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from : Working Party on Energy  
on : 16 March 2004

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No. prev. doc. : 7192/04 ENER 83 ENV 150 MI 76 CODEC 341

No. Cion prop. : 12082/03 ENER 240 ENV 430 CODEC 1095

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Subject : Proposal for a Directive of the European Parliament and of the Council on establishing a framework for the setting of Eco-design requirements for Energy-Using Products and amending Council Directive 92/42/EEC

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Delegations will find attached the above proposal as resulting from the meeting of the Working Party on Energy on 16 March 2004<sup>1</sup>.

With regard to the further procedure of this dossier, the Presidency underlined that further informal contacts with the EP (the next one is scheduled for 17.3.2004) could indicate mutual willingness to keep in touch with one another and share information. It should however be clear that the adoption in ENVI Committee of 74 draft amendments (while some 100 changes have been brought to the text through the proceedings of the Energy Working Party) would not contribute to facilitating an early conclusion of the dossier. In this respect, the BE/DE/IT/AT delegations expressed a preference for resolving as many problems as possible at Energy Working Party level before submitting the text to Coreper.

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<sup>1</sup> Changes with respect to doc 7192/04 are in italics and underlined

The IT delegation explained that its main concern is with regard to ensuring equal treatment for European and non-European producers and importers, in order to avoid market distortion and to ensure a level playing field; Sectoral directives should therefore only be adopted on the basis of a unique ecological profile.

The A delegation's main concern lies in the different levels of energy efficiency and environmental aspects in the Member States. This could raise problems for the implementation when a Member State already requires a higher level for a certain product, and possibly lead to the weakening of existing national environmental standards.

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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
On establishing a framework for the setting of Eco-design requirements for Energy-Using  
Products and amending Council Directive 92/42/EEC**

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,

[ ]<sup>2</sup>

*Article 1*

*Subject matter and scope*

1. This Directive establishes a framework for the setting of Community eco-design requirements for energy using products with the aim of ensuring the free movement of those products within the internal market.
2. It provides for the setting of requirements which the energy using products covered by implementing measures must fulfil with a view to their placing on the market and/or putting 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 energy supply.
3. This Directive shall not apply to means of transport for persons or goods.<sup>3</sup>
4. *This Directive and the implementing measures adopted pursuant to this Directive shall be without prejudice to Community chemicals legislation and Community waste management legislation.*<sup>4</sup>

*Article 2*

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<sup>2</sup> *Citations and* Recitals will be examined at a later stage.

<sup>3</sup> *BE/ES/FR/PT* would prefer a recital indicating that "*where an implementing measure applies to accessories or components specifically designed to be affixed in means of transport for persons or goods, the Commission should evaluate, on a case-by-case basis, the applicability of this Directive*".

<sup>4</sup> *In addition, the existing recital 15 should be amended as follows:*

*"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, Regulation (EC) N°1980/2000 of 17 July 2000 on a revised Community eco-label award scheme, Regulation (EC) N°2422/2001 of 6 November 2001 on a Community energy efficiency labelling programme for office equipment, Directive 2002/96/EC on waste from electrical and electronic equipment, Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment and Directive 76/769/EEC on the restriction of the marketing and use of dangerous substances and preparations. Synergies between this Directive and the existing Community instruments should contribute to increasing their respective impact and building coherent requirements for manufacturers to apply."*

*DE/FI/FR/UK: scrutiny reservation on underlined words on para 4 and reworded recital*

## Definitions

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

- (1) "Energy-using Product (EuP)" means a product which is dependent on energy input (electricity, fossil and renewable fuels) to work as intended and a product for the generation, transfer and measurement of such energy, including parts which are dependent on energy input and which are intended to be incorporated into EuP which are placed on the market and/or put into service as individual parts for end-users, the environmental performance of which can be assessed independently;
- (2) "Components and sub-assemblies" means parts<sup>5</sup> intended to be incorporated into EuP, 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 can not be assessed independently;
- (3) "Implementing measures" means measures adopted pursuant to this Directive laying down eco-design requirements for defined EuPs or for environmental aspects thereof;
- (4) "Placing on the market" means making a EuP 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;
- (4a) "Putting into service" means the first use of a EuP for its intended purpose by the end-user in the Community;
- (5) "Manufacturer" means any natural or legal person who manufactures EuP products covered by this Directive, and is responsible for the conformity of the EuP product with this Directive in view of its placing on the market and/or putting into service, under his own name or trademark or for his own use. In the absence of a manufacturer as defined in the first sentence, any natural or legal person who places on the market and/or puts into service EuP products covered by this Directive shall be considered a manufacturer<sup>6</sup>;
- (6) "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;
- (7) "Materials" means all materials used during the life cycle of the products;
- (8) "Product design" means the set of processes that transform legal, technical, safety, functional, market or other requirements to be met by the product into the technical specification of a EuP;
- (9) "Environmental aspect" means an element or function of a EuP that can interact with the environment during its life cycle;

