products ⇐ are provided with:

- the requisite information on the role that they can play in the sustainable use of the product;
- when required by the implementing measures, the ecological profile of the product and the benefits of ecodesign.

#### *Article 15*

### **Implementing measures**

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↓ 2008/28 Art. 1 pt. 2(a)  
⇒ new

1. When ~~an EuP~~ ⇒ a product ⇐ meets the criteria listed under paragraph 2, it shall be covered by an implementing measure or by a self-regulation measure in accordance with paragraph 3(b). Such 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 19(3).

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↓ 2005/32  
⇒ new

2. The criteria referred to in paragraph 1 are as follows:

- (a) the ~~EuP~~ ⇒ product ⇐ shall represent a significant volume of sales and trade, indicatively more than 200000 units a year within the Community according to most recently available figures;
- (b) the ~~EuP~~ ⇒ product ⇐ shall, considering the quantities placed on the market and/or put into service, have a significant environmental impact within the Community, as specified in Community strategic priorities as set out in Decision No 1600/2002/EC;

(c) the **EuP** ⇒ **product** ⇐ shall present significant potential for improvement in terms of its environmental impact without entailing excessive costs, taking into account in particular:

- the absence of other relevant Community legislation or failure of market forces to address the issue properly;
- a wide disparity in the environmental performance of **EuPs** ⇒ **products** ⇐ available on the market with equivalent functionality.

3. In preparing a draft implementing measure the Commission shall take into account any views expressed by the Committee referred to in Article 19(1) and shall further take into account:

- (a) Community environmental priorities, such as those set out in Decision No 1600/2002/EC or in the Commission's European Climate Change Programme (ECCP);
- (b) relevant Community legislation and self-regulation, such as voluntary agreements, which, following an assessment in accordance with Article 17, are expected to achieve the policy objectives more quickly or at lesser expense than mandatory requirements.

4. In preparing a draft implementing measure the Commission shall:

- (a) consider the life cycle of the **EuP** ⇒ **product** ⇐ and all its significant environmental aspects, *inter alia*, energy efficiency. The depth of analysis of the environmental aspects and of the feasibility of their improvement shall be proportionate to their significance. The adoption of ecodesign requirements on the significant environmental aspects of ~~an EuP~~ ⇒ **a product** ⇐ shall not be unduly delayed by uncertainties regarding the other aspects;
- (b) carry out an assessment, which will consider the impact on environment, consumers and manufacturers, including SMEs, in terms of competitiveness including on markets outside the Community, innovation, market access and costs and benefits;
- (c) take into account existing national environmental legislation that Member States consider relevant;
- (d) carry out appropriate consultation with stakeholders;
- (e) prepare an explanatory memorandum of the draft implementing measure based on the assessment referred to in point (b);
- (f) 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.

5. Implementing measures shall meet all the following criteria:

- (a) there shall be no significant negative impact on the functionality of the product, from the perspective of the user;
- (b) health, safety and the environment shall not be adversely affected;
- (c) there shall be no significant negative impact on consumers in particular as regards the affordability and the life-cycle cost of the product;
- (d) there shall be no significant negative impact on industry's competitiveness;

(e) in principle, the setting of an ecodesign requirement shall not have the consequence of imposing proprietary technology on manufacturers;

(f) no excessive administrative burden shall be imposed on manufacturers.

6. Implementing measures shall lay down ecodesign requirements in accordance with Annex I and/or Annex II.

Specific ecodesign requirements shall be introduced for selected environmental aspects which have a significant environmental impact.

Implementing measures may also provide that no ecodesign requirement is necessary for certain specified ecodesign parameters referred to in Annex I, Part 1.

7. The requirements shall be formulated so as to ensure that market surveillance authorities can verify the conformity of the **EuP** ⇒ product ⇐ with the requirements of the implementing measure. The implementing measure shall specify whether verification can be achieved directly on the **EuP** ⇒ product ⇐ or on the basis of the technical documentation.

8. Implementing measures shall include the elements listed in Annex VII.

9. Relevant studies and analyses used by the Commission in preparing implementing measures should be made publicly available, taking into account in particular easy access and use by interested SMEs.

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↓ 2008/28 Art. 1 pt. 2(b)

10. Where appropriate, an implementing measure laying down ecodesign requirements shall include provisions on the balancing of the various environmental aspects. Those measures, designed to amend nonessential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).

