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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on appliances burning gaseous fuels**

(Text with EEA relevance)

{SWD(2014) 150 final}  
{SWD(2014) 151 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **General context, reasons for and objectives of this proposal**

Directive 2009/142/EC on appliances burning gaseous fuels<sup>1</sup> is the codification of Directive 90/396/EEC<sup>2</sup> that was adopted on 29 June 1990 and became applicable as from 1 January 1992.

Directive 2009/142/EC is an example of Union harmonisation legislation, ensuring the free movement of appliances burning gaseous fuels. It has contributed considerably to the completion and operation of the Single Market with regard to appliances burning gaseous fuels. It harmonises the conditions for the placing on the market and/or putting into service of appliance burning gaseous fuels covered within its scope with regard to gas safety risks and rational use of energy.

Directive 2009/142/EC sets out essential requirements that appliances burning gaseous fuels must comply with in order to be made available on the EU market.

Directive 2009/142/EC is based on Article 114 of the Treaty on the Functioning of the European Union (hereinafter "the Treaty") and is one of the first harmonisation Directives based on the "New Approach" principles, according to which manufacturers must ensure compliance of their products with the mandatory performance and safety requirements provided for in the legislative instrument, without however imposing specific technical solutions or specifications.

This proposal intends to replace Directive 2009/142/EC on appliances burning gaseous fuels by a Regulation, in line with the Commission's simplification objectives.

Experience from the implementation of Directive 2009/142/EC made necessary to update and clarify some of its provisions, without however modifying its scope. Those provisions concern mainly some sector specific definitions, the content and the form of the Member States communications of their gas supply conditions, the relationship with other Union harmonisation legislation applying to gas appliances (for other aspects) and some essential requirements in order to complete them and reduce thus the need for interpretation.

The proposed Regulation does not change the current scope of Directive 2009/142/EC, it however, modifies some of its provisions in order to clarify and update their content. The proposed Regulation is also aligned to the provisions of Decision No 768/2008/EC establishing a common framework for the marketing of products (NLF Decision).

The proposed Regulation clarifies also the relationship between its provisions and other more specific EU harmonisation legislation. It also clarifies that the rational use of energy essential requirement in point 3.5 of Annex I to this Regulation will not apply with regard to the energy efficiency aspect concerning appliances burning gaseous fuels falling within an implementing measure of Directive 2009/125/EC establishing a framework for the setting of ecodesign requirements for energy-related products<sup>3</sup>. To this date the implementing measures under Directive 2009/125/EC are Directive 92/42/EEC on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels<sup>4</sup>, Commission Regulation (EU) No 813/2013 implementing Directive 2009/125/EC with regard to ecodesign requirements for space heaters

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<sup>1</sup> OJEU L 330, 16.12.2009, p.10.

<sup>2</sup> OJEU L 196, 26.7.1990, p.15.

<sup>3</sup> OJEU L 285, 31.10.2009, p.10.

<sup>4</sup> OJ L 167, 22.6.1992, p.17.

and combination heaters<sup>5</sup>, Commission Regulation (EU) No 814/2013 implementing Directive 2009/125/EC with regard to ecodesign requirements for water heaters and hot water storage tanks<sup>6</sup> and Commission Regulation (EU) No 932/2012 implementing Directive 2009/125/EC with regard to ecodesign requirements for household tumble driers<sup>7</sup>. The rational use of energy requirement of this Regulation will not apply to appliances burning gaseous fuels which will be covered by future Ecodesign implementing measures under Directive 2009/125/EC. In the absence of Ecodesign implementing measures, the rational use of energy requirement continues to apply. However, this does not affect the obligations of Member States to adopt national measures with regard to the promotion of the use of energy from renewable sources and to the energy efficiency of buildings in accordance with Directive 2009/28/EC on the promotion of the use of energy from renewable sources<sup>8</sup>, Directive 2010/31/EU on the energy performance of buildings<sup>9</sup> and Directive 2012/27/EU on energy efficiency<sup>10</sup>. Such measures, which may in certain circumstances, limit the installation of gas appliances which comply with the rational use of energy requirement of this Regulation, must be compatible with the Treaty and take into account of the need to ensure the coherent implementation of the all aspects of Union law.

The proposal intends also to align Directive 2009/142/EC to the “goods package” adopted in 2008 and in particular to the NLF Decision.

The NLF Decision sets out a common framework for EU product harmonisation legislation. This framework consists of the provisions which are commonly used in EU product legislation (e.g. definitions, obligations of economic operators, notified bodies, safeguard mechanisms, etc.). These common provisions have been reinforced to ensure that the legislation can be applied and enforced more effectively in practice. New elements, such as obligations on importers, have been introduced, which are crucial for improving the safety of products on the market.

The Commission has already proposed the alignment of nine Directives to the NLF Decision within an NLF implementation package adopted on 21 November 2011.

In view of ensuring consistency across Union harmonisation legislation for industrial products, in accordance with the political commitment resulting from the adoption of the NLF Decision and the legal obligation provided for in Article 2 of the NLF Decision, it is necessary that this proposal is in line with the provisions of the NLF Decision.

The proposal takes into account Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European Standardisation<sup>11</sup>.

The proposal also takes into account the proposal of the Commission of 13 February 2013 for a Regulation on market surveillance of products<sup>12</sup>, which intends to set out a single legal

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<sup>5</sup> OJ L 239, 6.9.2013, p.136.

<sup>6</sup> OJ L 239, 6.9.2013, p.162.

<sup>7</sup> OJ L 278, 12.10.2012, p.1.

<sup>8</sup> OJ L 140, 5.6.2009, p.16.

<sup>9</sup> OJ L 153, 18.6.2010, p.13.

<sup>10</sup> OJ L 315, 14.11.2012,p.1.

<sup>11</sup> Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European Standardisation and 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/EEEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012).

<sup>12</sup> Proposal for a Regulation of the European Parliament and of the Council on market surveillance of products and amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC,

instrument on the market surveillance activities in the field of non-food goods, consumer or non-consumer products and products covered or not by Union harmonisation legislation. This proposal merges the rules on market surveillance of Directive 2001/95/EC on general product safety<sup>13</sup>, Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products<sup>14</sup> and of sector-specific harmonisation legislation in order to increase the effectiveness of market surveillance activities within the Union. The proposed Regulation on market surveillance of products contains also the relevant provisions on market surveillance and safeguard clauses. Therefore, provisions in existing sector specific harmonisation legislation that relate to market surveillance and safeguard clauses should be removed from that harmonisation legislation. The overarching objective of the proposed Regulation is to simplify the Union market surveillance framework fundamentally so that it works better for its main users: market surveillance authorities and economic operators. Directive 2009/142/EC provides for a safeguard clause procedure for gas appliances. In line with the framework intended to be established by the proposed Regulation on the market surveillance of products, this proposal does not include the provisions on market surveillance and safeguard clause procedures provided for in the NLF Decision. However, in order to ensure legal clarity, it makes a reference to the proposed Regulation on market surveillance of products.

### **Consistency with other policies and objectives of the Union**

This initiative is in line with the Single Market Act<sup>15</sup>, which stressed the need to ensure consumer confidence in the quality of products on the market and the importance of reinforcing market surveillance. It is consistent with the Union energy policy as it does not affect the application and implementation of Union legislation in the field of energy efficiency and renewable energy.

It complements and is coherent with Union policy on energy supply and energy efficiency by not applying where more specific Union acts apply.

Furthermore it supports the Commission's policy on Better Regulation and simplification of the regulatory environment.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **Consultation of interested parties**

The revision of Directive 2009/142/EC has been discussed with national experts responsible for the implementation of the Directive, the conformity assessment bodies' forum, the administrative cooperation group on market surveillance as well as in bilateral contacts with industry associations.

The consultation included meetings with the Member States Working Group Gas Appliances (WG-GA), the Working Group GAD Revision (WG GAD REV) and the Gas Appliances Directive Advisory Committee (GAD-AC).

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<sup>13</sup> 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC, 2011/65/EU, Regulation (EU) No 302/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council (COM(2013) 75 final).

<sup>14</sup> OJ L 11, 15.1.2002, p.4.

<sup>15</sup> OJ L 218, 13.8.2008, p.30.

<sup>15</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, COM(2011) 206 final.

An Ex-post Evaluation Study was carried out in 2010-2011, intending to evaluate the results of the implementation of Directive 2009/142EC<sup>16</sup>. The study assessed the effectiveness of Directive 2009/142/EC, its impact on companies and users, possible trade barriers limiting the free movement of appliances, innovation and whether the provisions of the Directive are sufficient to ensure that appliances burning gaseous fuels and fittings placed on the market and/or put into service in accordance with it, are designed and manufactured so as to operate safely and present no gas related risks.

Although the Ex-post evaluation study concluded that Directive 2009/142/EC was functioning well and contributed to the improvement of safety of appliances burning gaseous fuels, it also highlighted some areas for possible improvements.

From December 2011 to March 2012, a public consultation was organised with as main objective to have the views and opinions of authorities, manufacturers, associations, standardisation organisations, notified bodies, consumer organisations and citizens on various issues that needed to be addressed in preparing the options for the revisions of Directive 2009/142/EC.

The participation in the public consultation was important and the Commission services received 90 replies with contributions from public authorities, industry associations, notified bodies, standardisation and consumer organisations, both big enterprises and SMEs and consumers.

The results of the public consultation are published at:

[http://ec.europa.eu/enterprise/sectors/pressure-and-gas/files/gad/publ-cons-summary\\_en.pdf](http://ec.europa.eu/enterprise/sectors/pressure-and-gas/files/gad/publ-cons-summary_en.pdf).

The consultation process in all related fora revealed widespread support for the revision.

There is unanimity on the need to align to the NLF and thus to improve the existing general regulatory framework. Authorities fully support the exercise because it will strengthen the existing system and improve cooperation at EU level. Industry expects a more level playing field resulting from more effective actions against products that do not comply with the legislation, as well as a simplification effect from the alignment of legislation. Certain concerns were expressed on some obligations which are, however, indispensable for increasing the efficiency of market surveillance. These measures will not entail significant costs for industry and the benefits resulting from improved market surveillance should by far outweigh the costs.

