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COMMISSION DELEGATED REGULATION (EU) .../...

of 11.3.2019

supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to energy labelling of refrigerating appliances with a direct sales function

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Legal and political context of the proposal

Regulation (EU) 2017/1369 of the European Parliament and the Council¹ (Energy Labelling Framework Regulation) sets a framework of energy labelling for energy-related products at EU level. Energy labelling is a key EU policy instrument for informing consumers about the energy efficiency requirements and other environmental aspects of energy-related products placed on the internal market. The energy label is recognised and used by 85 % of Europeans².

The Communication from the Commission COM(2016) 773 final³ (2016-2019 ecodesign working plan) sets out a list of products that are a priority for implementing measures and which are selected based on their potential for cost-effective reduction of greenhouse gas emissions following a fully transparent process culminating in working plans that outline the priorities for the development of implementing measures. The 2016-2019 ecodesign working plan includes refrigerating appliances with a direct sales function as a priority group for which work is ongoing.

In addition, several new policy initiatives indicate that ecodesign and energy labelling policies are relevant in a broader political context. The main initiatives in question are:

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank COM(2015) 80 final⁴ (energy union framework strategy), which calls for a sustainable, low-carbon and climate-friendly economy;
- the Paris Agreement⁵, which calls for a renewed effort in carbon emission abatement;
- the Gothenburg Protocol⁶, intended to control air pollution;
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions COM(2015) 614 final⁷ (circular economy action plan), which stresses the need to include reparability, recyclability and durability in ecodesign;
- the Emissions Trading Scheme (ETS)⁸, intended to achieve cost-effective greenhouse gas (GHG) emissions reductions. GHG are indirectly affected by the energy

¹ Regulation (EU) 2017/1369 of the European Parliament and of the council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1).

² Study on the impact of the energy label – and potential changes to it – on consumer understanding and on purchase decisions - LE London Economics and IPSOS, October 2014.

³ Communication from the Commission - Ecodesign working plan (COM(2016)773 final, Brussels, 30 November 2016).

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank. A framework strategy for a resilient energy union with forward-looking climate change policy (COM(2015) 80 final, Brussels, 25.02.2015).

⁵ <https://unfccc.int/process/the-paris-agreement/what-is-the-paris-agreement>.

⁶ http://www.unece.org/env/lrtap/multi_h1.html.

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Closing the loop - An EU action plan for the circular economy (COM/2015/614 final, Brussels 02.12.2015).

⁸ https://ec.europa.eu/clima/policies/ets_en.

consumption of the electricity using products in the scope of ecodesign and energy labelling policies;

- Communication from the Commission to the European Parliament and the Council COM(2014) 330 final⁹ (energy security strategy), which aims to ensure a stable and abundant supply of energy.

General context

The ecodesign together with the energy labelling legislative framework establish a push and pull market mechanism aiming at reducing carbon emissions by determining a major impact on the choices that consumers make when purchasing energy consuming products.

The two policy frameworks help products placed on the EU market to perform the same job using around one fifth less energy. By 2020, use of energy efficiency labels and ecodesign requirements is projected to lead to energy savings of around 165 Mtoe (million tonnes of oil equivalent) in the EU, roughly equivalent to the annual primary energy consumption of Italy. In relative terms, this represents a potential energy saving of approximately 9 % of the EU's total energy consumption and a potential 7 % reduction in carbon emissions. In 2030, savings are projected to grow to 15 % of the EU's total energy consumption and 11 % of its total carbon emissions.

Refrigerating appliances with a direct sales function (e.g. supermarket cabinets, beverage coolers, small ice-cream freezers, gelato-scooping cabinets and vending machines) are key for ensuring food quality preservation in the food chain in the Union, and in addition for providing to consumers other non-perishable foodstuffs, e.g. beverages, that are customarily consumed at temperatures below the ambient temperature. However, in fulfilling this function, the appliances are significant energy users and contributors to greenhouse gas emissions, with an annual consumption of about 65 TWh in the EU-28, equivalent to ca. 0,46 % of the total final energy consumption of the EU.

Work on this product group started in 2004-2005. The first preparatory study on ecodesign for commercial refrigeration in 2007 identified the relevant environmental aspects of refrigerating appliances with a direct sales function, and analysed the legislative, technical, environmental, economic and behavioural aspects of commercial refrigeration. It showed that there was significant energy saving potential. In 2013-2014, the JRC updated the preparatory study.