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↓ 2005/32

### *Article 16*

#### **Working plan**

1. In accordance with the criteria set out in Article 15 and having consulted the Consultation Forum referred to in Article 18, the Commission shall not later than 6 July 2007 establish a working plan which shall be made publicly available.

The working plan shall set out for the following three years an indicative list of product groups which will be considered as priorities for the adoption of implementing measures.

The working plan shall be amended periodically by the Commission after consultation with the Consultation Forum.

2. However, during the transitional period, while the first working plan referred to in paragraph 1 is being established, and, in accordance with the criteria set out in Article 15, and after consulting the Consultation Forum, the Commission shall as appropriate introduce by anticipation:

- implementing measures starting with those products which have been identified by the ECCP as offering a high potential for cost-effective reduction of greenhouse gas

emissions, such as heating and water heating equipment, electric motor systems, lighting in both the domestic and tertiary sectors, domestic appliances, office equipment in both the domestic and tertiary sectors, consumer electronics and HVAC (heating ventilating air conditioning) systems;

- a separate implementing measure reducing stand-by losses for a group of products.

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↓ 2008/28 Art. 1 pt. 3(b)

Those 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 19(3).

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↓ 2005/32

#### *Article 17*

##### **Self-regulation**

Voluntary agreements or other self-regulation measures presented as alternatives to implementing measures in the context of this Directive shall be assessed at least on the basis of Annex VIII.

#### *Article 18*

##### **Consultation Forum**

The Commission shall ensure that in the conduct of its activities it observes, in respect of each implementing measure, a balanced participation of Member States' representatives and all interested parties concerned with the product/product group in question, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations. These parties shall contribute, in particular, to defining and reviewing implementing measures, to examining the effectiveness of the established market surveillance mechanisms, and to assessing voluntary agreements and other self-regulation measures. These parties shall meet in a Consultation Forum. The rules of procedure of the Forum shall be established by the Commission.

#### *Article 19*

##### **Committee procedure**

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC 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.

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↓ 2008/28 Art. 1 pt. 4

3. 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.

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↓ 2005/32 (adapted)

#### *Article 20*

##### **Penalties**

The Member States shall ~~determine~~ ☒ lay down ☒ the ~~penalties~~ ☒ rules ☒ applicable to ~~breaches~~ ☒ infringements ☒ of the national provisions adopted pursuant to this Directive ☒ and shall take all measures necessary to ensure that they are implemented ☒. The penalties ☒ provided for ☒ shall be effective, proportionate and dissuasive, taking into account the extent of non-compliance and the number of units of non-complying products placed on the Community market. ☒ The Member States shall notify those provisions to the Commission by the date specified in Article 23(1) at the latest and shall notify it without delay of any subsequent amendment affecting them. ☒

#### *~~Article 21~~*

##### **~~Amendments~~**

~~1. Directive 92/42/EEC is hereby amended as follows:~~

~~1. Article 6 shall be deleted;~~

~~2. the following Article shall be inserted:~~

#### *~~Article 10a~~*

~~This Directive constitutes an implementing measure within the meaning of Article 15 of 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<sup>42</sup>, with regard to energy efficiency during use, in accordance with that Directive, and may be amended or repealed in accordance with Article 19(2) of Directive 2005/32/EC.»~~

~~3. Annex I, point 2, shall be deleted;~~

~~4. Annex II shall be deleted.~~

~~2. Directive 96/57/EC is hereby amended as follows:~~

~~The following Article shall be inserted:~~

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<sup>42</sup> ~~OJL 191, 22.7.2005, p. 29.~~

#### ~~Article 9a~~

~~This Directive constitutes an implementing measure within the meaning of Article 15 of 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<sup>43</sup>, with regard to energy efficiency during use, in accordance with that Directive, and may be amended or repealed in accordance with Article 19(2) of Directive 2005/32/EC.»~~

~~3. Directive 2000/55/EC is hereby amended as follows:~~

~~The following Article shall be inserted:~~

#### ~~Article 9a~~

~~This Directive constitutes an implementing measure within the meaning of Article 15 of 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<sup>44</sup>, with regard to energy efficiency during use, in accordance with that Directive, and may be amended or repealed in accordance with Article 19(2) of Directive 2005/32/EC.»~~

#### Article 22

##### **Repeals**

~~Directives 78/170/EEC and 86/594/EEC are repealed. Member States may continue to apply existing national measures adopted under Directive 86/594/EEC until such time as implementing measures for the products concerned are adopted under this Directive.~~

↓ 2005/32  
⇒ new

#### Article 22

##### **Review**

Not later than ~~6 July 2010~~ ⇒ 2012 ⇐ the Commission shall review ⇐ the appropriateness of extending the scope of the Directive to non energy related products, ⇐ the effectiveness of this Directive and of its implementing measures, the threshold for implementing measures, market surveillance mechanisms and any relevant self-regulation stimulated, after consultation of the Consultation Forum referred to in Article 18, and, as appropriate, present proposals to the European Parliament and the Council for amending this Directive.