### **Collection and use of expertise - Impact assessment**

An impact assessment on the revision of Directive 2009/142/EC has been conducted. The impact assessment sets out extensively the different options of revision of the sector related aspects of Directive 2009/142/EC.

With regard to the NLF alignment aspects, the impact assessment report for the revisions of Directive 2009/142/EC refers to the general impact assessment conducted in the framework of the NLF Implementation package of 21 November 2011<sup>17</sup>.

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<sup>16</sup> Ex-post evaluation of Directive 2009/142/EC on appliances burning gaseous fuels (GAD), Final Report, Risk & Policy Analysts Limited, March 2011, [http://ec.europa.eu/enterprise/dg/files/evaluation/03\\_2011\\_finalreport\\_gas\\_en.pdf](http://ec.europa.eu/enterprise/dg/files/evaluation/03_2011_finalreport_gas_en.pdf).

<sup>17</sup> New Legislative Framework (NLF) Alignment Package (Implementation Goods Package), Commission Staff Working Paper – Impact Assessment accompanying document to the 10 Proposals to Align Product Harmonisation Directives to Decision No 768/2008/EC, SEC(2011) 1376 final.

In particular, the modifications due to the alignment to the NLF Decision and their impacts are expected to be the same as for the nine product harmonisation Directives included in the Alignment Package.

The Impact Assessment Report on this Alignment Package has already examined in depth the different options, which are exactly the same with regard to Directive 2009/142/EC. The Report contained also an analysis of the impacts resulting from the legislative alignment to the provisions of the NLF Decision.

Therefore, the Impact Assessment Report on the revision of Directive 2009/142/EC did not examine those aspects and it focussed on specific issues relating to Directive 2009/142/EC as well as on the ways to address them.

Based on the information collected, the impact assessment carried out by the Commission examined and compared three options with regard to problems and issues relating to Directive 2009/142/EC.

### **Option 1 – “Do nothing” - No changes to the existing situation**

This option proposes no changes to Directive 2009/142/EC.

### **Option 2 – Intervention by non-legislative measures**

Option 2 considers the possibility of encouraging voluntary interventions to resolve the identified issues, e.g., guidance documents containing a commonly agreed interpretation of Directive 2009/142/EC.

### **Option 3 – Intervention by legislative measures**

This option consists in modifying Directive 2009/142/EC.

Option 3 was found to be the preferred option because:

- it is considered more effective than option 2: due to the lack of enforceability of option 2 it is questionable that the positive impacts would materialise under that option;
- it does not entail significant costs for economic operators and notified bodies; for those who are already acting responsibly, no extra costs or only negligible costs are expected, as the scope and the provisions remain in substance unchanged and only legal clarifications are inserted;
- not any significant economic or social impacts could be identified;
- options 1 and 2 do not provide answers to legal inconsistencies or ambiguities and therefore will not lead to a better implementation of Directive 2009/142/EC.

The proposal includes:

- The removal of the outdated temperature limit of 105°C from the definition of the scope;
- The introduction of currently missing definitions for the sector specific terminology under Directive 2009/142/EC;
- The introduction of a harmonised content and form of the communications of the Member States under Article 2(2) of Directive 2009/142/EC, of the types of gas and corresponding supply pressures used on their territory;

- The clarification of the relationship between Directive 2009/142/EC and other EU harmonisation legislation, including Ecodesign implementing measures under Directive 2009/125/EC and other Union energy policy instruments;
- The improvement of the readability of some of the provisions of Directive 2009/142/EC.

The impact of the proposal will lead to strengthening the competitiveness of European enterprises as a result of guaranteeing a level playing field for the economic operators and to enhanced safety protection for consumers and other end-users.

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

#### **3.1. Scope and definitions**

The scope of the proposed Regulation corresponds to the scope of Directive 2009/142/EC, and covers “appliances” and “fittings”.

The proposal introduces some definitions relating to sector specific issues, in order to improve its readability.

Additionally, the general definitions resulting from the alignment to the NLF Decision have been inserted.

#### **3.2. Member States communications on gas supply conditions on their territory**

The proposed Regulation contains current Article 2(2) of Directive 2009/142/EC, according to which Member States must communicate the types of gas and corresponding supply pressures used on their territories and any changes in their gas supply conditions to other Member States and the European Commission. Subsequently, this information is published in the *Official Journal of the European Union* (OJEU)<sup>18</sup>.

This information is very important for manufacturers as the gas supply conditions at the place where an appliance burning gaseous fuels is put into service are very important for its safe and correct functioning. Therefore, this aspect has to be taken into account by the manufacturer already in the design phase.

The availability of adequate information is also the prerequisite for the determination of the “*appliance category*” marking or markings that must be indicated on the appliance and are defined by the European Committee for Standardisation (CEN). Currently, this information is provided in harmonised standard hEN 437:2003+A1:2009 and in product specific European harmonised standards.

However, as the currently published information is not sufficient, there is a need to better determine the parameters which should be communicated by the Member States in order to ensure the adequacy and comparability of this information.

Additionally, the gas supply conditions in the Union are currently under rapid development. This is due, amongst others, to the general Union objective to increase the proportion of energies from renewable sources. As a result, more and more gases from non-conventional sources<sup>19</sup> will be supplied both through isolated local networks and by injecting them into natural gas distribution networks.

<sup>18</sup>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:296:0002:0007:EN:PDF>

<sup>19</sup>

For example, gaseous fuel produced from biomass where ‘biomass’ means the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal

Despite the attempts to achieve a higher degree of harmonisation of gas qualities across Europe<sup>20</sup>, the gradual depletion of the sources of gas extracted from some gas fields and their replacement with biogas will lead to an increasing diversity of gas qualities.

As the types of gas and their supply pressures are not subject to harmonisation in the framework of Directive 2009/142/EC and cannot be subject to such harmonisation under this proposal, the gas quality issue has to be taken into account in the proposal in order to ensure the link with the safety and performance of the appliances.

It is therefore important that this proposal ensures that manufacturers have adequate information about the types of gas and supply pressures available as gas appliances are very sensitive to the composition of the fuel. Inadequate or missing pieces of information during the design phase would lead to unsafe and/or not correctly performing (e.g. significantly reduced energy efficiency level) appliances being placed on the market.

Therefore the proposal defines the parameters that should be included in the communications, in order to better ensure the compatibility of the appliances with the gas supply conditions and provides for a harmonised form for those communications.

### **3.3. Making available on the market of gas appliances and fittings, obligations of economic operators, CE marking, free movement**

The proposal contains the typical provisions for product-related Union harmonisation legislation and sets out the obligations of the relevant economic operators (manufacturers, authorised representatives, importers and distributors), in accordance with the NLF Decision.

According to Directive 2009/142/EC, fittings do not bear the CE marking (as also they are not subject to a safeguard clause procedure). Fittings are not appliances burning gaseous fuels, but intermediate products made separately available only between professionals and intended to be incorporated into an appliance before the latter is placed on the market. According to Directive 2009/142/EC, fittings must however be accompanied by a certificate declaring their conformity with the provisions of the Directive and stating their characteristics and how they should be incorporated into an appliance or assembled to assist compliance with the essential requirements applicable to finished appliances. As the appropriate design of a fitting contributes to the correct and safe functioning of a finished appliance and as the gas related risks of an appliance can only be assessed after incorporation of the fitting, the proposed Regulation keeps the existing provision according to which fittings do not bear the CE marking. However, in order to improve clarity, the certificate accompanying fittings under Directive 2009/142/EC has been qualified as “Fitting conformity certificate”, in order to better define its content and clarify its relationship with the EU declaration of conformity requirement under other possibly applicable Union harmonisation legislation.

### **3.4. Harmonised standards**

Compliance with harmonised standards provides for a presumption of conformity with the essential requirements. Regulation (EU) No 1025/2012 sets out a horizontal legal framework for European standardisation. The Regulation contains inter alia provisions on standardisation requests from the Commission to the European Standardisation Organisation, on the

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substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste.

<sup>20</sup> Mandate M400 - Phase I: Standardization in the field of gas qualities, Final report, CEN/BT/WG 197 (2012) evaluating the impact of H gas quality variations on the behaviour of GAD compliant appliances.

Mandate M475: Mandate given to CEN for standards for biomethane for use in transport and injection in natural gas pipelines.

procedure for objections to harmonised standards and on stakeholder participation in the standardisation process. Consequently the provisions of Directive 2009/142/EC which cover the same aspects have not been reintroduced in this proposal for reasons of legal certainty.

### **3.5. Notified bodies**

Proper functioning of notified bodies is crucial for ensuring a high level of health and safety protection and for the confidence of all interested parties in the New Approach system.

Therefore, in line with the NLF Decision, the proposal reinforces the notification criteria for notified bodies and introduces specific requirements for notifying authorities.

### **3.6. Conformity assessment**

The proposal keeps the conformity assessment procedures provided for under Directive 2009/142/EC. It however updates the corresponding modules in line with the NLF Decision.

In particular, it keeps the requirement for a notified body intervention in the design and production phase of all appliances and fittings.

Furthermore, it keeps the current approach for the design phase, according to which the type examination of the product by the notified body takes the form of examination of the complete appliance or fitting.

Therefore, in accordance with Article 4(6) of the NLF Decision, it provides only for the EU-type examination – production type, as the examination of the technical documentation in conjunction with the examination of the complete type is considered, as in Directive 2009/142/EC, to better correspond with the high risks related to gas safety.

### **3.7. Implementing and delegated acts**

The proposal empowers the Commission to adopt, where appropriate, implementing acts to ensure the uniform application of this Regulation in respect of notified bodies that do not meet or no longer meet the requirements for their notification. Those implementing acts will be adopted in accordance with the provisions on implementing acts laid down in Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

The proposal empowers the Commission to adopt, where appropriate, delegated acts in accordance with Article 290 of the Treaty in respect of the content and the form of the Member States communications relating to the gas supply conditions on their territory, in order to take into account technical developments.