The preparatory study and its update confirmed an existing and cost-effective potential to reduce energy consumption. Therefore, the objectives of this proposal are to:

- introduce an energy label for commercial refrigeration to allow consumers who purchase the refrigerating appliances with a direct sales function to differentiate effectively and sufficiently between the appliances on the market;
- create incentives for producers to further develop and market energy efficient technology and products;
- generate cost savings for end users;
- reduce the average energy consumption of commercial refrigeration cabinets and additionally reduce GHG emissions which for commercial refrigeration are mainly related to energy consumption, but also refrigerant leakage;
- contribute to the EU industry's competitiveness and its leading role in high-quality manufacturing;

⁹ Communication from the Commission to the European Parliament and the Council, European security strategy (COM(2014) 330 final, Brussels 25.8.2014).

- promote energy efficiency as a contribution to security of energy supply in the framework of the Union objective of saving 32,5 % of the EU's energy consumption by 2030 by increasing the market take-up of energy-efficient refrigerating appliances with a direct sales function through the introduction of an energy label (together with the proposed ecodesign requirements);
- introduce specific end-of-life requirements to facilitate the dismantling of the cabinets and the fulfilment of the objectives of Directive 2012/19/EU of the European Parliament and of the Council¹⁰ (WEEE Directive).

Consistency with existing provisions in the policy area

Commission Delegated Regulation (EU) No 1060/2010¹¹ includes residential refrigerating appliances in its scope. These refrigerating appliances are mainly used in a household environment. This Regulation is currently being revised. The proposal for a revision exempts refrigerating appliances with a direct sales function from its scope, therefore there will not be overlapping requirements.

Commission Delegated Regulation (EU) 2015/1094¹² includes professional refrigerated storage cabinets and blast cabinets in its scope. These appliances are refrigerating appliances that are used in professional environments (e.g. restaurants), but that are not intended for display or customers access. This proposal exempts products in the scope of the Ecodesign Regulation for professional refrigeration, therefore there will not be overlapping requirements.

Energy Labelling Regulations on components - In addition to Energy Labelling Regulations on the final products, energy labelling requirements might be applicable to the components of refrigerating appliances with a direct sales function. Currently, there is one component that is regulated under energy labelling, that is lamps (Commission Delegated Regulation (EU) No 874/2012¹³).

Consistency with other Union policies

No EU legislation has been identified in the field of energy consumption of commercial refrigeration. For commercial refrigeration, relevant Union legislation applies in the field of safety, both mechanical and electrical, and standards. Other legislation with relevance for commercial refrigeration products on environmental aspects includes:

- The **WEEE Directive** set requirements on e.g. recovery and recycling of electrical and electronic equipment waste (WEEE) to reduce the negative environmental effects resulting from the generation and management of WEEE and from resource use. The WEEE Directive applies directly to refrigerating appliances with a direct sales function. Ecodesign implementing measures can complement the implementation of the WEEE Directive by including e.g. measures for material

¹⁰ Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ L 197 of 24-07-2012, p 38).

¹¹ Commission Delegated Regulation (EU) No 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJ L 314, 30.11.2010, p. 17).

¹² Commission Delegated Regulation (EU) 2015/1094 of 5 May 2015 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of professional refrigerated storage cabinets (OJ L 177, 8.7.2015, p. 2).

¹³ Commission Delegated Regulation (EU) No 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJ L 258, 26.9.2012, p. 1).

efficiency, thus contributing to waste reduction, instructions for correct assembly and disassembly, thus contributing to waste prevention and others;

- **Directive 2011/65/EU of the European Parliament and of the Council**¹⁴ (RoHS Directive) restricts the use of six specific hazardous materials and four different phthalates found in electrical and electronic equipment (EEE). The RoHS Directive does not apply explicitly to refrigeration appliances with a direct sales function, but the electronics in these appliances are expected to be in compliance with this Directive through the implementation of the Directive in the general product portfolio of suppliers. There is no overlapping requirement with this proposal;
- **Regulation (EU) No 517/2014 of the European Parliament and of the Council**¹⁵ (F-gas Regulation) controls the emissions from fluorinated greenhouse gases (F-gases), including hydrofluorocarbons (HFCs). The F-gas Regulation applies to refrigeration appliances with a direct sales function. In this proposal it has been decided not to include requirements on refrigerant gasses, therefore, there will not be overlapping requirements;
- The **Emissions Trading Scheme (ETS)**¹⁶ sets a cap on the total amount of certain greenhouse gasses that can be emitted by installations. This cap reduces over time, so that the total emissions fall. Within this cap companies receive or buy emission allowances which they can trade with one another as needed. They can also buy a limited amount of international credits. The ETS does not directly apply to refrigerating appliances with a direct sales function, however, it does apply to electricity production. This either leads to lower ETS prices (which could in turn decrease electricity prices) or to the need for less emission reductions in ETS sectors (lower renewable energy targets or less reductions of carbon emissions in industry).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal Basis