#### Article 22

##### **Confidentiality**

Requirements relating to the supply of information referred to in Article 11 and Annex I, Part 2, by the manufacturer and/or its authorised representative shall be proportionate and shall take into account the legitimate confidentiality of commercially sensitive information.

<sup>43</sup> OJ L 191, 22.7.2005, p. 29.

<sup>44</sup> OJ L 191, 22.7.2005, p. 29.

#### *Article 25*

#### **Implementation**

~~1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 11 August 2007.~~

~~They shall forthwith inform the Commission thereof.~~

~~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 reference shall be laid down by Member States.~~

~~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.~~

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↓ new

#### *Article 23*

#### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 9, 11, 14, 15 and 20 and Annexes I to V, VII and VIII by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and 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 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.

#### *Article 24*

#### **Repeal**

Directive 2005/32/EC, as amended by the Directive listed in Annex IX, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex IX, 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 X.

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<sup>45</sup> A date corresponding to 12 months after entry into force.

*Article ~~26~~25*

**Entry into force**

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

*Article ~~27~~26*

**Addressees**

This Directive is addressed to the Member States.

Done at [...].

*For the European Parliament*  
*The President*  
[...]

*For the Council*  
*The President*  
[...]

**ANNEX I**  
**METHOD FOR SETTING GENERIC ECO-DESIGN REQUIREMENTS**

**(REFERRED TO IN ARTICLE 15)**

Generic ecodesign requirements aim at improving the environmental performance of ~~EuPs~~ ⇒ products ⇐, focusing on significant environmental aspects thereof without setting limit values. The method according to this Annex will be applied when it is not appropriate to set limit values for the product group under examination. The Commission shall, when preparing a draft implementing measure to be submitted to the Committee referred to in Article 19, identify significant environmental aspects which shall be specified in the implementing measure.

In preparing implementing measures laying down generic ecodesign requirements pursuant to Article 15 the Commission will identify, as appropriate to the ~~EuP~~ ⇒ product ⇐ covered by the implementing measure, the relevant ecodesign parameters from among those listed in Part 1, the information supply requirements from among those listed in Part 2 and the requirements for the manufacturer listed in Part 3.

**PART 1. ECODESIGN PARAMETERS FOR ~~EuPs~~ ⇒ PRODUCTS ⇐**

1.1. In so far as they relate to product design, significant environmental aspects are identified with reference to the following phases of the life cycle of the product:

- (a) raw material selection and use;
- (b) manufacturing;
- (c) packaging, transport, and distribution;
- (d) installation and maintenance;
- (e) use;
- (f) end-of-life, meaning the state of ~~an EuP~~ ⇒ a product ⇐ having reached the end of its first use until its final disposal.

1.2. For each phase, the following environmental aspects are to be assessed where relevant:

- (a) predicted consumption of materials, of energy and of other resources such as fresh water;
- (b) anticipated emissions to air, water or soil;
- (c) anticipated pollution through physical effects such as noise, vibration, radiation, electromagnetic fields;
- (d) expected generation of waste material;
- (e) possibilities for reuse, recycling and recovery of materials and/or of energy, taking into account Directive 2002/96/EC.

1.3. In particular, the following parameters will be used, as appropriate, and supplemented by others, where necessary, for evaluating the potential for improving the environmental aspects mentioned in the previous paragraph:

- (a) weight and volume of the product;
- (b) use of materials issued from recycling activities;
- (c) consumption of energy, water and other resources throughout the life cycle;
- (d) use of substances classified as hazardous to health and/or the environment according to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packing and labelling of dangerous substances<sup>46</sup> and taking into account legislation on the marketing and use of specific substances, such as Directives 76/769/EEC or 2002/95/EC;
- (e) quantity and nature of consumables needed for proper use and maintenance;
- (f) ease for reuse and recycling as expressed through: number of materials and components used, use of standard components, time necessary for disassembly, complexity of tools necessary for disassembly, use of component and material coding standards for the identification of components and materials suitable for reuse and recycling (including marking of plastic parts in accordance with ISO standards), use of easily recyclable materials, easy access to valuable and other recyclable components and materials; easy access to components and materials containing hazardous substances;
- (g) incorporation of used components;
- (h) avoidance of technical solutions detrimental to reuse and recycling of components and whole appliances;
- (i) extension of lifetime as expressed through: minimum guaranteed lifetime, minimum time for availability of spare parts, modularity, upgradeability, reparability;
- (j) amounts of waste generated and amounts of hazardous waste generated;
- (k) emissions to air (greenhouse gases, acidifying agents, volatile organic compounds, ozone depleting substances, persistent organic pollutants, heavy metals, fine particulate and suspended particulate matter) without prejudice to Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery<sup>47</sup>;
- (l) emissions to water (heavy metals, substances with an adverse effect on the oxygen balance, persistent organic pollutants);

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<sup>46</sup> OJ 196, 16.8.1967, p. 1. Directive as last amended by Commission Directive 2004/73/EC (OJ L 152, 30.4.2004, p. 1).

<sup>47</sup> OJ L 59, 27.2.1998, p. 1. Directive as last amended by Directive 2004/26/EC (OJ L 146, 30.4.2004, p. 1).

(m) emissions to soil (especially leakage and spills of dangerous substances during the use phase of the product, and the potential for leaching upon its disposal as waste).

## **PART 2. REQUIREMENTS RELATING TO THE SUPPLY OF INFORMATION**

Implementing measures may require information to be supplied by the manufacturer that may influence the way the **EuP** ⇒ product ⇐ is handled, used or recycled by parties other than the manufacturer. This information may include, where applicable:

- information from the designer relating to the manufacturing process;
- information for consumers on the significant environmental characteristics and performance of a product, accompanying the product when it is placed on the market to allow consumers to compare these aspects of the products;
- information for consumers on how to install, use and maintain the product in order to minimise its impact on the environment and to ensure optimal life expectancy, as well as on how to return the product at end-of-life, and, where appropriate, information on the period of availability of spare parts and the possibilities of upgrading products;
- information for treatment facilities concerning disassembly, recycling, or disposal at end-of-life.

Information should be given on the product itself wherever possible.

This information will take into account obligations under other Community legislation, such as Directive 2002/96/EC.

## **PART 3. REQUIREMENTS FOR THE MANUFACTURER**

1. Addressing the environmental aspects identified in the implementing measure as capable of being influenced in a substantial manner through product design, manufacturers of **EuPs** ⇒ products ⇐ will be required to perform an assessment of the **EuP** ⇒ product ⇐ model throughout its lifecycle, based upon realistic assumptions about normal conditions and purposes of use. Other environmental aspects may be examined on a voluntary basis.

On the basis of this assessment manufacturers will establish the **EuP's** ⇒ product's ⇐ ecological profile. It will be based on environmentally relevant product characteristics and inputs/outputs throughout the product life cycle expressed in physical quantities that can be measured.

2. Manufacturers will make use of this assessment to evaluate alternative design solutions and the achieved environmental performance of the product against benchmarks.

The benchmarks will be identified by the Commission in the implementing measure on the basis of information gathered during the preparation of the measure.

The choice of a specific design solution will achieve a reasonable balance between the various environmental aspects and between environmental aspects and other relevant considerations, such as safety and health, technical requirements for functionality, quality, and performance, and economic aspects, including manufacturing costs and marketability, while complying with all relevant legislation.

## ANNEX II

### **METHOD FOR SETTING SPECIFIC ECODESIGN REQUIREMENTS**

#### **(REFERRED TO IN ARTICLE 15)**

Specific ecodesign requirements aim at improving a selected environmental aspect of the product. They may take the form of requirements for reduced consumption of a given resource, such as a limit on the use of a resource in the various stages of an **EuP's** ⇒ product's ⇐ life cycle, as appropriate (such as a limit on water consumption in the use phase or on the quantities of a given material incorporated in the product or a requirement for minimum quantities of recycled material).