### **3.8. Final provisions**

The proposed Regulation will become applicable two years after its entry into force to allow manufacturers, notified bodies, Member States and European Standardisation Bodies, time to adapt to the new requirements.

However, the designation of notified bodies pursuant to the new requirements and process needs to start shortly after the entry into force of this Regulation. This will ensure that by the date of application of the proposed Regulation, sufficient notified bodies will have been designated in accordance with the new rules so as to avoid problems with production continuity and market supply.

A transitional provision is foreseen for the certificates issued by notified bodies under Directive 2009/142/EC so as to allow stocks to be absorbed and ensure a smooth transition to the new requirements.

Directive 2009/142/EC will be repealed and replaced by the proposed Regulation.

### **3.9. Union competence, legal basis, subsidiarity principle and legal form**

#### **Legal basis**

The proposal is based on Article 114 of the Treaty.

#### **Subsidiarity principle**

The subsidiarity principle arises in particular with regard to the newly added provisions aiming at the improvement of effective enforcement of Directive 2009/142/EC, namely, the economic operators' obligations, the traceability provisions, the provisions on the assessment and notification of conformity assessment bodies.

Experience with the enforcement of the legislation has shown that measures taken at national level have led to divergent approaches and to a different treatment of economic operators inside the Union, which undermines the objectives of Directive 2009/142/EC. If actions are taken at national level to address the problems, this risks creating obstacles to the free movement of goods. Furthermore action at national level is limited to the territorial competence of a Member State. Coordinated action at Union level can much better achieve the objectives set, and will in particular render market surveillance more effective. Hence it is more appropriate to take action at Union level.

#### **Proportionality**

In accordance with the principle of proportionality, the proposed modifications do not go beyond what is necessary to achieve the objectives set.

The new or modified obligations do not impose unnecessary burdens and costs on industry - especially on small and medium sized enterprises - or administrations. Where modifications have been identified to have negative impacts, the analysis of the impacts of the option serves to provide the most proportionate response to the problems identified. A number of modifications concern the improvement of clarity of the existing Directive without introducing new requirements that entail added cost.

#### **Legislative technique used**

The proposal takes the form of a Regulation.

The proposed change from a Directive to a Regulation takes into account the Commission's general objective to simplify the regulatory environment and the need to ensure a uniform implementation throughout the Union of the proposed legislation.

The proposed Regulation is based on Article 114 of the Treaty and aims to ensure the proper functioning of the internal market for gas appliances. It imposes clear and detailed rules which will become applicable in a uniform manner at the same time throughout the Union.

In accordance with the total harmonisation principles, Member States are not allowed to impose more stringent or additional requirements in their national legislation for the placing on the market of gas appliances. In particular, the mandatory essential requirements and the conformity assessment procedures to be followed by manufacturers must be identical in all Member States.

The same applies with regard to the provisions that have been introduced as a result from the alignment to the NLF Decision. Those provisions are clear and sufficiently precise to be applied directly by the actors concerned.

The obligations provided for the Member States, such as the obligation to assess, appoint and notify the conformity assessment bodies are, in any case, not transposed as such into national

law but implemented by the Member States by means of the necessary regulatory and administrative arrangements. This will not change when the obligations concerned are set out in a Regulation.

Therefore, Member States have almost no flexibility in transposing a Directive into their national law. The choice of a Regulation will however allow them to save the costs associated with the transposition of a Directive.

Additionally, a Regulation avoids the risk of possible diverging transpositions of a Directive by the different Member States, which might lead to different levels of safety protection and create obstacles to the internal market, undermining thus its effective implementation.

The change from a Directive to a Regulation will not lead to any change in the regulatory approach.

The characteristics of the New Approach will be fully preserved, in particular the flexibility given to manufacturers in the choice of the means employed to comply with the essential requirements and in the choice of the procedure used, amongst the available conformity assessment procedures, to demonstrate compliance of gas appliances. The existing mechanisms supporting the implementation of the legislation (standardisation process, working groups, administrative cooperation, the development of guidance documents etc.) will not be affected by the nature of the legal instrument.

Furthermore, the choice of a Regulation does not mean that the decision-making process is centralised. Member States retain their competence e.g. as regards the designation and accreditation of notified bodies, market surveillance and enforcement action and of defining their gas supply conditions as far as the gas qualities are not harmonised at Union level.

Finally, the use of Regulations in the area of internal market legislation, allows, in accordance also with the preference expressed by stakeholders, to avoid the risk of ‘gold plating’. It also allows manufacturers to work directly with the Regulation text instead of needing to identify and examine 28 transposition laws.

On this basis, it is considered that the choice of a Regulation is the most appropriate solution for all involved parties as it will allow a more rapid and coherent application of the proposed legislation and will establish a clearer regulatory environment for economic operators.

#### **4. BUDGETARY IMPLICATION**

This proposal does not have any implication for the Union budget.

#### **5. ADDITIONAL INFORMATION**

##### **Repeal of existing legislation**

The adoption of the proposal will lead to repeal of Directive 2009/142/EC.

##### **European Economic Area**

The proposal concerns the EEA and should therefore be extended to the European Economic Area.

## Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on appliances burning gaseous fuels**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>21</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2009/142/EC of the European Parliament and of the Council relating to appliances burning gaseous fuels<sup>22</sup> lays down rules for the placing on the market and the putting into service of appliances burning gaseous fuels.
- (2) Directive 2009/142/EC is based on the New Approach principles, as set out in Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards<sup>23</sup>. Thus, it sets out only the essential requirements applying to appliances burning gaseous fuels, whereas technical details are adopted by the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European Standardisation<sup>24</sup>. Conformity with the harmonised standards so set, the reference numbers of which are published in the Official Journal of the European Union, provides a presumption of conformity with the requirements of Directive 2009/142/EC. Experience has shown that those basic principles have worked well in this sector and should be maintained and even further promoted.
- (3) Experience from the implementation of Directive 2009/142/EC has shown the need to modify some of its provisions in order to clarify and update them and ensure thus legal

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<sup>21</sup> OJ C [...], [...], p.[...].

<sup>22</sup> Directive 2009/142/EC of the European Parliament and of the Council of 30 November 2009 relating to appliances burning gaseous fuels (OJ L 330, 16.12.2009, p.10).

<sup>23</sup> OJ C 136, 4.6.1985, p.1.

<sup>24</sup> 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).

certainty as regards the definitions relating to its scope, the content of the Member States' communications of their gas types and supply pressures and certain essential requirements.

- (4) As certain aspects of Directive 2009/142/EC should be revised and enhanced, in the interests of clarity that Directive should be repealed. Since the scope, essential requirements and conformity assessment procedures must be identical in all Member States, there is almost no flexibility in transposing a Directive based on the New Approach principles into national law. In order to simplify the regulatory framework, Directive 2009/142/EC should be replaced by a Regulation, which is the appropriate legal instrument as it imposes clear and detailed rules which do not give room for divergent transposition by Member States and ensures thus a uniform implementation throughout the Union.
- (5) Decision No 768/2008/EC of the European Parliament and of the Council on a common framework for the marketing of products<sup>25</sup> lays down a common framework of general principles and reference provisions intended to apply across the legislation harmonising the conditions for the marketing of products in order to provide a coherent basis for revision or recasts of that legislation. In order to ensure consistency with other sectoral product legislation, Directive 2009/142/EC should be adapted to that Decision.
- (6) Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products<sup>26</sup> lays down horizontal provisions on the accreditation of conformity assessment bodies [,market surveillance of products and controls on products from third countries,] and the CE marking.
- (7) Regulation (EU) No [...] of the European Parliament and of the Council<sup>27</sup> [on market surveillance of products] provides detailed rules on market surveillance and on controls of products entering the Union from third countries, including appliances burning gaseous fuels. It also sets out a safeguard clause procedure. Member States should organise and carry out market surveillance, appoint market surveillance authorities and specify their powers and duties. They should also set up general and sector-specific market surveillance programs.
- (8) The scope of Directive 2009/142/EC should be maintained. This Regulation should apply to appliances burning gaseous fuels and to fittings incorporated into an appliance burning gaseous fuels. Appliances burning gaseous fuels are domestic and non-domestic appliances intended for a number of specified applications.
- (9) This Regulation should aim to ensure the functioning of the internal market of appliances burning gaseous fuels and of fittings as regards the gas safety risks and energy efficiency.
- (10) This Regulation should not apply where other Union harmonisation legislation covers more specifically the aspects covered by this Regulation. This includes the measures

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<sup>25</sup> Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p.82).

<sup>26</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p.30).

<sup>27</sup> OJ L [...], [...], p. [...].

issued under Directive 2009/125/EC of the European Parliament and of the Council<sup>28</sup> establishing a framework for ecodesign requirements.

- (11) Article 6 of this Regulation prevents Member States from imposing stricter requirements on health, safety and energy conservation which would prohibit, restrict or impede the making available on the market and the putting into service of appliances which comply with this Regulation. However, this provision does not affect the possibility for Member States, when implementing other EU Directives, to impose requirements which affect the energy efficiency of products, including gas appliances, as long as such measures are compatible with the Treaty.
- (12) Directive 2009/28/EC of the European Parliament and of the Council<sup>29</sup> on the promotion of the use of energy from renewable sources requires Member States to introduce in their building regulations and codes appropriate measures in order to increase the share of all kinds of energy from renewable sources in the building sector. Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings<sup>30</sup> requires Member States to set minimum energy performance requirements for buildings and building elements and system requirements in respect of the overall energy performance of the technical building systems which are installed in existing buildings. Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency<sup>31</sup> requires Member States to take sufficient measures to progressively reduce energy consumption in different areas including in buildings.
- (13) This Regulation does not affect the obligation for Member States to adopt national measures with respect to the promotion of the use of energy from renewable sources and to the energy efficiency of buildings in accordance with Directives 2009/28/EC 2010/31/EU and 2012/27/EU. It is consistent with the objectives of these Directives that national measures may in certain circumstances limit the installation of gas appliances which comply with the rational use of energy requirement of this Regulation, provided that such requirements do not constitute an unjustifiable market barrier.
- (14) Member States should take the necessary steps to ensure that appliances burning gaseous fuels are made available on the market and put into service only where they do not compromise the safety of persons, domestic animals and property, when normally used.
- (15) The provisions of this Regulation do not affect the Member States' entitlement to lay down rules concerning commissioning or periodic inspections of appliances burning gaseous fuels in order to ensure their correct installation, use and maintenance.
- (16) The provisions of this Regulation do not affect the Member States' entitlement to lay down requirements as they may deem necessary concerning installation aspects, space

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<sup>28</sup> 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).