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<sup>5</sup> *PT: insert "which are dependent on energy input"*

<sup>6</sup> *PT/LV: replace this definition by the definition of "producer" contained in the WEEE Directive (2002/96/EC), in order to clarify the role of the importer, which the existing definition of "authorised representative" does not provide for. Cion: this suggestion might raise problems as exports and imports between Member States are also covered by that definition.*

- (10) “Environmental impact” means any change to the environment, wholly or partially resulting from EuPs during their life cycle;
- (11) “Life cycle”<sup>7</sup> means the consecutive and interlinked stages of a EuP from raw material use to the final disposal;
- (12) “Re-use” means any operation by which a EuP 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 a EuP, which is returned to collection points, distributors, recyclers or manufacturers, as well as re-use of an EuP following refurbishment<sup>8</sup>;
- (13) “Recycling” means the reprocessing in a production process of waste materials for the original purpose or for other purposes but excluding energy recovery. 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;
- (14) “Recovery” means any of the applicable operations provided for in Annex II B to Council Directive 75/442/EEC,<sup>\*</sup>
- (15) “Waste” means any substance or object in the categories set out in Annex I to Directive 75/442/EEC which the holder discards or intends or is required to discard;
- (16) "Hazardous waste" means any waste which is covered by Article 1(4) of Council Directive 91/689/EEC,<sup>\*\*</sup>
- (17) “Ecological profile” means a description [by the manufacturer, in accordance with the implementing measure applicable to the EuP]<sup>9</sup>, of the inputs and outputs (such as materials, emissions and waste) associated with a EuP throughout 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;
- (18) “Environmental performance”<sup>10</sup> of a EuP means the results of the manufacturer’s management of the environmental aspects of the EuP, as reflected in its ecological profile;
- (19) “Improvement of the environmental performance” means the process of enhancing the environmental performance of a EuP, over successive generations, although not necessarily in respect of all environmental aspects of the product simultaneously;

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<sup>7</sup> A recital could note the relevance of ISO 14040 in this context.  
DK/SE: the definition should be in coherence with ISO 14040, and read: "Life cycle means the consecutive and interlinked stages of a EuP from raw material acquisition or generation of natural resources to the final disposal". Cion: this suggestion goes too far, social aspects would possibly also be included.

AT/IT: definition should be in coherence with Annex I.

<sup>8</sup> DK/AT/SE: definition should be in coherence with that in the WEEE Directive (2002/96/EC).

<sup>\*</sup> OJ L 194, 25.07.1975, p. 39, as amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

<sup>\*\*</sup> OJ L 377, 31.12.1991, p. 20.

<sup>9</sup> IT: delete bracketed words. This change is linked to IT proposals with regard to Annex I, pt 3.

<sup>10</sup> IT: delete the word "manufacturer", and replace the words "ecological profile" by "technical documentation". This change is linked to IT proposals with regard to Annex I, pt 3.

- (20) “Eco-design” means the integration of environmental aspects into product design with the aim to improve the environmental performance of the EuP throughout its whole life cycle;
- (21) “Eco-design requirement” means any requirement in relation to a EuP, or the design of a EuP, intended to improve its environmental performance or any requirement for the supply of information with regard to the environmental aspects of a EuP;
- (22) “Generic eco-design requirement” means any eco-design requirement based on the ecological profile as a whole and not setting limit values on particular environmental aspects;
- (23) “Specific eco-design requirement” means a quantified and measurable eco-design requirement relating to a particular environmental aspect of a EuP, such as energy consumption during use, calculated for a given unit of output performance;
- (24) "Harmonised standard" means a technical specification adopted by a recognised standards body under a mandate from the Commission in accordance with the procedures laid down in Directive 98/34/EC 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*

Member States shall take all appropriate measures to ensure that EuP 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 4.

### *Article 4*

#### *Marking and declaration of conformity*

1. Before a EuP covered by implementing measures is placed on the market and/or put into service, 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 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 EuP 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 part 2 of Annex I to be in their official language(s) when the EuP reaches the final user.

Member States may also authorise this to be provided 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 and the nature of the information which is to be provided.