In preparing implementing measures laying down specific ecodesign requirements pursuant to Article 15, the Commission will identify, as appropriate to the **EuP** ⇒ product ⇐ covered by the implementing measure, the relevant ecodesign parameters from among those referred to in Annex I, Part 1, and set the levels of these requirements, in accordance with the procedure referred to in Article 19(2), as follows:

1. A technical, environmental and economic analysis will select a number of representative models of the **EuP** ⇒ product ⇐ in question on the market and identify the technical options for improving the environmental performance of the product, keeping sight of the economic viability of the options and avoiding any significant loss of performance or of usefulness for consumers.

The technical, environmental and economic analysis will also identify, for the environmental aspects under consideration, the best-performing products and technology available on the market.

The performance of products available on international markets and benchmarks set in other countries' legislation should be taken into consideration during the analysis as well as when setting requirements.

On the basis of this analysis and taking into account economic and technical feasibility as well as potential for improvement, concrete measures are taken with a view to minimising the product's environmental impact.

Concerning energy consumption in use, the level of energy efficiency or consumption will be set aiming at the life-cycle cost minimum to end-users for representative **EuP** ⇒ product ⇐ models, taking into account the consequences on other environmental aspects. The life-cycle cost analysis method uses a real discount rate on the basis of data provided from the European Central Bank and a realistic lifetime for the **EuP** ⇒ product ⇐; it is based on the sum of the variations in purchase price (resulting from the variations in industrial costs) and in operating expenses, which result from the different levels of technical improvement options, discounted over the lifetime of the representative **EuP** ⇒ product ⇐ models considered. The

operating expenses cover primarily energy consumption and additional expenses in other resources (such as water or detergent).

A sensitivity analysis covering the relevant factors (such as the price of energy or other resource, the cost of raw materials or production costs, discount rates) and, where appropriate, external environmental costs, including avoided greenhouse gas emissions, will be carried out to check if there are significant changes and if the overall conclusions are reliable. The requirement will be adapted accordingly.

A similar methodology could be applied to other resources such as water.

2. For the development of the technical, environmental and economic analyses, information available in the framework of other Community activities could be used.

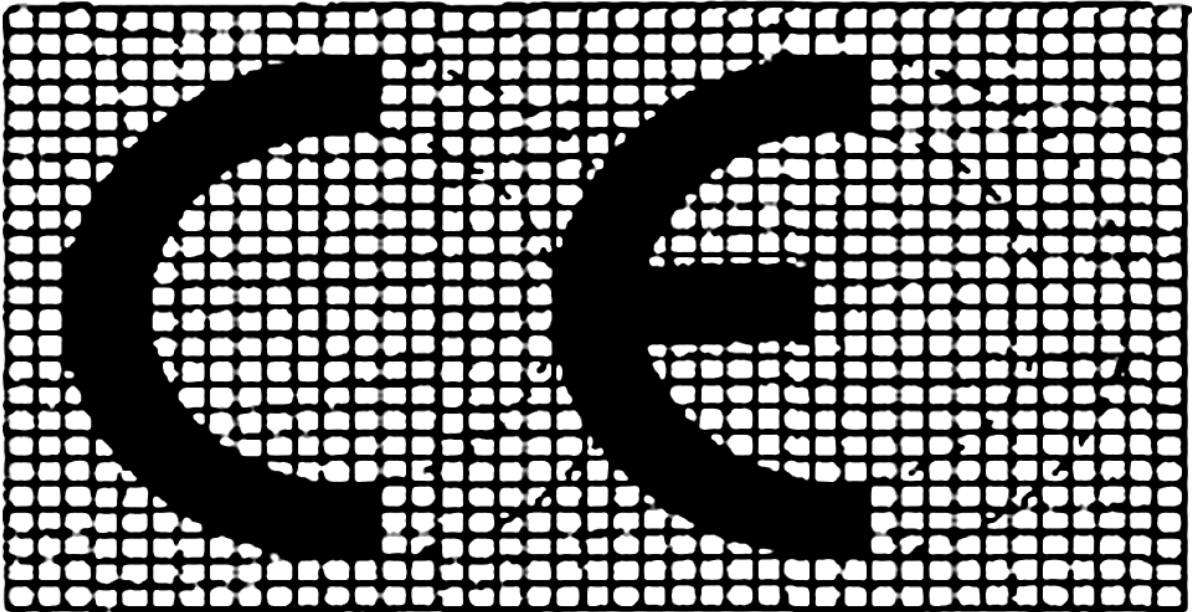
The same applies for information available from existing programmes applied in other parts of the world for setting the specific ecodesign requirement of ~~EuPs~~ ⇒ products ⇐ traded with the EU's economic partners.