<sup>29</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p.16).

<sup>30</sup> Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p.13).

<sup>31</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p.1).

ventilation conditions and aspects relating to the safety of the building itself and its energy performance, provided that those provisions do not impose design requirements on appliances burning gaseous fuels.

- (17) As this Regulation does not cover such risks caused by appliances burning gaseous fuels in case of incorrect installation, maintenance or use, Member States are encouraged to take measures to ensure that public is made aware of the risks related to combustion products and in particular to carbon monoxide.
- (18) Although this Regulation does not regulate the gas supply conditions in the Member States, it should take into account the fact that different conditions as regards types of gas and supply pressures are in force in the Member States in the absence of harmonisation of the technical characteristics of the gaseous fuel. The composition and specifications of the types of gas and the supply pressures at the place where an appliance burning gaseous fuels is put into service is very important for its safe and correct functioning and therefore this aspect should be taken into consideration already at the design phase of the appliance in order to ensure its compatibility with the gas type(s) and supply pressure(s) it is intended for.
- (19) In order to avoid barriers to trade with regard to appliances burning gaseous fuels on grounds relating to the fact that the gas supply conditions are not yet harmonised and ensure thus a sufficient information of economic operators, Member States should communicate to the other Member States and to the Commission the gas types and supply pressures used in their territory and any changes thereof in good time.
- (20) The communication of the gas types and supply pressures by Member States should contain the relevant necessary information for economic operators. In this framework, the primary source of the gaseous fuel supplied is not relevant for the characteristics, the performance and the compatibility of appliances burning gaseous fuels with the communicated gas supply conditions.
- (21) When determining the gas families and gas groups used on their territory, Member States are encouraged to take into account the on-going standardisation work concerning gas qualities and ensure thus across the Union, a coherent and coordinated approach towards harmonisation of the gaseous fuels via standardisation.
- (22) When in accordance with Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas<sup>32</sup> and the on-going standardisation work of CEN on the gas quality specifications, Member States take concrete measures for a wider use of biogas by injecting such gas into the gas distribution network or by distributing such gas through isolated systems, they should ensure to timely update their communication of gas types in case the quality of the supplied gas does not remain within the already communicated quality range.
- (23) When Member States establish their national action plans in accordance with Directive 2009/28/EC in order to comply with their obligation to increase the percentage of renewables energies and in particular biogas in the total energy consumption, they are encouraged to consider the possibilities of injecting such gases in the gas distribution network.
- (24) Member States should take the necessary measures to ensure that the gas supply conditions do not constitute barriers to trade and that they do not restrict the putting

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<sup>32</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p.94).

into service of appliances burning gaseous fuels that are compatible with the local gas supply conditions.

- (25) Appliances burning gaseous fuels covered by this Regulation and complying with its provisions should benefit from the principle of free movement of goods. Such appliances should be allowed to be put into service provided that they are compatible with the local gas supply conditions.
- (26) The appliance category marking indicated on the appliance data plate establishes a direct link with the gas families and/or gas groups for which an appliance burning gaseous fuels has been designed to burn safely at the desired performance level and thus ensures the compatibility of the appliance with the local gas supply conditions.
- (27) The essential safety, health and rational use of energy requirements should be observed in order to ensure that appliances burning gaseous fuels are safe when normally used at the desired performance level.
- (28) The essential requirements should be interpreted and applied so as to take account of the state of the art at the time of design and manufacture as well as of technical and economic considerations which are consistent with a high degree of health, safety protection and rational use of energy.
- (29) Economic operators should be responsible for the compliance of appliances burning gaseous fuels and of fittings with the requirements of this Regulation, in relation to their respective roles in the supply chain, so as to ensure a high level of protection of public interests, such as health, safety, rational use of energy and the protection of consumers and other users, domestic animals and property and to guarantee fair competition on the Union market.
- (30) All economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they only make available on the market appliances burning gaseous fuels which are in conformity with this Regulation. It is necessary to provide for a clear and proportionate distribution of obligations which correspond to the role of each economic operator in the supply and distribution chain.
- (31) The manufacturer, having detailed knowledge of the design and production process, is best placed to carry out the complete conformity assessment procedure. Conformity assessment should therefore remain solely the obligation of the manufacturer.
- (32) The manufacturer should provide sufficient and detailed information on the intended use of the appliance burning gaseous fuels so as to allow its correct and safe installation and putting into service, use and maintenance. Such information may need to include the technical specifications of the interface between the appliance and its installation environment.
- (33) In order to facilitate the communication between economic operators, national market surveillance authorities and consumers, Member States should encourage economic operators to include a website address in addition to the postal address.
- (34) It is necessary to ensure that appliances burning gaseous fuels and fittings from third countries entering the Union market comply with the requirements of this Regulation, and in particular that appropriate conformity assessment procedures have been carried out by manufacturers with regard to those appliances and fittings. Provision should therefore be made for importers to make sure that the appliances burning gaseous fuels and fittings they place on the market comply with the requirements of this Regulation and that they do not place on the market appliances and fittings which do not comply

with such requirements or present a risk. Provision should also be made for importers to make sure that conformity assessment procedures have been carried out and that appliance marking and documentation drawn up by manufacturers are available for inspection by the competent supervisory authorities.

- (35) The distributor makes an appliance burning gaseous fuels or a fitting available on the market after it has been placed on the market by the manufacturer or the importer and should act with due care to ensure that its handling of the appliance or fitting does not adversely affect its compliance.
- (36) When placing on the market an appliance burning gaseous fuels or a fitting, every importer should indicate on the appliance or fitting his name, registered trade name or registered trade mark and the postal address at which he can be contacted. Exceptions should be provided for in cases where the size or nature of the appliance or fitting does not allow it. This includes cases where the importer would have to open the packaging to put his name and address on the product.
- (37) Any economic operator that either places an appliance burning gaseous fuels or a fitting on the market under his own name or trademark or modifies an appliance burning gaseous fuels or a fitting in such a way that compliance with the requirements of this Regulation may be affected should be considered to be the manufacturer and should assume the obligations of the manufacturer.
- (38) Distributors and importers, being close to the market place, should be involved in market surveillance tasks carried out by the competent national authorities, and should be prepared to participate actively, providing those authorities with all necessary information relating to the appliance burning gaseous fuels or fitting concerned.
- (39) Ensuring traceability of an appliance burning gaseous fuels or a fitting throughout the whole supply chain helps to make market surveillance simpler and more efficient. An efficient traceability system facilitates market surveillance authorities' task of tracing economic operators who made non-compliant appliances burning gaseous fuels or fittings available on the market.
- (40) This Regulation should be limited to the expression of the essential requirements. In order to facilitate conformity assessment with those requirements it is necessary to provide for presumption of conformity for appliances burning gaseous fuels or fittings which are in conformity with harmonised standards that are adopted in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European Standardisation<sup>33</sup> for the purpose of expressing detailed technical specifications of those requirements, especially with regard to the design, manufacture, operation, testing the rational use of energy and installation of appliances burning gaseous fuels.
- (41) Regulation (EU) No 1025/2012 provides for a procedure for objections to harmonised standards where those standards do not entirely satisfy the requirements of this Regulation.

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<sup>33</sup> 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).

- (42) In order to enable economic operators to demonstrate and the competent authorities to ensure that appliances burning gaseous fuels or fittings made available on the market conform to the essential requirements, it is necessary to provide for conformity assessment procedures. Decision No 768/2008/EC establishes modules for conformity assessment procedures, which include procedures from the least to the most stringent, in proportion to the level of risk involved and the level of safety required. In order to ensure inter-sectoral coherence and to avoid ad-hoc variants, conformity assessment procedures should be chosen from among those modules.
- (43) Manufacturers of appliances burning gaseous fuels should draw up an EU declaration of conformity to provide information required under this Regulation on the conformity of an appliance with the requirements of this Regulation and of other relevant Union harmonisation legislation.
- (44) To ensure effective access to information for market surveillance purposes, the information required to identify all applicable Union Acts for an appliance burning gaseous fuels should be available in a single EU declaration of conformity.
- (45) Manufacturers of fittings should issue a Fitting conformity certificate to provide information required under this Regulation on the conformity of the fitting with the requirements of this Regulation. In case the fitting is subject also to other Union harmonisation legislation, manufacturers of fittings should also, where relevant, issue an EU declaration of conformity in accordance with that legislation.
- (46) The CE marking, indicating the conformity of an appliance burning gaseous fuels is the visible consequence of a whole process comprising conformity assessment in a broad sense. General principles governing the CE marking and its relationship with other markings are set out in Regulation (EC) No 765/2008. Rules governing the affixing of the CE marking should be laid down in this Regulation.
- (47) Fittings are not appliances burning gaseous fuels, but intermediate products made available between professionals and intended to be incorporated into an appliance. As the appropriate design of a fitting contributes to the correct and safe functioning of a finished appliance and as the gas related risks of an appliance can only be assessed after incorporation of the fitting, it is appropriate that fittings do not bear the CE marking.
- (48) A check of compliance of appliances burning gaseous fuels and of fittings with the essential requirements provided for in this Regulation is necessary in order to provide effective protection for users and third parties.
- (49) In order to ensure compliance of appliances burning gaseous fuels with the essential requirements, it is necessary to lay down appropriate conformity assessment procedures to be followed by the manufacturer. Those procedures should be set from the conformity assessment modules laid down in Decision No 768/2008/EC.
- (50) The conformity assessment procedures set out in this Regulation require the intervention of conformity assessment bodies, which are notified by the Member States to the Commission.
- (51) Experience has shown that the criteria set out in Directive 2009/142/EC that conformity assessment bodies have to fulfil to be notified to the Commission are not sufficient to ensure a uniformly high level of performance of these bodies throughout the Union. It is, however, essential that all conformity assessment bodies perform their functions to the same level and under conditions of fair competition. That requires the

setting of obligatory requirements for conformity assessment bodies wishing to be notified in order to provide conformity assessment services.