The proposed Regulation is a delegated measure adopted pursuant to Regulation (EU) 2017/1369, in particular Articles 11 and 16 thereof. The legal basis for acting at EU level through the Ecodesign Framework Directive and the Energy Labelling Framework Regulation is Article 114 and Article 194 of the Treaty on the Functioning of the European Union (TFEU)¹⁷. Article 114 relates to the ‘the establishment and functioning of the internal market’, while Article 194 gives, amongst others, the EU the objective ‘in the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment’ to ‘ensure security of energy supply in the Union’ and ‘promote energy efficiency and energy saving and the development of new and renewable forms of energy’.

Subsidiarity (for non-exclusive competence)

The adoption of energy labelling measures for refrigerating appliances with a direct sales function by individual Member States' legislation would lead to obstacles to the free

¹⁴ Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) (OJ L 174, 1.7.2011, p. 88).

¹⁵ Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ L 150, 20.5.2014, p.195). https://ec.europa.eu/clima/policies/ets_en

¹⁶ https://ec.europa.eu/clima/policies/ets_en

¹⁷ Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47).

movement of goods within the Union. Such measures must therefore have the same content throughout the Union. In line with the principle of subsidiarity¹⁸, it is thus appropriate for the measure in question to be adopted at Union level.

The Consultation Forum meeting of 2 July 2014 resulted in broad support from Member States for EU-wide implementing measures for refrigerating appliances with a direct sales function. The EU will limit itself only to setting the legislative framework. As far as certain aspects of the implementation are concerned, i.e. market surveillance and monitoring, EU action is not necessary to achieve the objectives, as Member States assume these responsibilities under the Energy Labelling Framework Directive.

Proportionality

The Energy Labelling Framework Regulation includes a built-in proportionality and significance test in Article 16(2), which states that the delegated acts shall specify products that meet the following criteria:

- (a) the product group should have significant potential for saving energy and where relevant, other resources;
- (b) models with equivalent functionality should differ significantly in the relevant performance levels within the product group;
- (c) there should be no significant negative impact as regards the affordability and the life cycle cost of the product group;
- (d) the introduction of energy labelling requirements for a product group should not have a significant negative impact on the functionality of the product during use.

An assessment of the proposal in view of such requirements was carried out in the impact assessment. This concluded that the proposal fulfils these criteria, while achieving the objectives described in Section 1 of this Explanatory Memorandum. In accordance with the principle of proportionality, this measure does not go beyond what is necessary in order to achieve the objective, which is to set harmonised energy labelling requirements for refrigerating appliances with a direct sales function.

Summary of the proposed action

Two impact assessments were carried out in the period 2008-2009 and in the period 2014-2015. The Regulatory Scrutiny Board issued a positive opinion with comments on 7 July 2015. Scenarios with different levels of energy efficiency were assessed, in the second study these scenarios were:

- (a) a business-as-usual scenario, where all other relevant EU-level policies and measures are assumed to continue;
- (b) a voluntary agreement;
- (c) mandatory ecodesign requirements only;
- (d) mandatory energy labelling requirements only;
- (e) mandatory ecodesign and energy labelling requirements coming into force in three sets of increasing stringency;

¹⁸ The principle of subsidiarity as is defined in Article 5 of the Treaty establishing the European Union intends to ensure that decisions are taken as closely as possible to the citizen; the Union should take action only in areas which fall within its exclusive competence and which do not lead to a more effective action if taken at national, regional or local level.

- (f) mandatory ecodesign and energy labelling requirements coming into force in two sets of increasing stringency.

Seeing the extended period between the finalisation of the impact assessment and the inter service consultation, the requirements proposed in the impact assessment were checked and updated where necessary with 2017 data for refrigerating appliances with a direct sales function based on industry input and in cooperation with the JRC.

The scenario with energy efficiency requirements in two tiers and an energy label was retained as the preferred scenario. By 2030, this scenario is estimated to result in:

- electricity savings of 19 TWh/yr (48 TWh/y in primary energy terms) and GHG emission savings of 7,4 MtCO₂eq./a;
- savings on annual end-user expenditure of EUR 2,9 billion and extra business revenue of EUR 0,4 billion per year;
- an alignment with technological progress and global minimum energy efficiency requirements in other economies;
- a contribution to the EU industry's competitiveness and its leading role in high-quality manufacturing;
- safeguarding of small and medium enterprises.