*Article 5*  
*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 [eco-design requirements]<sup>11</sup>, of a EuP that complies with all the relevant provisions of the applicable implementing measure and bears the CE marking in accordance with Article 4.
2. Member States shall not prevent the showing, for example at trade fairs, exhibitions and demonstrations, of EuP which are not in conformity with the provisions of the applicable implementing measure, provided there is a visible indication that they are not placed on the market/put into service until brought into conformity.

*Article 6*  
*Safeguard clause*

1. Where a Member State ascertains that a EuP bearing the CE marking referred to in Article 4 and used in accordance with its intended use, does not comply with all the relevant provisions of the applicable implementing measure<sup>12</sup>, the manufacturer or its authorised representative shall be obliged to make the EuP 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 non compliance continues, the Member State shall restrict or prohibit the placing on the market and/or putting into service of the EuP in question or ensure that it is withdrawn from the market.

[]

3. Any decision by a Member State pursuant to this Directive which restricts the placing on the market and/or the putting into service of a EuP 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.
4. The Member State shall immediately inform the Commission and the other Member States of any decision made 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 the harmonised standards referred to in Article 9(2);
  - (c) shortcomings in the harmonised standards referred to in Article 9(2).

5. The Commission shall enter into consultation with the parties concerned without delay and

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<sup>11</sup> DK( supported by AT): replace bracketed words by "requirements regarding the environmental aspects covered by the applicable implementing measure". DE: *could support if the word "environmental" was deleted*. SE/FI: replace bracketed words by "requirements regarding the aspects covered by this directive". Council Legal Service: **DELETED**

<sup>12</sup> ES: *suggests insertion of "as referred to in Annex VII", in order to cover transitional periods;* Cion: *scrutiny*

may draw upon technical advice from independent external experts.

Following that consultation, the Commission shall immediately inform the Member State which took the initiative 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.

6. Where the decision referred to in the first subparagraph of paragraph 1 of this Article is based on a shortcoming in the harmonised standards, the Commission shall immediately initiate the procedure set out in Article 9 (2), (3) and (4). The Commission shall at the same time inform the Committee referred to in Article 14 (1).
7. The Member States and the Commission shall take the necessary measures to guarantee confidentiality with regard to information provided during that procedure, where justified.
8. The decisions taken by Member States pursuant to this Article shall be made public, in a transparent way.  
The Commission's opinion on those decisions shall be published in the *Official Journal of the European Union*.

*Article 7<sup>13 14</sup>*  
*Conformity assessment*

1. Before placing a EuP covered by implementing measures on the market and/or putting an EuP into service, the manufacturer or its authorised representative shall ensure that a conformity assessment of the EuP is carried out with all the relevant requirements of the applicable implementing measure.
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 environmental 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]<sup>15</sup>.

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<sup>13</sup> SE/NL: scrutiny reservation with regard to the possibility of using *also* ISO 9000 on quality management in this context. FI/Cion: *ISO 9000 quality systems are in practice irrelevant here because ISO 14001 is in fact the environmental version of ISO 9000*. NL: either refer to ISO 9000 or put less emphasis on environmental systems.

<sup>14</sup> DE/AT/BE/IT: delete Annex V in order to ensure level-playing field and equal treatment of European and extra-European producers and importers. Cion: Annex V sets the legal requirements for equal treatment

<sup>15</sup> DE/BE: *replace bracketed words by the following "and an environmental management system that complies with harmonised standards or with Regulation 761/2001/EC"*. IT/AT: *positive scrutiny on suggestion*. IT: *the reference to EMAS could be transferred to Article 8*. Cion: deletion would limit possibility of application to all products, e.g. boilers use other modules than module A



If a EuP 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 and the design function is included within the scope of that registration, the environmental management scheme of that organisation shall be presumed to comply with the requirements of Annex V to this Directive.

[If a EuP covered by implementing measures is designed by an organisation having an environmental 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 environmental management system shall be presumed to comply with the corresponding requirements of Annex V]<sup>16</sup>.

3. After placing a EuP 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 EuP 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 4 shall be drawn up in one of the official languages of the Community.

#### *Article 8* *Presumption of conformity*

1. Member States shall regard EuP bearing the CE marking referred to in Article 4 as conforming to the relevant provisions of the applicable implementing measure.
2. Member States shall regard EuP 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.<sup>17</sup> EuP which have been awarded the Community eco-label pursuant to Regulation (EC) No 1980/2000 shall be presumed to comply with the eco-design requirements of the applicable implementing measure insofar as those requirements are met by the Eco-label.