- (52) In order to ensure a consistent level of conformity assessment quality, it is also necessary to set requirements for notifying authorities and other bodies involved in the assessment, notification and monitoring of notified bodies.
- (53) If a conformity assessment body demonstrates conformity with the criteria laid down in harmonised standards, it should be presumed to comply with the corresponding requirements set out in this Regulation.
- (54) The system set out in this Regulation should be complemented by the accreditation system provided for in Regulation (EC) No 765/2008. Since accreditation is an essential means of verifying the competence of conformity assessment bodies, it should also be used for the purposes of notification.
- (55) Transparent accreditation as provided for in Regulation (EC) No 765/2008, ensuring the necessary level of confidence in conformity certificates, should be considered by the national public authorities throughout the Union as the preferred means of demonstrating the technical competence of conformity assessment bodies. However, national authorities may consider that they possess the appropriate means of carrying out that evaluation themselves. In such cases, in order to ensure the appropriate level of credibility of evaluations carried out by other national authorities, they should provide the Commission and the other Member States with the necessary documentary evidence demonstrating the compliance of the conformity assessment bodies evaluated with the relevant regulatory requirements.
- (56) Conformity assessment bodies frequently subcontract parts of their activities linked to the assessment of conformity or have recourse to a subsidiary. In order to safeguard the level of protection required for the appliances burning gaseous fuels to be placed on the Union market, it is essential that conformity assessment subcontractors and subsidiaries fulfil the same requirements as notified bodies in relation to the performance of conformity assessment tasks. Therefore, it is important that the assessment of the competence and the performance of bodies to be notified and the monitoring of bodies already notified cover also activities carried out by subcontractors and subsidiaries.
- (57) It is necessary to increase the efficiency and transparency of the notification procedure and, in particular, to adapt it to new technologies so as to enable online notification.
- (58) Since conformity assessment bodies may offer their services throughout the Union, it is appropriate to give the other Member States and the Commission the opportunity to raise objections concerning a notified body. It is therefore important to provide for a period during which any doubts or concerns as to the competence of conformity assessment bodies can be clarified before they start operating as notified bodies.
- (59) In the interests of competitiveness, it is crucial that conformity assessment bodies apply the conformity assessment procedures without creating unnecessary burdens for economic operators. For the same reason, and to ensure equal treatment of economic operators, consistency in the technical application of the conformity assessment procedures needs to be ensured. That can best be achieved through appropriate coordination and cooperation between conformity assessment bodies.
- (60) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred to the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European

Parliament and of the Council laying down the rules for the Commission's exercise of implementing powers<sup>34</sup>.

- (61) The advisory procedure should be used for the adoption of implementing acts requesting the notifying Member State to take the necessary corrective measures in respect of notified bodies that do not meet or no longer meet the requirements for their notification.
- (62) In order to take into account the technical developments, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of amendments to the content and the form of the Member State communications on the gas supply conditions on their territory.
- (63) The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (64) It is necessary to provide for transitional arrangements that allow the making available on the market or the putting into service of appliances burning gaseous fuels and fittings that have already been placed on the market in accordance with Directive 2009/142/EC.
- (65) Member States should lay down rules on penalties applicable to infringements to this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (66) Since the objective of this Regulation, namely to ensure that appliances burning gaseous fuels on the market fulfil the requirements providing for a high level of protection of health and safety of users and protection of domestic animals or property and for rational use of energy, while guaranteeing the functioning of the internal market cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (67) Directive 2009/142/EC should therefore be repealed.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I GENERAL PROVISIONS

### *Article 1*

#### **Scope**

- (1) This Regulation shall apply to appliances and fittings.

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Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

- (2) For the purposes of this Regulation, an appliance shall be considered to be ‘normally used’ where the following conditions are met:
  - (a) it is correctly installed and regularly serviced in accordance with the manufacturer’s instructions.
  - (b) it is used with a normal variation in the gas quality and a normal fluctuation in the supply pressure.
  - (c) it is used in accordance with its intended purpose or in a way which can be reasonably foreseen.
- (3) This Regulation shall not apply to:
  - (a) Appliances specifically designed for use in industrial processes carried out on industrial premises.
  - (b) Appliances specifically designed for use on aircrafts and railways.
  - (c) Appliances specifically designed for research purposes for temporary use in laboratories.
- (4) Where, for appliances or fittings, the aspects covered by this Regulation are covered more specifically by other acts of Union harmonisation legislation, this Regulation shall not apply or shall cease to apply to such appliances or fittings in respect of those aspects.
- (5) The rational use of energy essential requirement in point 3.5 of Annex I to this Regulation shall not apply to appliances covered by a measure issued pursuant to Article 15 of Directive 2009/125/EC.

## *Article 2*

### **Definitions**

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

- (1) ‘appliances’ means appliances burning gaseous fuels used for cooking, refrigeration, air-conditioning, space heating, hot water production, lighting and washing, as also forced draught burners and heating bodies to be equipped with such burners;
- (2) ‘fittings’ means safety devices, controlling devices or regulating devices and sub-assemblies thereof, separately marketed for trade use and designed to be incorporated into an appliance burning gaseous fuels or to be assembled to constitute such an appliance;
- (3) ‘burning’ means a process in which gaseous fuel reacts with oxygen producing heat or light;
- (4) ‘washing’ means the entire washing process, including drying and ironing;
- (5) ‘gaseous fuel’ means any fuel which is in a gaseous state at a temperature of 15 °C under a pressure of 1 bar;
- (6) ‘industrial process’ means the extraction, growth, refining, processing, production, manufacture or preparation of materials, plants, livestock, animal products, food or other products with a view to its commercial use;
- (7) ‘specific design’ means a design for an appliance when that design is only intended to address a specific need for a specific process;

- (8) ‘industrial premises’ means any place where the main activity carried out is an industrial process that would be subject to specific national health and safety regulations;
- (9) ‘gas family’ means a group of gaseous fuels with similar burning behaviour linked together by a range of Wobbe indices;
- (10) ‘gas group’ means a specified range of Wobbe index within that of the family concerned;
- (11) ‘Wobbe index’ means an indicator of the interchangeability of fuel gases used to compare the combustion energy output of different composition fuel gases in an appliance;
- (12) ‘appliance category’ means the identification of gas families and/or gas groups that an appliance is designed to burn safely and at the desired performance level, as indicated by the appliance category marking, determined by CEN;
- (13) ‘making available on the market of appliances’ means any supply of appliances for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
- (14) ‘making available on the market of fittings’ means any supply for trade use of fittings for distribution on the Union market in view of incorporation into an appliance or assembled to constitute such an appliance, whether in return for payment or free of charge;
- (15) ‘energy efficiency’ means the ratio of output of performance of an appliance, to input of energy;
- (16) ‘placing on the market’ means the first making available of an appliance or a fitting on the Union market;
- (17) ‘putting into service’ means the first use of an appliance or its first use for the manufacturer’s own purposes;
- (18) ‘manufacturer’ means any natural or legal person who manufactures an appliance or a fitting or who has such an appliance or fitting designed or manufactured, and markets that product under his name or trademark;
- (19) ‘authorised representative’ means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks;
- (20) ‘importer’ means any natural or legal person established within the Union who places an appliance or a fitting from a third country on the Union market;
- (21) ‘distributor’ means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes an appliance or a fitting available on the market;
- (22) ‘economic operators’ means the manufacturer, the authorised representative, the importer and the distributor;
- (23) ‘technical specification’ means a document that prescribes technical requirements to be fulfilled by an appliance or a fitting;
- (24) ‘harmonised standard’ means harmonised standard as defined in Article 2(1)(c) of Regulation (EU) No 1025/2012;

- (25) ‘accreditation’ means accreditation as defined in Article 2(10) of Regulation (EC) No 765/2008;
- (26) ‘national accreditation body’ means national accreditation body as defined in Article 2(11) of Regulation (EC) No 765/2008;
- (27) ‘conformity assessment’ means the process demonstrating whether the essential requirements of this Regulation relating to an appliance or a fitting have been fulfilled;
- (28) ‘conformity assessment body’ means a body that performs conformity assessment activities including calibration, testing, certification and inspection;
- (29) ‘recall’ means any measure aimed at achieving the return of an appliance that has already been made available to the end-user;
- (30) ‘withdrawal’ means any measure aimed at preventing an appliance or a fitting in the supply chain from being made available on the market;
- (31) ‘CE marking’ means a marking by which the manufacturer indicates that the appliance is in conformity with the applicable requirements set out in Union harmonisation legislation providing for its affixing;
- (32) ‘Union harmonisation legislation’ means any Union legislation harmonising the conditions for the marketing of products.

### *Article 3*

#### **Making available on the market and putting into service**

- (1) Member States shall take all appropriate measures to ensure that appliances may be made available on the market and put into service only if they satisfy the requirements of this Regulation.
- (2) Member States shall take all appropriate measures to ensure that fittings may be made available on the market only if they satisfy the requirements of this Regulation.
- (3) This Regulation shall not affect Member States’ entitlement to lay the requirements which they may deem necessary to ensure that persons, domestic animals and property are protected during the normal use of the appliances, provided that this does not mean modifications to such appliances.