3. The date of entry into force of the requirement will take the redesign cycle for the product into account.

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ANNEX III  
**CE MARKING**

**(REFERRED TO IN ARTICLE 5(2))**



The CE marking must have a height of at least 5 mm. If the CE marking is reduced or enlarged the proportions given in the above graduated drawing must be respected.

The CE marking must be affixed to the ~~EuP~~ ⇒ product ⇐. Where this is not possible, it must be affixed to the packaging and to the accompanying documents.

## ANNEX IV

### INTERNAL DESIGN CONTROL

#### (REFERRED TO IN ARTICLE 8)

1. This Annex describes the procedure whereby the manufacturer or its authorised representative who carries out the obligations laid down in point 2 of this Annex ensures and declares that the ~~EuP~~ ⇒ product ⇐ satisfies the relevant requirements of the applicable implementing measure. The declaration of conformity may cover one or more products and must be kept by the manufacturer.

2. A technical documentation file making possible an assessment of the conformity of the ~~EuP~~ ⇒ product ⇐ with the requirements of the applicable implementing measure will be compiled by the manufacturer.

The documentation will specify, in particular:

- (a) a general description of the ~~EuP~~ ⇒ product ⇐ and of its intended use;
- (b) the results of relevant environmental assessment studies carried out by the manufacturer, and/or references to environmental assessment literature or case studies, which are used by the manufacturer in evaluating, documenting and determining product design solutions;
- (c) the ecological profile, if required by the implementing measure;
- (d) elements of the product design specification relating to environmental design aspects of the product;
- (e) a list of the appropriate standards referred to in Article 10, applied in full or in part, and a description of the solutions adopted to meet the requirements of the applicable implementing measure where the standards referred to in Article 10 have not been applied or where these standards do not cover entirely the requirements of the applicable implementing measure;
- (f) a copy of the information concerning the environmental design aspects of the product provided in accordance with the requirements specified in Annex I, Part 2;
- (g) the results of measurements on the ecodesign requirements carried out, including details of the conformity of these measurements as compared with the ecodesign requirements set out in the applicable implementing measure.

3. The manufacturer must take all measures necessary to ensure that the product will be manufactured in compliance with the design specifications referred to in point 2 and with the requirements of the measure which apply to it.

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## ANNEX V

### MANAGEMENT SYSTEM FOR ASSESSING CONFORMITY

#### (REFERRED TO IN ARTICLE 8)

1. This Annex describes the procedure whereby the manufacturer who satisfies the obligations of point 2 of this Annex ensures and declares that the ~~EuP~~ ⇒ product ⇐ satisfies the requirements of the applicable implementing measure. The declaration of conformity may cover one or more products and must be kept by the manufacturer.

2. A management system may be used for the conformity assessment of ~~an EuP~~ ⇒ a product ⇐ provided that the manufacturer implements the environmental elements specified in point 3 of this Annex.

#### 3. Environmental elements of the management system

This point specifies the elements of a management system and the procedures by which the manufacturer can demonstrate that the ~~EuP~~ ⇒ product ⇐ complies with the requirements of the applicable implementing measure.

##### 3.1. The environmental product performance policy

The manufacturer must be able to demonstrate conformity with the requirements of the applicable implementing measure. The manufacturer must also be able to provide a framework for setting and reviewing environmental product performance objectives and indicators with a view to improving the overall environmental product performance.

All the measures adopted by the manufacturer to improve the overall environmental performance of and to establish the ecological profile of ~~an EuP~~ ⇒ a product ⇐, if required by the implementing measure, through design and manufacturing, must be documented in a systematic and orderly manner in the form of written procedures and instructions.

These procedures and instructions must contain, in particular, an adequate description of:

- the list of documents that must be prepared to demonstrate the ~~EuP's~~ ⇒ product's ⇐ conformity, and — if relevant — that have to be made available;
- the environmental product performance objectives and indicators and the organisational structure, responsibilities, powers of the management and allocation of resources with regard to their implementation and maintenance;
- the checks and tests to be carried out after manufacture to verify product performance against environmental performance indicators;
- procedures for controlling the required documentation and ensuring that it is kept up to date;
- the method of verifying the implementation and effectiveness of the environmental elements of the management system.

##### 3.2. Planning

The manufacturer will establish and maintain

- (a) procedures for establishing the ecological profile of the product;
- (b) environmental product performance objectives and indicators, which consider technological options taking into account technical and economic requirements;
- (c) a programme for achieving these objectives.