Energy label

While household refrigerating appliances and professional refrigerated storage cabinets are covered by energy labelling regulations, this is not the case for refrigerating appliances with a direct sales function. Despite this being a business-to-business product, energy labelling would be a useful communication tool to purchasing departments, and would help bring energy consumption to the centre of purchase considerations. Moreover, minimum requirements alone would not drive the market to purchasing appliances with doors, which is one of the most cost effective measures that could be taken to improve energy efficiency. Therefore, an energy label is proposed to complement the ecodesign requirements.

The energy label proposal will apply from 1 September 2020 onwards. The efficiency classes are set out in the table below. The energy labelling classes were set to find a distribution of the data points similar to a normal distribution over the different energy classes. The A class is expected to be empty in 2020. This is in line with the Energy Labelling Framework Regulation.

The proposal lists the parameters and other information to be entered, in particular:

- in the public part of the product database established pursuant to Regulation (EU) 2017/1369 (this part can be printed as the product information sheet);
- in the compliance part of the product database established pursuant to Regulation (EU) 2017/1369 (this is a part of the technical documentation).

The list of parameters to be entered in the product database includes not only information strictly related to the energy label and its verification, but also all information useful for end-users and for market surveillance authorities to verify compliance with the ecodesign regulation on light sources, which is being drafted currently.

It is the intention of the Commission that this act should apply from the same date as the ecodesign act which is being drafted currently.

Energy efficiency classes of refrigerating appliances with a direct sales function

Energy Efficiency Class	Energy Efficiency Index (EEI)
A	$EEI < 10$
B	$10 \leq EEI < 20$
C	$20 \leq EEI < 35$
D	$35 \leq EEI < 50$
E	$50 \leq EEI < 65$
F	$65 \leq EEI < 80$
G	$EEI \geq 80$

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENT

Consultation of interested parties

Stakeholders have been extensively consulted during the preparatory studies, and before and after the two Consultation Forum meetings. External expert advice was also collected and analysed during the stakeholder consultation.

The preparatory study followed the Methodology for Ecodesign of Energy related Products (MEErP)¹⁹.

That study covered refrigeration with a direct sales function (commercial refrigerated cabinets) and included a technical, environmental and economic analysis identifying the need to set requirements and policy options.

The preparatory study was developed in an open process, taking into account input from relevant stakeholders including manufacturers and their associations, environmental Non-governmental Organisations (NGOs), consumer organisations and Member State representatives.

To facilitate communication with stakeholders, a dedicated website was set up for the first study on which the interim results and other relevant materials were published. During the course of this study, two open consultation meetings were held to discuss the study. These open consultation meetings were attended by a wide range of stakeholders, including industry, NGOs and Member States representatives.

Pursuant to Article 18 of Directive 2009/125/EC²⁰, Member State representatives and stakeholders were formally consulted through the Ecodesign Consultation Forum. The first Consultation Forum on commercial refrigerators and freezers took place on 23 April 2010. However, the work did not result in proposals for measures because stakeholders' views were too divergent and extra analysis was requested.

¹⁹ Kemna, R.B.J., Methodology for the Ecodesign of Energy-related Products (MEErP) – Part 2, VHK for the European Commission, 2011 (MEErP).

²⁰ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10).

The process was re-launched in 2012. To update the preparatory work and the formulation of technical options for the implementing measures, the JRC worked intensively with stakeholders in a Technical Working Group (TWG).

The TWG on commercial refrigeration was composed of experts from Member States' administration, industry, NGOs and academia. They collaborated through the project's website²¹, and contributed with data, information and/or written comments to interim draft versions of the preparatory study. Two workshops were held, on 23 April 2013 in Seville and on 10 December 2013 in Brussels. Three questionnaires were distributed to the TWG, requesting information and data updates, and gathering opinions on the scope of the legislation, definitions, and energy consumption. Stakeholders were involved through numerous bilateral meetings and site visits to manufacturing, testing and dismantling plants.

A second meeting of the Consultation Forum took place on 2 July 2014, preceded by the distribution of updated working documents (explanatory notes, the draft Ecodesign Regulation, the draft energy labelling Regulation and draft transitional methods).

At the time of the entry into force of the Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making²², the draft Regulation was already beyond the stage of the open public consultation, therefore no open public consultation was held.

In the period 2017-2018, some bilateral meetings were organised with industry and the JRC to update the data and the requirements from the impact assessment. The draft proposal with updated requirements was subject to an inter service consultation that ran in the period September - October 2018.

Feedback

As part of the better regulation agenda, a feedback period ran from with the aim of gathering additional views of citizens and stakeholders.