### *Article 4*

#### **Gas supply conditions**

- (1) Member States shall communicate to Commission and the other Member States, the types of gas and corresponding supply pressures of gaseous fuels used on their territory and in good time any changes thereof, in accordance with the requirements set out in Annex II.
- (2) The Commission shall ensure that this information is published in the *Official Journal of the European Union*.

## *Article 5*

### **Essential requirements**

Appliances and fittings shall comply with the essential requirements which apply to them set out in Annex I.

## *Article 6*

### **Free movement**

- (1) Member States shall not, on grounds relating to the aspects covered by this Regulation, prohibit, restrict or impede the making available on the market and the putting into service of appliances which comply with this Regulation.
- (2) Member States shall not, on grounds relating to the risks covered by this Regulation, prohibit, restrict or impede the making available on the market of fittings which comply with this Regulation.
- (3) This Regulation shall not affect the obligation for Member States to provide for measures with respect to the promotion of the use of energy from renewable sources and to the energy efficiency of buildings, in accordance with Directives 2009/28/EC, 2010/31/EU and 2012/27/EU. Such measures shall be compatible with the Treaty.

## **CHAPTER II** **OBLIGATIONS OF ECONOMIC OPERATORS**

### *Article 7 [Article R2 of Decision No 768/2008/EC]*

#### **Obligations of manufacturers**

- (1) When placing their appliances or fittings on the market, manufacturers shall ensure that they have been designed and manufactured in accordance with the essential requirements set out in Annex I.
- (2) Manufacturers of appliances or fittings shall draw up the technical documentation referred to in Annex III and carry out the relevant conformity assessment procedure referred to in Article 14 or have it carried out.  
Where compliance of an appliance with the applicable requirements has been demonstrated by the procedure referred to in the first subparagraph, manufacturers shall draw up an EU declaration of conformity and affix the CE marking.  
Where compliance of a fitting with the applicable requirements has been demonstrated by the procedure referred to in the first subparagraph, manufacturers shall draw up a Fitting conformity certificate.
- (3) Manufacturers shall keep the technical documentation and the EU declaration of conformity for 10 years after the appliance has been placed on the market.  
Manufacturers shall keep the technical documentation and the Fitting conformity certificate for 10 years after the fitting has been placed on the market.

- (4) Manufacturers shall ensure that procedures are in place for series production to remain in conformity. Changes in appliance or fitting design or characteristics and changes in the harmonised standards or in other technical specifications by reference to which the conformity of the appliance or the fitting is declared shall be adequately taken into account.
- When deemed appropriate with regard to the risks presented by an appliance or a fitting, manufacturers shall, to protect the health and safety of consumers and other end-users, carry out sample testing of the appliance made available on the market, investigate, and, if necessary, keep a register of complaints of non-conforming appliances and fittings, and recalls of such appliances, and shall keep distributors informed of any such monitoring.
- (5) Manufacturers shall ensure that their appliances or fittings bear a type, batch or serial number or other element allowing their identification.
- Where the size or nature of the appliance or the fitting does not allow it, manufacturers shall ensure that the required information is provided on the packaging.
- (6) Manufacturers shall indicate their name, registered trade name or registered trade mark, the postal address at which they can be contacted on the appliance or, where that is not possible, on the packaging and in the instructions accompanying the appliance. The address must indicate a single point at which the manufacturer can be contacted. The contact details shall be in a language easily understood by consumers and other users and the market surveillance authorities as determined by the Member State concerned.
- Manufacturers shall indicate their name, registered trade name or registered trade mark, the postal address at which they can be contacted on the fitting or, where that is not possible, on the packaging and in the instructions accompanying the fitting. The address must indicate a single point at which the manufacturer can be contacted.
- (7) Manufacturers shall ensure that the appliance is accompanied by instructions and safety information in accordance with point 1.5 of Annex I, in a language which can be easily understood by consumers and other end-users, as determined by the Member State concerned. Such instructions and safety information shall be clear, understandable and intelligible.
- Manufacturers shall ensure that the fitting is accompanied by the Fitting conformity certificate containing, amongst others, instructions for incorporation or assembly, adjustment, operation and maintenance in accordance with point 1.7 of Annex I, in a language which can be easily understood by appliance manufacturers. The instructions shall be clear, understandable and intelligible.
- (8) Manufacturers who consider or have reason to believe that the an appliance or a fitting which they have placed on the market is not in conformity with this Regulation shall immediately take the necessary corrective measures necessary to bring that appliance or fitting into conformity, to withdraw it or recall it, as appropriate. Furthermore, where the appliance or the fitting presents a risk, manufacturers shall immediately inform the competent national authorities of the Member States in which they made the appliance or the fitting available on the market to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

- (9) Manufacturers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of the appliance or the fitting with this Regulation, in a language which can be easily understood by that authority. That information and documentation may be provided in paper or electronic form. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by the appliances or fittings which they have placed on the market.

*Article 8 [Article R3 of Decision No 768/2008/EC]*

**Authorised representatives**

- (1) A manufacturer may, by a written mandate, appoint an authorised representative. The obligations laid down in Article 7(1) and the drawing up of technical documentation shall not form part of the authorised representative's mandate.
- (2) An authorised representative shall perform the tasks specified in the mandate received from the manufacturer. The mandate shall allow the authorised representative to do at least the following:
- (a) keep the EU declaration of conformity and the technical documentation at the disposal of national surveillance authorities for 10 years after the appliance has been placed on the market;
  - (b) keep the Fitting conformity certificate and the technical documentation at the disposal of national surveillance authorities for 10 years after the fitting has been placed on the market;
  - (c) further to a reasoned request from a competent national authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of the appliance or fitting;
  - (d) cooperate with the competent national authorities, at their request, on any action taken to eliminate the risks posed by appliances or fittings covered by the authorised representative's mandate.

*Article 9 [Article R4 of Decision No 768/2008/EC]*

**Obligations of importers**

- (1) Importers shall place only compliant appliances or fittings on the market.
- (2) Before placing an appliance on the market, importers shall ensure that the appropriate conformity assessment procedure in accordance with Article 14 has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation, that the appliance bears the CE marking and is accompanied by instructions and safety information in accordance with point 1.5 of Annex I, and that the manufacturer has complied with the requirements set out in Article 7(5) and (6) respectively.

Before placing a fitting on the market, importers shall ensure that the appropriate conformity assessment procedure in accordance with Article 14 has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation, that the fitting is accompanied by the Fitting conformity

certificate containing, amongst others, instructions for incorporation or assembly, adjustment, operation and maintenance in accordance with point 1.7 of Annex I, and that the manufacturer has complied with the requirements set out in Article 7(5) and (6) respectively.

Where an importer considers or has reason to believe that an appliance or a fitting is not in conformity with the essential requirements set out in Annex I, he shall not place the appliance or the fitting on the market until it has been brought into conformity. Furthermore, where the appliance or the fitting presents a risk, the importer shall inform the manufacturer and the market surveillance authorities to that effect.

- (3) Importers shall indicate their name, registered trade name or registered trade mark and the postal address at which they can be contacted on the appliance or where that is not possible, on its packaging and in the instructions accompanying the appliance. The contact details shall be in a language easily understood by consumers and other end-users and of the market surveillance authorities as determined by the Member State concerned.  
Importers shall indicate their name, registered trade name or registered trade mark and the postal address at which they can be contacted on the fitting or where that is not possible, on its packaging. The contact details shall be in a language easily understood by appliance manufacturers and the market surveillance authorities as determined by the Member State concerned.
- (4) Importers shall ensure that the appliance is accompanied by instructions and safety information in accordance with point 1.5 of Annex I, in a language which can be easily understood by consumers and other end-users, as determined by the Member State concerned.
- Importers shall ensure that the fitting is accompanied by the Fitting conformity certificate containing, amongst others, instructions for incorporation or assembly, adjustment, operation and maintenance in accordance with point 1.7 of Annex I, in a language which can be easily understood by appliance manufacturers, as determined by the Member State concerned.
- (5) Importers shall ensure that, while an appliance or a fitting is under their responsibility, storage or transport conditions do not jeopardise their compliance with the requirements set out in Annex I.
- (6) When deemed appropriate with regard to the risks presented by an appliance or a fitting, importers shall, to protect the health and safety of the users, upon a duly justified request of the competent authorities, carry out sample testing of appliances or fittings made available on the market, investigate, and, if necessary, keep a register of complaints of nonconforming appliances or fittings and recalls of such appliances, and shall keep distributors informed of any such monitoring.
- (7) Importers who consider or have reason to believe that an appliance or a fitting which they have placed on the market is not in conformity with this Regulation shall immediately take the corrective measures necessary to bring that appliance or the fitting into conformity, to withdraw it or recall it, if appropriate. Furthermore, where the appliance or the fitting presents a risk, importers shall immediately inform the competent national authorities of the Member States in which they made the appliance or the fitting available on the market to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

- (8) Importers shall, for 10 years after the appliance has been placed on the market, keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request.
- Importers shall, for 10 years after the fitting has been placed on the market, keep a copy of the Fitting conformity certificate at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request.
- (9) Importers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of an appliance or a fitting in a language which can be easily understood by that authority. That information and documentation may be provided in paper or electronic form. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by appliances or fittings which they have placed on the market.

*Article 10 [Article R5 of Decision No 768/2008/EC]*

**Obligations of distributors**

- (1) When making an appliance or fitting available on the market distributors shall act with due care in relation to the requirements of this Regulation.
- (2) Before making an appliance available on the market distributors shall verify that the appliance bears the CE marking and it is accompanied by instructions and safety information in accordance with point 1.5 of Annex I, in a language which can be easily understood by consumers and other end-users as determined by the Member State in which the appliance is to be made available on the market, and that the manufacturer and the importer have complied with the requirements set out in Article 7(5) and (6) and Article 9(3) respectively.

