

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 (recast) (Text with EEA relevance)

Article 7

Safeguard clause

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

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

Where non-compliance continues, the Member State shall take a decision restricting or prohibiting the placing on the market and/or putting into service of the product in question or ensure that it is withdrawn from the market.

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

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

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

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

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

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

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

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

5 Where the decision referred to in paragraph 1 of this Article is based on a shortcoming in a harmonised standard, the Commission shall immediately initiate the procedure set out in

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Article 10(2), (3) and (4). The Commission shall at the same time inform the Committee referred to in Article 19(1).

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

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

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