9 feedbacks were received, 2 from environmental NGOs, 6 from companies/business associations and one from a public authority (respectively 67 %, 22 % and 11 % of the feedbacks). The respondents were from Belgium (4), Germany (2), Switzerland (2), the Netherlands (1) and Sweden (1). 7 respondents were SMEs (industry associations and NGOs also registered as SMES, although they represent a large share of the industry and consumers) and 2 to a large company.

The NGOs were mainly concerned about the transparency of the energy efficiency formula, which should be simplified by deleting the correction factors; the ambition level for ice-cream freezers, the EEI should be 80 in T1 and 50 in T2; and the resource efficiency requirements which should be further reinforced.

The industry was mainly concerned about the differentiation between the product groups, which should be further refined; the requirements for remote and plug-in cabinets, which should be made less stringent; the need for defining a reference model for testing; alignment with the standards; refrigerated drum vending machines; and fish serve-over counters with flaked ice which should be removed from the scope.

²¹ <http://susproc.jrc.ec.europa.eu/comrefrig/index.html>.

²² Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making of 13 April 2016 on better law-making (OJ L 123, 12.05.2016, p. 1).

Impact Assessment

An impact assessment is required if the expected economic, environmental or social impacts of EU action are likely to be significant. The impact assessment for the ecodesign and energy labelling regulation for refrigerating appliances with a direct sales function was carried out in 2014-2015.

It was based on the data collected in the preparatory study. Additional data and information was collected and discussed by the impact assessment study team with industry and experts, and with other stakeholders including representatives of the Member States.

In general, all stakeholders are in favour of ecodesign and energy labelling requirements for refrigerating appliances with a direct sales function. In particular most of the European industry supports the introduction of the legislation as soon as possible: they consider that new requirements would stimulate innovation and allow industry to better plan investments in new products.

Choice of instrument

The proposed form of action is a directly applicable Commission Delegated Regulation supplementing Regulation (EU) 2017/1369.

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supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to energy labelling of refrigerating appliances with a direct sales function

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU²³, and in particular Articles 11 and 16 thereof,

Whereas:

- (1) Regulation (EU) 2017/1369 empowers the Commission to adopt delegated acts as regards the labelling or re-scaling of the labelling of product groups representing significant potential for energy savings and, where relevant, other resources.
- (2) The Communication from the Commission COM(2016) 773²⁴ (ecodesign working plan) established by the Commission in application of point 1 of Article 16 of Directive 2009/125/EC of the European Parliament and of the Council²⁵ sets out the working priorities under the ecodesign and energy labelling framework for the period 2016-2019. Refrigerating appliances with a direct sales function are among the energy-related product groups to be considered as priorities for the undertaking of preparatory studies and eventual adoption of measure.
- (3) Measures from the ecodesign working plan have an estimated potential to deliver in total in excess of 260 TWh of annual final energy savings in 2030, which is equivalent to reducing greenhouse gas emissions by approximately 100 million tonnes per year in 2030. Refrigerating appliances with a direct sales function is one of the product groups listed in the ecodesign working plan, with an estimated 48 TWh of annual final energy savings in 2030.
- (4) The Commission carried out two preparatory studies covering the technical, environmental and economic characteristics of refrigerating appliances with a direct sales function typically used in the Union. The studies were carried out in close cooperation with stakeholders and interested parties from the Union and third

²³ OJ L 198, 28.07.2017, p. 1.

²⁴ Communication from the Commission. Ecodesign working plan 2016-2019, COM(2016) 773 final, 30.11.2016.

²⁵ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10).

countries. The results of these studies were made public and presented to the Consultation Forum established by Article 14 of Regulation (EU) 2017/1369.