Before making a fitting available on the market distributors shall verify that the fitting is accompanied by the Fitting conformity certificate containing, amongst others, instructions for incorporation or assembly, adjustment, operation and maintenance in accordance with point 1.7 of Annex I, in a language which can be easily understood by appliance manufacturers, and that the manufacturer and the importer have complied with the requirements set out in Article 7(5) and (6) and Article 9(3) respectively.

Where a distributor considers or has reason to believe that an appliance or a fitting is not in conformity with the essential requirements set out in Annex I, he shall not make the appliance or the fitting available on the market until it has been brought into conformity. Furthermore, where the appliance or the fitting presents a risk, the distributor shall inform the manufacturer or the importer to that effect as well as the market surveillance authorities.

- (3) Distributors shall ensure that, while an appliance or a fitting is under their responsibility, storage or transport conditions do not jeopardise their/its compliance with the essential requirements set out in Annex I.
- (4) Distributors who consider or have reason to believe that an appliance or a fitting which they have made available on the market is not in conformity with this

Regulation shall make sure that the corrective measures necessary to bring that appliance into conformity, to withdraw it or recall it, if appropriate, are taken. Furthermore, where the appliance presents a risk, distributors shall immediately inform the competent national authorities of the Member States in which they made the appliance available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

- (5) Distributors shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of an appliance or a fitting. That information and documentation may be provided in paper or electronic form. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by the appliance or the fitting which they have made available on the market.

*Article 11 [Article R6 of Decision No 768/2008/EC]*

**Cases in which obligations of manufacturers apply to importers and distributors**

An importer or distributor shall be considered a manufacturer for the purposes of this Regulation and he shall be subject to the obligations of the manufacturer under Article 7, where he places an appliance or a fitting on the market under his name or trademark or modifies an appliance or a fitting already placed on the market in such a way that compliance with the requirements of this Regulation may be affected.

*Article 12 [Article R7 of Decision No 768/2008/EC]*

**Identification of economic operators**

Economic operators shall, on request, identify the following to the market surveillance authorities:

- (a) any economic operator who has supplied them with an appliance or a fitting;
- (b) any economic operator to whom they have supplied an appliance or a fitting.

Economic operators shall be able to present the information referred to in the first paragraph for a period of 10 years after they have been supplied with the appliance or the fitting and for a period of 10 years after they have supplied the appliance or the fitting.

**CHAPTER III**  
**CONFORMITY OF APPLIANCES AND FITTINGS**

*Article 13 [Article R8 of Decision No 768/2008/EC]*

**Presumption of conformity of appliances and fittings**

Appliances and fittings which are in conformity with harmonised standards or parts thereof the references of which have been published in the *Official Journal of the European Union* shall be presumed to be in conformity with the essential requirements covered by those standards or parts thereof, referred to in Annex I.

## *Article 14*

### Conformity assessment procedure for appliances and fittings

- (1) Before an appliance or a fitting is placed on the market, the manufacturer shall submit it to a conformity assessment procedure in accordance with paragraphs 2 or 3.
- (2) The conformity of series-manufactured appliances and fittings with the requirements of this Regulation shall be certified through EU-type examination (Module B – production type) referred to in point 1 of Annex III, combined with either of the following conformity assessment procedures, at the choice of the manufacturer:
  - (a) conformity to type based on internal production control plus supervised appliance or fitting checks at random intervals (Module C2), set out in point 2 of Annex III;
  - (b) conformity to type based on quality assurance of the production process (Module D), set out in point 3 of Annex III;
  - (c) conformity to type based on appliance or fitting quality assurance (Module E), set out in point 4 of Annex III;
  - (d) conformity to type based on appliance or fitting verification (Module F), set out in point 5 of Annex III.
- (3) In the case of production of an appliance as a single unit or in small quantities, conformity based on unit verification (Module G), set out in point 6 of Annex III, may be chosen by the manufacturer.
- (4) After completion of the procedures referred to in points (a) to (d) of paragraph 2 or in paragraph 3, the appliance manufacturer shall, in accordance with Article 18, affix the CE marking on the conforming appliance and draw up an EU declaration of conformity.  
After completion of the procedures referred to in points (a) to (d) of paragraph 2, the fitting manufacturer shall issue a Fitting conformity certificate.
- (5) Records and correspondence relating to conformity assessment of an appliance or a fitting, shall be drawn up in the official language(s) of the Member State where the notified body carrying out the procedures referred to in paragraphs 2 and 3 is established or in a language accepted by that body.

## *Article 15*

### **EU declaration of conformity** [Article R10 of Decision No 768/2008/EC]

- (1) The EU declaration of conformity shall state that the fulfilment of essential requirements set out in Annex I has been demonstrated.
- (2) The EU declaration of conformity shall have the model structure set out in Annex V and shall contain the elements specified in the relevant conformity assessment procedures set out in Annex III and shall be continuously updated. It shall be translated into the language or languages required by the Member State in whose market the appliance is placed or made available on the market.
- (3) Where an appliance is subject to more than one Union acts requiring an EU declaration of conformity, a single EU declaration of conformity shall be drawn up in respect of all such Union acts. That declaration shall contain the identification of the acts concerned including the publication references.

- (4) By drawing up the EU declaration of conformity, the manufacturer shall assume responsibility for the compliance of the appliance with the requirements laid down in this Regulation.

*Article 16*

**Fitting conformity certificate**

- (1) The Fitting conformity certificate shall state that the fulfilment of the applicable essential requirements set out in Annex I has been demonstrated.
- (2) The Fitting conformity certificate shall have the model structure set out in Annex VI. In order to assist compliance with the essential requirements applicable to finished appliances set out in Annex I, the Fitting conformity certificate shall state the characteristics of the fitting and it shall contain instructions on how it should be incorporated into an appliance or assembled to constitute such an appliance. It shall contain also the elements specified in the relevant conformity assessment procedures set out in Annex III and shall be continuously updated. It shall be in a language which can be easily understood by appliance manufacturers.
- (3) The Fitting conformity certificate shall be supplied with the fitting.
- (4) Where a fitting is covered by other Union legislation covering other aspects which require the CE marking, the latter shall indicate that the fitting is presumed to conform to the provisions of those other acts. In such a case, the publication reference of the said acts in the Official *Journal of the European Union* shall be given in the documents, notices or instructions required by those acts and accompanying the fitting.
- (5) By drawing up the Fitting conformity certificate, the manufacturer shall assume responsibility for the compliance of the fitting with the requirements laid down in this Regulation.

*Article 17 [Article R11 of Decision No 768/2008/EC]*

**General principles of the CE marking**

The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008.

*Article 18 [Article R12 of Decision No 768/2008/EC]*

**Rules and conditions for affixing the CE marking and inscriptions**

- (1) The CE marking and the inscriptions referred to in Annex IV shall be affixed visibly, legibly and indelibly to the appliance or to its data plate.
- (2) The inscriptions referred to point 2 of Annex IV shall be affixed, visibly, legibly and indelibly to the fitting or to its data plate, as far as relevant.
- (3) The CE marking and/or the inscriptions referred to in Annex IV shall be affixed before the appliance or the fitting is placed on the market.
- (4) The CE marking shall be followed by the identification number of the notified body involved in the production control phase of the appliance.
- (5) The identification number of the notified body involved in the production control phase shall be affixed on the fitting.

- (6) The CE marking and/or the identification number referred to in paragraphs 4 and 5 may be followed by any other mark indicating a special risk or use.

## **CHAPTER IV**

### **NOTIFICATION OF CONFORMITY ASSESSMENT BODIES**

*Article 19 [Article R13 of Decision No 768/2008/EC]*

#### **Notification**

Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party conformity assessment tasks in accordance with Article 14.

*Article 20 [Article R14 of Decision No 768/2008/EC]*

#### **Notifying authorities**

- (1) Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with Article 24.
- (2) Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by a national accreditation body within the meaning of and in accordance with Regulation (EC) No 765/2008.
- (3) Where the notifying authority delegates or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity that body shall be a legal entity and shall comply mutatis mutandis with the requirements laid down in Article 21 (1) to (6). In addition it shall have arrangements to cover liabilities arising out of its activities.
- (4) The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraph 3.

*Article 21 [Article R15 of Decision No 768/2008/EC]*

#### **Requirements relating to notifying authorities**

- (1) A notifying authority shall be established in such a way that no conflict of interest with conformity assessment bodies occurs.
- (2) A notifying authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.
- (3) A notifying authority shall be organised in such a way that each decision relating to notification of a conformity assessment body is taken by competent persons different from those who carried out the assessment.
- (4) A notifying authority shall not offer or provide any activities that conformity assessment bodies perform or consultancy services on a commercial or competitive basis.
- (5) A notifying authority shall safeguard the confidentiality of the information it obtains.
- (6) A notifying authority shall have a sufficient number of competent personnel at its disposal for the proper performance of its tasks.

*Article 22 [Article R16 of Decision No 768/2008/EC]*

**Information obligation of notifying authorities**

Member States shall inform the Commission of their procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, and of any changes thereto.

The Commission shall make that information publicly available.

*Article 23 [Article R17 of Decision No 768/2008/EC]*

**Requirements relating to notified bodies**

(1) For the purposes of notification, a notified body shall meet the requirements laid down in paragraphs 2 to 11.

(2) A conformity assessment body shall be established under national law of a Member State and have legal personality.

(3) A conformity assessment body shall be a third-party body independent of the organisation or the appliance or the fitting it assesses.

A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of appliances or fittings which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such a body.

(4) A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the appliances or the fittings which they assess, nor the representative of any of those parties. This shall not preclude the use of assessed appliances or fittings that are necessary for the operations of the conformity assessment body or the use of such appliances or fittings for personal purposes.

A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those appliances or fittings, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall in particular apply to consultancy services.

Conformity assessment bodies shall ensure that the activities of their subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

(5) Conformity assessment bodies and their personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.