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<sup>16</sup> DE/BE/AT/IT: delete bracketed paragraph

<sup>17</sup> DE: *EMAS or other labels (in line with ISO 14024) should be considered as compatible with harmonised standards.* Cion: accepting other labels would put legal certainty into question. AT: paragraph to be deleted, CE marking should be the only reference. Cion: CE marking obligation continues to exist but if the product has been awarded the eco-label, that means it is complying with certain criteria; and there is no need for duplicating tests

*Article 9<sup>18</sup>*  
*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 the harmonised standards.
2. Where a Member State or the Commission considers that the harmonised standards, the application of which is presumed to satisfy specific provisions of an applicable implementing measure, do not entirely satisfy those, the Member State concerned or the Commission shall inform the Standing Committee set up by Article 5 of Directive 98/34/EC to that effect giving the reasons, which 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 the revision of the harmonised standards concerned.

*Article 10*  
*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 covered by implementing measures<sup>19</sup> with relevant information on the material composition and the consumption of energy, materials and/or resources of the components or sub-assemblies [ ].

*Article 11*  
*Administrative co-operation 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 functioning of this Directive and in particular, in the implementation of Article 6 thereof.

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<sup>18</sup> *Recital 13 to read: "Harmonised standards can largely contribute to help producers applying the implementing measures adopted under this Directive. Such standards could be essential in establishing measurement and testing methods. In the case of generic eco-design requirements harmonised standards could contribute considerably to guiding producers in establishing the ecological profile of their product 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".*

<sup>19</sup> *SE/UK: scrutiny on new text*

The administrative co-operation 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. Specifications 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 14(2).
3. The Commission shall take appropriate measures in order to encourage and contribute to the co-operation between Member States referred to in this Article.<sup>20</sup>

### *Article 12*

#### *Implementing measures*

1. The Commission, acting in accordance with the procedure referred to in Article 14(2), may adopt implementing measures<sup>21</sup>.

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<sup>20</sup> DE/PT: suggest addition of the following sentence: "The exchange of information is permitted only for the creation of ecological profiles and insofar as the sources are publicly accessible".

Cion: opposed

<sup>21</sup> A recital could state: "When preparing implementing measures and the working plan the Commission should consult Member States' representatives as well as relevant interested parties concerned with the product group, such as industry, including SMEs and crafts industry, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations".

Should delegations choose the option of a "Consultation Forum" the following new Article would be included:

#### *"Article 12 b Consultation forum"*

The Commission shall ensure that in the conduct of its activities the Committee referred to in Article 14(2) observes, in respect of each implementing measure a balanced participation of all relevant interested parties concerned with that product/product group such as industry including SMEs, crafts, traders, retailers, importers, environmental protection groups and consumer organisations. These parties shall meet in a consultation forum. The rules of procedure of the forum shall be established by the Commission in accordance with the procedure laid down Article 14(2)",  
the advisory procedure provided for in Article 14 (3) and the Recital suggested above should be deleted.

DE: delete the words "the advisory procedure provided for in Article 14 (3)"

IT: incorporate the proposed Article 12b as new point 5 in Article 14, but modify the two last sentences: penultimate sentence to be deleted, ultimate sentence to be reworded as follows: "The rules of this consultation shall be established by the Commission in accordance with the procedure laid down in Article 14(2)"

DE/AT/PT: prefer the option "Consultation forum" incorporated in text.

DK/ES/FI/FR//IT/NL/UK/Cion prefer the option "Recital".

2. An EuP to be covered by an implementing measure shall meet all the following criteria:
  - (a) the EuP shall represent  a significant volume of sales and trade within the EC;
  - (b) the EuP shall have  a significant environmental impact within the EC;
  - (c) the EuP shall present  significant potential for improvement in relationship to the environmental impact without entailing excessive costs.
  
3. In considering whether to prepare a draft implementing measure the Commission shall take into account any views expressed by the Committee referred to in Article 14 and shall further take into account
  - (a) Community environmental priorities, such as those set out in Decision N° 1600/2002/EC or in the Commission's European Climate Change Programme (ECCP)\*;
  - (b) relevant self-regulation<sup>22</sup>, such as voluntary agreements or other measures taken by industry.
  
4. In preparing a draft implementing measure the Commission shall:
  - (a) consider the  life cycle of the product;
  - (b) carry out an analysis, which will consider the impact on environment, consumers and manufacturers, including small and medium sized enterprises in terms of competitiveness, innovation, market access and costs and benefits;
  - (ba) take into account existing national environmental legislation that Member States consider relevant ;
  - (c) carry out appropriate consultation with stakeholders;
  - (d) prepare an explanatory memorandum of the draft implementing measure based on the assessment referred to in sub-paragraph (b);
  - (e) set implementing date(s), any staged or transitional measure or periods taking into account in particular possible impacts on small and medium sized enterprises <sup>23</sup>.
  