- (5) The preparatory studies concluded that there was a need to the introduce energy labelling requirements for refrigerating appliances with a direct sales function.
- (6) The preparatory studies identified that energy consumption in the use phase is the most significant environmental aspect of refrigerating appliances with a direct sales function.
- (7) The preparatory studies have shown that the electricity consumption of products subject to this Regulation can be further reduced significantly by an energy labelling measure focusing on refrigerating appliances with a direct sales function.
- (8) This Regulation should apply to the following refrigerating appliances with a direct sales function: supermarket refrigerating (freezer or refrigerator) cabinets, beverage coolers, small ice-cream freezers, gelato-scooping cabinets and refrigerated vending machines.
- (9) Minibars and wine storage appliances with sales functions should not be considered refrigerating appliances with direct sales functions and therefore should be excluded from this Regulation, they are in the scope of the Commission Delegated Regulation (EU) 2019/XXX *[OP – please enter the reference of Regulation C(2019)1806]*²⁶.
- (10) Vertical static-air cabinets are professional refrigerating appliances and are defined in Commission Regulation (EU) 2015/1095²⁷, and should therefore be excluded from this Regulation.
- (11) Refrigerating appliances with a direct sales function that are displayed at trade fairs should bear the energy label if the first unit of the model has already been placed on the market or is placed on the market at the trade fair.
- (12) The relevant product parameters should be measured using reliable, accurate and reproducible methods. Those methods should take into account recognised state-of-the-art measurement methods including, where available, harmonised standards adopted by the European standardisation bodies, as listed in Annex I to Regulation (EU) No 1025/2012 of the European Parliament and of the Council²⁸.
- (13) The terminology and testing methods of this Regulation are consistent with the terminology and testing methods adopted in EN 16901, EN 16902, EN 50597 and EN ISO 23953-2.
- (14) Recognising the growth of sales of energy-related products through internet hosting platforms, rather than directly from suppliers' websites, it should be clarified that internet sales platforms should be responsible for enabling the displaying of the label

²⁶ Commission Delegated Regulation (EU) 2019/XXX *[OP please enter the full OJ-L references of Regulation C(2019)1806]*.

²⁷ Commission Regulation (EU) 2015/1095 of 5 May 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for professional refrigerated storage cabinets, blast cabinets, condensing units and process chillers (OJ L 177, 8.7.2015, p. 19).

²⁸ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

provided by the supplier in proximity to the price. They should inform the dealer of that obligation, but should not be responsible for the accuracy or content of the label and the product information sheet provided. However, in application of Article 14(1)(b) of Directive 2000/31/EC of the Parliament and of the Council²⁹ on electronic commerce, such internet hosting platforms should act expeditiously to remove or to disable access to information about the product in question if they are aware of the non-compliance (e.g. missing, incomplete or incorrect label or product information sheet) for example if informed by the market surveillance authority. A supplier selling directly to end-users via its own website is covered by dealers' distance selling obligations referred to in Article 5 of Regulation (EU) 2017/1369.

- (15) The measures provided for in this Regulation were discussed by the Consultation Forum and the Member States' experts in accordance with Articles 14 and 18 of Regulation (EU) 2017/1369.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation establishes requirements for the labelling of, and the provision of supplementary product information on, electric mains-operated refrigerating appliances with a direct sales function, including appliances sold for refrigeration of items other than foodstuffs.
2. This Regulation does not apply to:
 - (a) refrigerated appliances with a direct sales function that are only powered by energy sources other than electricity;
 - (b) refrigerating appliances with a direct sales function that do not use a vapour compression refrigeration cycle;
 - (c) the remote components, such as the condensing unit, compressors or water condensed unit, to which a remote cabinet needs to be connected in order to function;
 - (d) food processing refrigerating appliances with a direct sales function;
 - (e) refrigerating appliances with a direct sales function specifically tested and approved for the storage of medicines or scientific samples;
 - (f) refrigerating appliances with a direct sales function for the sale and display of live foodstuffs, such as refrigerating appliances for the sale and display of living fish and shellfish, refrigerated aquaria and water tanks;
 - (g) saladettes;
 - (h) horizontal serve-over counters with integrated storage designed to work at chilled operating temperatures;
 - (i) refrigerating appliances with direct sales function that have no integrated system for producing cooling and function by ducting chilled air that is produced by an external air chiller unit; this does not include remote cabinets

²⁹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.07.2000, p. 1).

nor does it include category 6 refrigerated vending machines, as defined Annex IV, Table 4;

- (j) corner cabinets;
- (k) vending machines that are designed to work at frozen operating temperatures;
- (l) serve-over fish counters with flaked ice;
- (m) professional refrigerated storage cabinets, blast cabinets, condensing units and process chillers as defined in Regulation (EU) 2015/1095;
- (n) wine storage appliances and minibars.