(6) A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it by Annex II and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

At all times and for each conformity assessment procedure and each kind or category of appliances or fittings in relation to which it has been notified, a conformity assessment body shall have at its disposal the necessary:

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment tasks;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency and the ability of reproduction of those procedures. It shall have appropriate policies and procedures in place that distinguish between tasks it carries out as a notified body and other activities;
- (c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the appliance or fitting technology in question and the mass or serial nature of the production process.

A conformity assessment body shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and shall have access to all necessary equipment or facilities.

(7) The personnel responsible for carrying out conformity assessment activities shall have the following:

- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
- (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments;
- (c) appropriate knowledge and understanding of the essential requirements set out in Annex I, of the applicable harmonised standards and of the relevant provisions of Union harmonisation legislation and of national legislation;
- (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

(8) The impartiality of the conformity assessment bodies, their top level management and of the personnel responsible for carrying out the conformity assessment tasks shall be guaranteed.

The remuneration of the top level management and of the personnel responsible for carrying out the conformity assessment tasks of a conformity assessment body shall not depend on the number of assessments carried out or on the results of those assessments.

(9) Conformity assessment bodies shall take out liability insurance unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the conformity assessment.

- (10) The personnel of a conformity assessment body shall observe professional secrecy with regard to all information obtained in carrying out their tasks under Annex III or any provision of national law giving effect to them, except in relation to the competent authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.
- (11) Conformity assessment bodies shall participate in, or ensure that their personnel responsible for carrying out the conformity assessment tasks are informed of, the relevant standardisation activities and the activities of the notified body coordination group established under the relevant Union harmonisation legislation and shall apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

*Article 24 [Article R18 of Decision No 768/2008/EC]*

### **Presumption of conformity of notified bodies**

Where a conformity assessment body demonstrates its conformity with the criteria laid down in the relevant harmonised standards or parts thereof the references of which have been published in the *Official Journal of the European Union* it shall be presumed to comply with the requirements set out in Article 23 in so far as the applicable harmonised standards cover those requirements.

*Article 25 [Article R20 of Decision No 768/2008/EC]*

### **Subsidiaries of and subcontracting by notified bodies**

- (1) Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Article 23 and shall inform the notifying authority accordingly.
- (2) Notified bodies shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established.
- (3) Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.
- (4) Notified bodies shall keep at the disposal of the notifying authority the relevant documents concerning the assessment of the qualifications of the subcontractor or the subsidiary and the work carried out by them under Annex III.

*Article 26 [Article R22 of Decision No 768/2008/EC]*

### **Application for notification**

- (1) A conformity assessment body shall submit an application for notification to the notifying authority of the Member State in which it is established.
- (2) The application for notification shall be accompanied by a description of the conformity assessment activities, the conformity assessment module or modules and the appliance/fitting or appliances/fittings for which that body claims to be competent, as well as by an accreditation certificate, where one exists, issued by a national accreditation body attesting that the conformity assessment body fulfils the requirements laid down in Article 23.

- (3) Where the conformity assessment body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all the documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Article 23.

*Article 27 [Article R23 of Decision No 768/2008/EC]*

**Notification procedure**

- (1) Notifying authorities may notify only conformity assessment bodies which have satisfied the requirements laid down in Article 23.
- (2) They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.
- (3) The notification shall include full details of the conformity assessment activities, the conformity assessment module or modules and the appliance/fitting or appliances/fittings concerned and the relevant attestation of competence.
- (4) Where a notification is not based on an accreditation certificate as referred to in Article 26(2), the notifying authority shall provide the Commission and the other Member States with documentary evidence which attests to the conformity assessment body's competence and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Article 23.
- (5) The body concerned may perform the activities of a notified body only where no objections are raised by the Commission or the other Member States within two weeks of a notification where an accreditation certificate is used or within two months of a notification where accreditation is not used.  
Only such a body shall be considered a notified body for the purposes of this Regulation.
- (6) The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification.

*Article 28 [Article R24 of Decision No 768/2008/EC]*

**Identification numbers and lists of notified bodies**

- (1) The Commission shall assign an identification number to a notified body.  
It shall assign a single such number even where the body is notified under several Union acts.
- (2) The Commission shall make publicly available the list of the notified bodies under this Regulation, including the identification numbers that have been allocated to them and the activities for which they have been notified.  
The Commission shall ensure that that list is kept up to date.

*Article 29 [Article R25 of Decision No 768/2008/EC]*

**Changes to notifications**

- (1) Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 23 or that it is failing to fulfil

its obligations, the notifying authority shall, as appropriate, restrict, suspend or withdraw the notification, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall immediately inform the Commission and the other Member States accordingly.

- (2) In the event of restriction, suspension or withdrawal of notification, or where the notified body has ceased its activity, the notifying Member State shall take appropriate steps to ensure that the files of that body are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request.

*Article 30 [Article R26 of Decision No 768/2008/EC]*

**Challenge of the competence of notified bodies**

- (1) The Commission shall investigate all cases where it doubts, or doubt is brought to its attention regarding, the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject.
- (2) The notifying Member State shall provide the Commission, on request, with all information relating to the basis for the notification or the maintenance of the competence of the notified body concerned.
- (3) The Commission shall ensure that all sensitive information obtained in the course of its investigations is treated confidentially.
- (4) Where the Commission ascertains that a notified body does not meet or no longer meets the requirements for its notification, it shall adopt an implementing act requesting the notifying Member State to take the necessary corrective measures, including withdrawal of notification if necessary.

The implementing act referred to in the first subparagraph shall be adopted in accordance with the advisory procedure referred to in Article 36(2).

*Article 31 [Article R27 of Decision No 768/2008/EC]*

**Operational obligations of notified bodies**

- (1) Notified bodies shall carry out conformity assessments in accordance with the conformity assessment procedures provided for in Annex III.
- (2) Conformity assessments shall be carried out in a proportionate manner, avoiding unnecessary burdens for economic operators.

Conformity assessment bodies shall perform their activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the appliance or fitting technology in question and the mass or serial nature of the production process.

In so doing they shall nevertheless respect the degree of rigour and the level of protection required for the compliance of the appliance or the fitting with the provisions of this Regulation.

- (3) Where a notified body finds that essential requirements set out in Annex I or corresponding harmonised standards or other technical specifications have not been met by a manufacturer, it shall require that manufacturer to take appropriate corrective measures and shall not issue a conformity certificate.

- (4) Where, in the course of the monitoring of conformity following the issue of a certificate, a notified body finds that an appliance or a fitting no longer complies, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw the certificate if necessary.
- (5) Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates, as appropriate.

*Article 32*

**Appeal against decisions of notified bodies**

Member States shall ensure that an appeal procedure against decisions of notified bodies is available.

*Article 33 [Article R28 of Decision No 768/2008/EC]*

**Information obligation of notified bodies**

- (1) Notified bodies shall inform the notifying authority of the following:
  - (a) any refusal, restriction, suspension or withdrawal of a certificate;
  - (b) any circumstances affecting the scope of or the conditions for notification;
  - (c) any request for information which they have received from market surveillance authorities regarding conformity assessment activities;
  - (d) on request, conformity assessment activities performed within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.
- (2) Notified bodies shall provide the other bodies notified under this Regulation carrying out similar conformity assessment activities covering the same appliances or fittings with relevant information on issues relating to negative and, on request, positive conformity assessment results.

*Article 34 [Article R29 of Decision No 768/2008/EC]*

**Exchange of experience**

The Commission shall provide for the organisation of exchange of experience between the Member States' national authorities responsible for notification policy.

*Article 35 [Article R30 of Decision No 768/2008/EC]*

**Coordination of notified bodies**

The Commission shall ensure that appropriate coordination and cooperation between bodies notified under this Regulation are put in place and properly operated in the form of a sectoral group or groups of notified bodies.

Member States shall ensure that the bodies notified by them participate in the work of that or those group or groups, directly or by means of designated representatives.

## **CHAPTER V**

### **COMMITTEE PROCEDURE**

#### *Article 36*

##### **Committee procedure**

- (1) The Commission shall be assisted by the Committee on appliances burning gaseous fuels. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
- (2) Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

#### *Article 37*

##### **Amendment of Annexes**

The Commission shall be empowered to adopt delegated acts in accordance with Article 38 concerning modifications to the content and the form of the communications of the Member States of the gas supply conditions used in their territory, set out in Annex II, in order to take into account the technical developments with regard to the gas supply conditions.

#### *Article 38*

##### **Exercise of the delegation**

- (1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
- (2) The delegation of power referred to in Article 37 shall be conferred for an indeterminate period of time.
- (3) The delegation of powers referred to in Article 37 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
- (4) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
- (5) A delegated act adopted pursuant to Article 37 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

## **CHAPTER VI**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### *Article 39*

##### **Penalties**

The Member States shall lay down the rules on penalties applicable to infringements by economic operators of this Regulation and shall take all measures necessary to ensure that they are enforced. Such rules may include criminal penalties for serious infringements.

The penalties provided for shall be effective, proportionate and dissuasive.

The Member States shall notify those provisions to the Commission by [*3 months prior to the date of application of this Regulation*] and shall notify it without delay of any subsequent amendment affecting them.

#### *Article 40*

##### **Transitional provisions**

- (1) Member States shall not impede the making available on the market or the putting into service of appliances covered by Directive 2009/142/EC which are in conformity with that Directive and which were placed on the market before [*the date referred to in Article 42(2)*].
- (2) Member States shall not impede the making available on the market of fittings covered by Directive 2009/142/EC which are in conformity with that Directive and which were placed on the market before [*the date referred to in Article 42(2)*].

#### *Article 41*

##### **Repeal**

Directive 2009/142/EC is repealed from [*the date referred to in Article 42(2)*].

References to the repealed Directive shall be construed as references to this Regulation and shall be read with in accordance with the correlation table laid down in Annex VII.

*Article 42*

**Entry into force and date of application**

- (1) This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
- (2) It shall apply from [two years after entry into force].
- (3) By way of derogation from paragraph 2, Articles 19 to 35 shall apply from [*six months after entry into force*].

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*