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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 and safety 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 manufacturers' competitiveness, including on markets outside the Community;

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\* doc. 6914/00 ENV 64 ENER 13.

<sup>22</sup> Recital indicating that "self-regulation, including voluntary agreements as unilateral commitments by industry can provide for quick progress due to rapid and cost-effective implementation, and allows for flexible and adjusted adaptation to technological options and market sensitivities" .

<sup>23</sup> PT: suggests addition of " or specific products".

<sup>24</sup> NL : suggests addition of a new para f): "Take into account the best products and technology available on the European market by benchmarking these with the implementing agreement".  
NL: this addition could be made in this Article or in Annex II, as proposed by DE (*see FN 43*).  
Cion: this suggestion is contrary to the integrated product policy.

- (e) in principle, the setting of an eco-design requirement shall not have as a consequence that a proprietary technology is imposed on manufacturers;
  - (f) shall not impose excessive administrative load for the manufacturer.
6. The implementing measures shall lay down generic eco-design requirements in accordance with Annex I and/or specific eco-design requirements in accordance with Annex II.
- Specific eco-design requirements shall be introduced for selected environmental aspects which have a significant environmental impact.
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7. The implementing measures shall include the elements listed in Annex VII;
8. Relevant studies and analyses used by the Commission in preparing the implementing measures should be made publicly available.

*Article 12a*  
*Working plan*

1. In accordance with the criteria set out in Article 12 and with the procedure referred to in Article 14(3)<sup>26</sup>, the Commission shall not later than [2] years after adoption of this Directive establish a working plan which shall be made publicly available.

The working plan shall set out for the subsequent 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 in accordance with the procedure referred to in Article 14(3).

2. However in the transitional period while the first Community working plan referred to in paragraph 1 is being established, and in accordance with the procedure laid down in Article 14(2) and the criteria set out in Article 12, the Commission may adopt 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.<sup>27</sup>

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<sup>25</sup> DK (supported by AT) proposes insertion of a new paragraph: "Implementing measures must not have the effect of lowering existing and justified levels of environmental protection in Member States". Cion: opposed. Council Legal Service: **DELETED**

<sup>26</sup> DE/AT: replace "3" by "2", and add "and following prior stakeholder consultation". Cion: *opposed*

<sup>27</sup> A recital could state: "Considering the need to contribute to the achievement of the commitments in the framework of the Kyoto Protocol, and without prejudice to the integrated approach promoted in this directive, priority should be given in the first stage to those measures with a high potential for reducing greenhouse gas emissions at low cost".

*Article 13<sup>28</sup>*  
*[Article merged with Article 16]*

*Article 14*  
*Committee*

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.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
4. The Committee shall adopt its own rules of procedure.

*Article 15*  
*Penalties<sup>29</sup>*

The Member States shall determine the *penalties* applicable to breaches of the national provisions adopted pursuant to this Directive. The *penalties* shall be effective, proportionate and dissuasive.

*Article 16<sup>30</sup>*  
*Amendment*

1. Directive 92/42/EEC *shall be* amended as follows:

(1) Article 6 is deleted.

(2) *The following Article shall be inserted after Article 10:*

*This Directive constitutes an implementing measure as referred to in Article 12 of Directive xx/xx, with regard to energy efficiency during use, in accordance with Annex I, part 1 and Annex II of that Directive, and may be amended or repealed in accordance with Article 14 of Directive xx/xx.*

(3) Annex I, section 2, is deleted.

2. *Directive 96/57/EC shall be amended as follows:*

*The following Article shall be inserted after Article 9:*

*This Directive constitutes an implementing measure as referred to in Article 12 of Directive xx/xx, with regard to energy efficiency during use, in accordance with Annex I, part 1 and Annex II of that Directive, and may be amended or repealed in accordance with Article 14 of Directive xx/xx.*

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<sup>28</sup> *AT : reservation with regard to the possible decreasing of existing national environmental standards.*

<sup>29</sup> *to be translated into Dutch as "sancties"*

<sup>30</sup> *UK: reluctant to repeal provisions for voluntary labelling of boilers without any alternative arrangements to ensure reliable consumer information on these products.*

3. Directive 2000/55/EC shall be amended as follows:

The following Article shall be inserted after Article 9:

This Directive constitutes an implementing measure as referred to in Article 12 of Directive xx/xx, with regard to energy efficiency during use, in accordance with Annex I, part 1 and Annex II of that Directive, and may be amended or repealed in accordance with Article 14 of Directive xx/xx.