### 3.3. Implementation and documentation

3.3.1. The documentation concerning the management system should cover the following, in particular:

- (a) responsibilities and authorities will be defined and documented in order to ensure effective environmental product performance and reporting on its operation for review and improvement;
- (b) documents will be established indicating the design control and verification techniques implemented and processes and systematic measures used when designing the product;
- (c) the manufacturer will establish and maintain information to describe the core environmental elements of the management system and the procedures for controlling all documents required.

3.3.2. The documentation concerning the **EuP** ⇒ product ⇐ will specify, in particular:

- (a) a general description of the **EuP** ⇒ product ⇐ and of its intended use;
- (b) the results of relevant environmental assessment studies carried out by the manufacturer, and/or references to environmental assessment literature or case studies, which are used by the manufacturer in evaluating, documenting and determining product design solutions;
- (c) the ecological profile, if required by the implementing measure;
- (d) documents describing the results of measurements on the ecodesign requirements carried out including details of the conformity of these measurements as compared with the ecodesign requirements set out in the applicable implementing measure;
- (e) the manufacturer will establish specifications indicating, in particular, standards which have been applied; where standards referred to in Article 10 are not applied or where they do not cover entirely the requirements of the relevant implementing measure, the means used to ensure compliance;
- (f) a copy of the information concerning the environmental design aspects of the product provided in accordance with the requirements specified in Annex I, Part 2.

### 3.4. Checking and corrective action

- (a) the manufacturer must take all measures necessary to ensure that the **EuP** ⇒ product ⇐ is manufactured in compliance with its design specification and with the requirements of the implementing measure which applies to it;
- (b) the manufacturer will establish and maintain procedures to investigate and respond to non-conformity, and implement changes in the documented procedures resulting from corrective action;
- (c) the manufacturer will carry out at least every three years a full internal audit of the management system with regard to its environmental elements.

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**ANNEX VI**

**DECLARATION OF CONFORMITY**

**(REFERRED TO IN ARTICLE 5(3))**

The EC declaration of conformity must contain the following elements:

1. the name and address of the manufacturer or of its authorised representative;
  2. a description of the model sufficient for unambiguous identification;
  3. where appropriate, the references of the harmonised standards applied;
  4. where appropriate, the other technical standards and specifications used;
  5. where appropriate, the reference to other Community legislation providing for the affixing of the CE mark that is applied;
  6. identification and signature of the person empowered to bind the manufacturer or its authorised representative.
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**ANNEX VII**  
**CONTENTS OF THE IMPLEMENTING MEASURES**  
**(REFERRED TO IN ARTICLE 15(8))**

The implementing measure will specify, in particular:

1. the exact definition of the type(s) of ~~EuP(s)~~ ⇒ product(s) ⇐ covered;
2. the ecodesign requirement(s) for the ~~EuP(s)~~ ⇒ product(s) ⇐ covered, implementing date(s), staged or transitional measures or periods;
  - in the case of generic ecodesign requirement(s), the relevant phases and aspects selected from those mentioned in Annex I, points 1.1 and 1.2, accompanied by examples of parameters selected from those mentioned in Annex I, point 1.3 as guidance when evaluating improvements regarding identified environmental aspects;
  - in the case of specific ecodesign requirement(s), its (their) level(s);
3. the ecodesign parameters referred to in Annex I, Part 1 relating to which no ecodesign requirement is necessary;
4. the requirements on installation of the ~~EuP~~ ⇒ product ⇐ where it has a direct relevance to the ~~EuPs~~ ⇒ product's ⇐ environmental performance considered;
5. the measurement standards and/or measurement methods to be used; when available, harmonised standards the reference numbers of which have been published in the *Official Journal of the European Union* will be used;
6. the details for conformity assessment under Decision 93/465/EEC;
  - where the module(s) to be applied is (are) different from Module A; the factors leading to the selection of that specific procedure;
  - where relevant the criteria for approval and/or certification of the third parties; where different modules are laid down in other CE requirements for the same ~~EuP~~ ⇒ product ⇐, the module defined in the implementing measure will prevail for the requirement concerned;
7. requirements on information to be provided by manufacturers notably on the elements of the technical documentation which are needed for facilitating the checking of the compliance of the ~~EuP~~ ⇒ product ⇐ with the implementing measure;
8. the duration of the transitional period during which Member States must permit the placing on the market and/or putting into service of ~~EuPs~~ ⇒ products ⇐ which comply with the regulations in force in their territory on the date of adoption of the implementing measure;

9. the date for the evaluation and possible revision of the implementing measure, taking into account speed of technological progress.