Article 2 **Definitions**

For the purpose of this Regulation, the following definitions shall apply:

1. 'refrigerating appliance with a direct sales function' means an insulated cabinet with one or more compartments that are controlled at specific temperatures, cooled by natural or forced convection through one or more energy consuming means and intended for displaying and selling with or without assisted serving, foodstuffs and other items at specified temperatures below the ambient temperature to customers, accessible directly through open sides or through one or more doors or drawers or both including refrigerating appliances with a direct sales function with areas used for storage of foodstuffs and other items not accessible by customers, and excluding minibars and wine storage appliances;
2. 'foodstuffs' means food, ingredients, beverages, including wine, and other items primarily used for consumption which require refrigeration at specified temperatures;
3. 'condensing unit' means a product integrating at least one electrically driven compressor and one condenser, capable of cooling down and continuously maintaining low or medium temperature inside a refrigerated appliance or system, using a vapour compression cycle once connected to an evaporator and an expansion device, as defined in Regulation (EU) 2015/1095;
4. 'remote cabinet' means a refrigerating appliance with a direct sales function which consists of a factory-made assembly of components that in order to function as a refrigerating appliance with a direct sales function needs to be connected additionally to remote components (condensing unit and/or compressor and/or water condensed unit) which are not an integral part of the cabinet;
5. 'food processing refrigerating appliances with a direct sales function' means a refrigerating appliance with a direct sales function specifically tested and approved for carrying out food processing such as ice-cream makers or microwave-equipped refrigerated vending machines or ice makers; this does not include refrigerating appliances with a direct sales function equipped with one compartment specifically designed for carrying out food processing which is equivalent to less than 20 % of the appliance total net volume;
6. 'net volume' means the part of the gross volume of any compartment which is left after deduction of the volume of components and spaces unusable for the storage or display of foodstuffs and other items, in cubic decimetres (dm³) or litres (L);

7. 'gross volume' means the volume within the inside liners of the compartment without internal fittings and with door or lid closed, in cubic decimeters (dm³) or litres (L);
8. 'specifically tested and approved' means that the product complies with all the following requirements:
 - (a) it has been specifically designed and tested for the mentioned operating condition or application, according to the Union legislation mentioned or related acts, relevant Member State legislation, and/or relevant European or international standards;
 - (b) it is accompanied by evidence, to be included in the technical documentation in the form of a certificate, a type approval mark or a test report, that the product has been specifically approved for the mentioned operating condition or application;
 - (c) it is placed on the market specifically for the mentioned operating condition or application, as evidenced at least by the technical documentation, information provided for the product and any advertising or marketing materials;
9. 'saladette' means a refrigerating appliance with a direct sales function with one or more doors or drawer fronts in the vertical plane that has cut-outs in the top surface into which temporary storage bins can be inserted for easy-access storage of foodstuffs such as pizza toppings or salad items;
10. 'horizontal serve-over counter with integrated storage' means a horizontal cabinet for assisted service, which includes refrigerated storage which is of at least 100 litres (L) per meter (m) length and which is normally placed at the serve-over counter's base;
11. 'horizontal cabinet' means a refrigerating appliance with a direct sales function with horizontal display, opening on its top, and accessible from above;
12. 'chilled operating temperature' means a temperature between -3,5 degrees Celsius (°C) and 15 degrees Celsius (°C) for appliances equipped with energy management systems for saving energy and between -3,5 degrees Celsius (°C) and 10 degrees Celsius (°C) for appliances not equipped with energy management systems for saving energy;
13. 'operating temperature' means the reference temperature inside a compartment during testing;
14. 'refrigerated vending machine' means a refrigerating appliance with a direct sales function designed to accept consumer payments or tokens to dispense chilled foodstuffs and other items without on-site labour intervention;
15. 'corner cabinet' means a refrigerating appliance with a direct sales function used to achieve geometrical continuity between two linear cabinets that are at an angle to each other and/or that form a curve. A corner cabinet does not have a recognisable longitudinal axis or length since it consists only of a filling shape (wedge or similar) and is not designed to function as a stand-alone refrigerated unit. The two ends of the corner cabinet are inclined at an angle between 30 ° and 90 °;
16. 'frozen operating temperature' means a temperature below -12 degrees celsius (°C);
17. 'serve-over fish counter with flaked ice' means a cabinet for horizontal assisted service, designed and marketed specifically for fresh fish display. It is characterised

by having on its top a bed of flaked ice used to maintain the temperature of the displayed fresh fish, and it also has a built in drain outlet;