*Article 17*  
*Repeals*

Directives 78/170/EC 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 the present Directive.

*Article 18*  
*Review*

Not later than [5 years after adoption of this Directive] the Commission shall review the effectiveness of this Directive and, as appropriate, present proposals to the European Parliament and the Council for amending this Directive.

*Article 19*  
*Confidentiality*

Requirements on the supply of information, referred to in Article 10 and Annex I, part 2, by the manufacturer and/or its authorised representative shall be proportionate and shall take into account legitimate confidentiality of commercially sensitive information.

*Article 20*  
*Implementation*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than [24 months after its entry into force].
2. Where these measures are adopted by the Member States, 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.
3. 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, together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

*Article 21*  
*Entry into force*

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

*Article 22*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,  
*For the European Parliament*  
*The President*

*For the Council*  
*The President*



**ANNEX I<sup>31</sup>: (referred to in Article 12)**  
**Method for setting generic eco-design requirements**

Generic eco-design requirements aim at improving the environmental performance of the product focusing on significant environmental aspects thereof without setting limit values. The Commission shall identify significant environmental aspects during the preparation of the draft measure to be submitted to the Committee referred to in Article 14 which shall be specified in the implementing measure.

In preparing implementing measures laying down generic eco-design requirements pursuant to Article 12 the Commission shall identify, as appropriate for the EuP covered by the implementing measure, the applicable eco-design parameters among those listed in part 1, the information supply requirements among those listed in part 2. The implementing measures shall, *as appropriate*, contain the [requirements for the manufacturer listed in part 3]<sup>32</sup>.

**Part 1. ECO-DESIGN PARAMETERS FOR EUP**

- 1.1 The significant environmental aspects are identified considering the following phases of the lifecycle of the product and in so far as they relate to product design:
- (a) raw material use<sup>33</sup>;
  - (b) manufacturing;
  - (c) packaging, transport, and distribution;
  - (d) installation and maintenance;
  - (e) use;
  - (f) end-of-life, meaning the state of a EuP having reached the end of its first use<sup>34</sup>.
- 1.2 For each phase, the following environmental aspects shall 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<sup>35</sup> Directive 2002/96/EC on WEEE\*.

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<sup>31</sup> PT: scrutiny reservation on all Annexes

<sup>32</sup> IT: replace bracketed words by "the information supply requirements among those listed in part 2, and shall follow the requirements assessment procedure described in part 3". DK: add "The implementing measure shall contain guidelines on the balancing of the various environmental aspects". SE: can sympathise with suggestion. Cion: opposed

<sup>33</sup> IT/SE/FI: add: "*including raw material acquisition after "raw material use"*."

<sup>34</sup> It was suggested to include a reference to waste management, reuse and final disposal AT/SE: support the inclusion of such reference. SE: (f) to be reworded: "*end-of-life, meaning the end of first use until final disposal*"

<sup>35</sup> DK: replace "taking into account" by "complying with" throughout the Annex. Cion: opposed on grounds of difference of relevance.

\* as amended by Directive 2003/108/EC of 8.12.2003, OJ L 345, 31.12.2003, p. 106.

- 1.3 In particular, the following parameters shall be used, as appropriate, and supplemented by others, where necessary, for evaluating the potential for improvement on 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 Directive 67/548/EEC<sup>\*\*</sup> and taking into account legislation on the marketing and use of specific substances, such as 76/769/EEC<sup>\*\*\*</sup> 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 re-use and recycling (including marking of plastic parts according to ISO), 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 relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery;<sup>\*</sup>
  - (l) Emissions to water (heavy metals, substances with an adverse effect on the oxygen balance, persistent organic pollutants);
  - (m) Emissions to soil (especially leakage and spills of dangerous substances during usage phase of products, and the potential for leaching upon disposal as waste).

## **PART 2. REQUIREMENTS ON THE SUPPLY OF INFORMATION**

Implementing measures may require information to be supplied by the manufacturer that may influence the way the EuP is handled, used or recycled by parties other than the manufacturer including, where applicable:

- Information [from the designer]<sup>36</sup> 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 the consumer 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 how to return the product at the end of life.

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<sup>\*\*</sup> OJ 196, 16.08.1967, p.1-5.

<sup>\*\*\*</sup> OJ L 262, 27.09.1976, p.201-203.

<sup>\*</sup> OJ L 59, 27.02.1998, p.1.

<sup>36</sup> UK: delete bracketed words

- Information for treatment facilities concerning disassembly, recycling, or disposal at end-of-life.