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## **ANNEX VIII**

In addition to the basic legal requirement that self-regulatory initiatives shall comply with all provisions of the Treaty (in particular internal market and competition rules), as well as with the international engagements of the Community, including multilateral trade rules, the following non-exhaustive list of indicative criteria may be used to evaluate the admissibility of self-regulatory initiatives as an alternative to an implementing measure in the context of this Directive:

### **1. OPENNESS OF PARTICIPATION**

Self-regulatory initiatives shall be open to the participation of third country operators, both in the preparatory and in the implementation phases.

### **2. ADDED VALUE**

Self-regulatory initiatives shall deliver added value (more than ‘business as usual’) in terms of the improved overall environmental performance of the ~~EU~~ product covered.

### **3. REPRESENTATIVENESS**

Industry and their associations taking part in a self-regulatory action shall represent a large majority of the relevant economic sector, with as few exceptions as possible. Care shall be taken to ensure respect for competition rules.

### **4. QUANTIFIED AND STAGED OBJECTIVES**

The objectives defined by the stakeholders shall be set in clear and unambiguous terms, starting from a well-defined baseline. If the self-regulatory initiative covers a long time-span, interim targets shall be included. It must be possible to monitor compliance with objectives and (interim) targets in an affordable and credible way using clear and reliable indicators. Research information and scientific and technological background data shall facilitate the development of these indicators.

### **5. INVOLVEMENT OF CIVIL SOCIETY**

With a view to ensuring transparency, self-regulatory initiatives shall be publicised, including through the use of the Internet and other electronic means of disseminating information.

The same shall apply to interim and final monitoring reports. Stakeholders including Member States, industry, environmental NGOs and consumers' associations shall be invited to comment on a self-regulatory initiative.

### **6. MONITORING AND REPORTING**

Self-regulatory initiatives shall contain a well-designed monitoring system, with clearly identified responsibilities for industry and independent inspectors. The Commission services,

in partnership with the parties to the self-regulatory initiative, shall be invited to monitor the achievement of the objectives.

The plan for monitoring and reporting shall be detailed, transparent and objective. It shall remain for the Commission services, assisted by the Committee referred to in Article 19(1), to consider whether the objectives of the voluntary agreement or other self-regulatory measures have been met.

#### **7. COST-EFFECTIVENESS OF ADMINISTERING A SELF-REGULATORY INITIATIVE**

The cost of administering self-regulatory initiatives, in particular as regards monitoring, shall not lead to a disproportionate administrative burden, as compared to their objectives and to other available policy instruments.

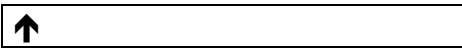
#### **8. SUSTAINABILITY**

Self-regulatory initiatives shall respond to the policy objectives of this Directive including the integrated approach and shall be consistent with the economic and social dimensions of sustainable development. The protection of consumers' interests (health, quality of life and economic interests) shall be integrated.

#### **9. INCENTIVE COMPATIBILITY**

Self-regulatory initiatives are unlikely to deliver the expected results if other factors and incentives — market pressure, taxes, and legislation at national level — send contradictory signals to participants in the commitment. Policy consistency is essential in this regard and shall be taken into consideration when assessing the effectiveness of the initiative.

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**ANNEX IX**

**PART A**

**Repealed Directive with list of its successive amendments  
(referred to in Article 24)**

Directive 2005/32/EC of the European Parliament  
and of the Council (OJ L 191, 22.7.2005, p. 29)

Directive 2008/28/EC of the European Parliament                      only Article 1  
and of the Council (OJ L 81, 20.3.2008, p. 48)

**PART B**

**List of time-limits for transposition into national law  
(referred to in Article 24)**

Directive	Deadline for transposition
2005/32/EC	11 August 2007
2008/28/EC	-

**ANNEX X**

**CORRELATION TABLE**

Directive 2005/32/EC	This Directive
Articles 1 to 20	Articles 1 to 20
Article 21	_____
Article 22	_____
Article 23	Article 21
Article 24	Article 22
Article 25	_____
_____	Article 23
_____	Article 24
Article 26	Article 25
Article 27	Article 26
Annexes I to VIII	Annexes I to VIII
_____	Annex IX
_____	Annex X

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