18. 'wine storage appliance' means a refrigerating appliance with only one type of compartment for the storage of wine, with precision temperature control for the storage conditions and target temperature, and equipped with anti-vibration measures, as defined in Regulation (EU) 2019/XXX [OP – please enter the reference of Regulation C(2019)1806];
19. 'compartment' means an enclosed space within a refrigerating appliance with a direct sales function, separated from other compartment(s) by a partition, container, or similar construction, which is directly accessible through one or more external doors and may itself be divided into sub-compartments. For the purpose of this Regulation, unless specified otherwise, 'compartment' refers to both compartments and sub-compartments;
20. 'external door' is the part of a refrigerating appliance with a direct sales function that can be moved or removed to at least allow inserting the load from the exterior to the interior or extracting the load from the interior to the exterior of the refrigerating appliance with a direct sales function;
21. 'sub-compartment' means an enclosed space in a compartment having a different operating temperature range from the compartment in which it is located;
22. 'minibar' means a refrigerating appliance with a total volume of maximum 60 litres, which is primary intended for the storage and sales of foodstuffs in hotel rooms and similar premises, as defined in Regulation (EU) 2019/XXX[OP – please enter the reference of Regulation C(2019)1806];
23. 'point of sale' means a location where refrigerating appliances with a direct sales function are displayed or offered for sale, hire or hire-purchase;
24. 'energy efficiency index' (EEL) means an index number for the relative energy efficiency of a refrigeration appliance with a direct sales function expressed in percentage (%), calculated in accordance with point 2 of Annex IV.

Article 3

Obligations of suppliers

1. Suppliers shall ensure that:
 - (a) each refrigerating appliance with a direct sales function is supplied with a printed label in the format, as set out in Annex III;
 - (b) the parameters of the product information sheet, set out in Annex V, are entered into the product database;
 - (c) if specifically requested by the dealer, the product information sheet shall be made available in printed form;
 - (d) the content of the technical documentation, set out in Annex VI, is entered into the product database;
 - (e) any visual advertisement for a specific model of a refrigerating appliance with a direct sales function contains the energy efficiency class and the range of energy efficiency classes available on the label, in accordance with Annex VII;

- (f) any technical promotional material or other promotional material concerning a specific model of refrigerating appliances with a direct sales function, including technical promotional material or other promotional material on the internet, includes the energy efficiency class of that model and the range of energy efficiency classes available on the label, in accordance with Annex VII and Annex VIII;
 - (g) an electronic label in the format and containing the information, as set out in Annex III, shall be made available to dealers for each refrigerating appliance with a direct sales function model;
 - (h) an electronic product information sheet, as set out in Annex V, is made available to dealers for each refrigerating appliance with a direct sales function model.
2. The energy efficiency class shall be based on the energy efficiency index calculated in accordance with Annex II.

Article 4

Obligations of dealers

Dealers shall ensure that:

- (a) each refrigerating appliance with a direct sales function, at the point of sale of the appliance, including at trade fairs, bears the label provided by suppliers, in accordance with point 1(a) of Article 3, with the label displayed for built-in appliances in such a way to be clearly visible, and for other refrigerating appliances with a direct sales function in such a way as to be clearly visible on the outside of the front or top of the refrigerating appliance;
- (b) in the event of distance selling, the label and product information sheet are provided, in accordance with Annexes VII and VIII;
- (c) any visual advertisement for a specific model of a refrigerating appliance with a direct sales function, including on the internet, contains the energy efficiency class and the range of energy efficiency classes available on the label, in accordance with Annex VII and VIII;
- (d) any technical promotional material or other promotional material concerning a specific model of a refrigerating appliance with a direct sales function, including technical promotional material or other promotional material on the internet, which describes its specific technical parameters includes the energy efficiency class of that model and the range of energy efficiency classes available on the label, in accordance with Annexes VII and VIII.

Article 5

Obligations of internet hosting platforms

Where a hosting service provider as referred to in Article 14 of Directive 2000/31/EC allows the direct selling of refrigerating appliances with a direct sales function through its internet site, the service provider shall enable the showing of the electronic label and electronic product fiche sheet provided by the dealer on the display mechanism, in accordance with the provisions of Annex VIII, and shall inform the dealer of the obligation to display them.

Article 6
Measurement methods

The information to be provided pursuant to Articles 3 and 4 shall be obtained by reliable, accurate and reproducible measurement and calculation methods, which take into account the recognised state-of-the-art measurement and calculation methods, set out in Annex IV.

Article 7
Verification procedure for market surveillance purposes

Member States shall apply the verification procedure laid down in Annex IX when performing the market surveillance checks referred to in paragraph 3 of Article 8 of Regulation (EU) 2017/1369.

Article 8
Review

The Commission shall review this Regulation in the light of technological progress and present the results of this assessment, including, if appropriate, a draft revision proposal, to the Consultation Forum no later than *[OP- please insert date: four years after its entry into force of the present regulation]*. The review shall among other matters assess:

- (a) the energy efficiency classes;
- (b) the possibility to address circular economy aspects;
- (c) the feasibility of refining the classification of products inter alia considering the difference between integral and remote cabinets.

Article 9
Entry into force and application

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

It shall apply from 1 March 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11.3.2019

For the Commission
The President
Jean-Claude JUNCKER