[Information shall be found on the product itself wherever possible.<sup>37</sup>

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

### **Part 3. REQUIREMENTS FOR THE MANUFACTURER<sup>38</sup>**

1. Focusing on the environmental aspects identified in the implementing measure, [manufacturers of EuP shall be required to]<sup>39</sup> perform an assessment of the environmental aspects of a representative EuP model throughout its lifecycle, based upon realistic assumptions about normal conditions and for the purposes of use<sup>40</sup>.

On the basis of this assessment manufacturers will establish the ecological profile<sup>41</sup> of a representative EuP model. It shall be based on environmentally relevant product characteristics and inputs/outputs occurring throughout the product life cycle expressed in physical quantities that can be measured.

The assessment shall concentrate on and give priority to those factors, which are capable of being influenced in a substantial manner through product design.

2. The manufacturer shall make use of this assessment to evaluate alternative design solutions with the aim of achieving an improvement of the environmental performance of the product taking into account the state of the art in eco-design.

The choice of a specific design solution shall 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.

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<sup>37</sup> BE: suggests addition of two further obligations, i.e.: "information on the period of availability of spare parts and the possibilities of upgrading appliances", and "information for the consumer indicating potential effects on the environment and on human health". Cion: first request is covered in Pt 1 point 1.3 (i)

<sup>38</sup> IT: replace "manufacturer" by "assessment procedure". Elsewhere in Pt 3, "manufacturer" should be replaced by "the Commission"

<sup>39</sup> IT: replace bracketed words by "the Commission, in co-operation with stakeholders"

<sup>40</sup> IT: add "within the Community"

<sup>41</sup> clarification of the difference between ecological profile and life cycle analysis could be helpful.

**ANNEX II**  
**Method for Setting the level of Specific Eco-Design Requirements**  
(Referred to in Article 12)

Specific eco-design requirements aim at improving a selected environmental aspect of the product<sup>42</sup>. They may take the form of requirements for reduced consumption of a given resource, such as limits for the use of this resource in the various stages of the life cycle, as appropriate (e.g. limits in the water consumption in the use phase or in the quantities of a given material incorporated in the product or minimum required quantities of recycled material).

In preparing implementing measures laying down specific eco-design requirements pursuant to Article 12, the Commission shall set the levels of these requirements as follows in accordance with the procedure referred to in Article 14(2):

1. A technical, environmental and economic analysis selects a number of representative models of the EuP in question on the market and identifies 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.

43

On the basis of this analysis and taking into account economic and technical feasibility as well as potential for improvement, [concrete measures are taken]<sup>44</sup> with a view to reducing the product's environmental impact.

Concerning energy consumption in use, the level of energy efficiency or consumption shall be set aiming at the life cycle cost minimum to final users for representative EuP 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; 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 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 elements (such as price of energy or other resource, cost of raw material or production cost, discount rates) and, where appropriate, the inclusion of external environmental costs, shall be carried out to check if there are significant changes and if the overall conclusions are robust. The requirement shall be adapted accordingly.

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

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<sup>42</sup> UK (supported by SE): insert: "which have a significant environmental impact. The Commission shall identify any significant environmental aspects during the preparation of the draft measure to be submitted to the Committee referred to in Article 14 which shall be specific in the implementing measure. Specific eco-design requirements..."

<sup>43</sup> DE (supported by NL/FI): add new paragraph: "The representative models to be selected in accordance with Article 12(5) have to include those with the best available technology". (see also FN 24). Cion: suggestion not in line with integrated product approach

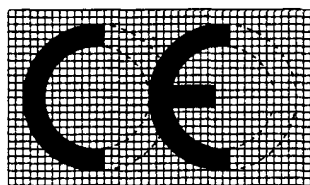
<sup>44</sup> UK (supported by SE): replace bracketed words by: "a draft implementing measure is prepared"

2. For the development of the technical, environmental and economical 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 eco-design requirement of EuP traded with the EU's economic partners.

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

**ANNEX III**  
**CE Marking**  
(Referred to in Article 4(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. 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 7)

1. This Annex describes the procedure whereby the manufacturer or its authorised representative who carries out the obligations laid down in paragraph 2 of this Annex ensures and declares that EuP satisfies the relevant requirements of the applicable implementing measure. [The manufacturer, or its authorised representative, must affix the CE marking provided for in Article 4 to each item of EuP and draw up a written declaration of conformity]<sup>45</sup>. The declaration of conformity may cover one or more products and must be kept by the manufacturer.
  
2. A technical documentation file enabling an assessment of the conformity of the EuP with the requirements of the applicable implementing measure shall be compiled by the manufacturer. The documentation shall specify, *in particular*:
  - a) a general description of the EuP 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 documents referred to in Article 9, applied in full or in part, and a description of the solutions adopted to meet the requirements of the applicable implementing measure where the documents referred to in Article 9 have not been applied or where these documents 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 which is provided in accordance with the requirements specified in Annex I, part 2;
  - g) the results of measurements on the eco-design requirements carried out including details of the conformity of these measurements as compared with the eco-design 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 section 2 and with the requirements of the measure which apply to it.

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<sup>45</sup> UK: delete bracketed sentence; this requirement is dealt with in Article 4.

**ANNEX V<sup>46</sup>**  
**Environmental Management System**  
(Referred to in Article 7)

1. This Annex describes the procedure whereby the manufacturer who satisfies the obligations of paragraph 2 of this Annex ensures and declares that the EuP satisfies the requirements of the applicable implementing measure. The manufacturer, or its authorised representative, must affix the CE marking provided for in Article 4 to each item of EuP and draw up a written declaration of conformity. The declaration of conformity may cover one or more products and must be kept by the manufacturer.
2. The manufacturer must implement the environmental management system elements specified in paragraph 3 of this Annex.
3. Environmental management system (EMS)

This paragraph defines the environmental management system elements and procedures that are necessary for improving the environmental performance of products in order to ensure compliance of the EuP with the requirements of the applicable implementing measure.

3.1. The environmental product performance policy

The manufacturer shall be able to demonstrate improvement in overall environmental product performance and providing a framework for setting and reviewing environmental product performance objectives and indicators, taking into account the requirements of the implementing measure.

All the provisions adopted by the manufacturer to establish and improve the ecological profile of the product through design and manufacturing must be documented in a systematic and orderly manner in the form of written procedures and instructions.

They must contain in particular an adequate description of:

- the significant environmental aspects and impacts of the products and an explanation of their nature;
- 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 management system.

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<sup>46</sup> SE: scrutiny reservation on this Annex; DE/BE/AT: delete this Annex



### 3.2. Planning

The manufacturer shall establish and maintain

- a) procedures for the establishment of 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

- a) responsibilities and authorities shall be defined and documented in order to ensure effective environmental product performance and reporting on its operation for review and improvement;
- b) documents shall be established indicating the design control and verification techniques implemented and processes and systematic measures used when designing the product;
- c) documents describing the results of measurements on the eco-design requirements carried out including details of the conformity of these measurements as compared with the eco-design requirements set out in the applicable implementing measure;
- d) the manufacturer shall establish specifications indicating, in particular, standards which have been applied; where standards referred to in Article 9 are not applied or where they do not cover entirely the requirements of the relevant implementing measure, the means used to ensure compliance;
- e) the manufacturer shall establish and maintain information to describe the core elements of the environmental management system and procedures for controlling all documents required.

### 3.4 Checking and corrective action

- a) the manufacturer shall establish and maintain procedures to investigate and handle non conformance, and implement changes in the documented procedures resulting from corrective action;
- b) the manufacturer shall carry out at least every three years a full internal environmental management system audit.

**ANNEX VI**  
**Declaration of conformity**  
(Referred to in Article 4(3))

**THE EC DECLARATION OF CONFORMITY MUST CONTAIN THE FOLLOWING PARTICULARS:**

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 harmonized standards applied;
4. Where appropriate, the other technical standards and specifications used;
5. Where appropriate, the reference of 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.

**ANNEX VII**  
**Contents of the implementing measures**  
(Referred to in Article 12(4))

**THE IMPLEMENTING MEASURE SHALL SPECIFY, IN PARTICULAR:**

1. The exact definition of the type(s) of EuP covered;
2. The eco-design requirement(s) for the EuP covered, implementing date(s), staged or transitional measures or periods;
  - in case of generic eco-design requirement(s) the relevant phases and aspects among those mentioned in Annex I, part 1.1 and 1.2, accompanied by examples of parameters among those mentioned in Annex I, part 1.3 as guidance when evaluating improvements regarding identified environmental aspects;
  - in case of specific eco-design requirement(s), its (their) level(s);
3. The requirements on installation of the EuP where it has a direct relevance to the environmental performance considered;
4. 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* shall be used;
5. 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, the module defined in the implementing measure shall prevail for the requirement concerned;

6. Requirements on information to be provided by manufacturers or their authorised representatives to the authorities for enhanced market surveillance;
7. The duration of the transitional period during which Member States must permit the placing on the market and/or putting into service of EuP which comply with the regulations in force in their territory at the date of adoption of the implementing measure;
8. The date for the evaluation and possible revision of the implementing measure.