

Directive 2009/142/EC of the European Parliament and of the Council of 30 November 2009 relating to appliances burning gaseous fuels (codified version) (Text with EEA relevance)

DIRECTIVE 2009/142/EC OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

of 30 November 2009

relating to appliances burning gaseous fuels

(codified version)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(2)</sup>,

Whereas:

- (1) Council Directive 90/396/EEC of 29 June 1990 on the approximation of the laws of the Member States relating to appliances burning gaseous fuels<sup>(3)</sup> has been substantially amended<sup>(4)</sup>. In the interests of clarity and rationality the said Directive should be codified.
- (2) Member States are responsible for ensuring the health and safety on their territory of their people and, where appropriate, of domestic animals and goods in relation to the hazards arising out of the use of appliances burning gaseous fuels.
- (3) In certain Member States, mandatory provisions define in particular the safety level required of appliances burning gaseous fuels by specifying design, operating characteristics and inspection procedures. These mandatory provisions do not necessarily lead to different safety levels from one Member State to another but do, by their disparity, hinder trade within the Community.
- (4) Different conditions as regards types of gas and supply pressures are in force in the Member States. These conditions are not harmonised because each Member State's energy supply and distribution situation is peculiar to it.
- (5) Community law provides - by way of derogation from one of the fundamental rules of the Community, namely the free movement of goods - that obstacles to movement within the Community resulting from disparities in national legislation relating to the marketing of products must be accepted in so far as such obstacles can be recognised

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as being necessary to satisfy mandatory requirements. Therefore, the harmonisation of legislation in the present case should be limited to the provisions necessary to satisfy both the mandatory and essential requirements regarding safety, health and energy conservation in relation to gas appliances. These requirements should replace the national provisions in this matter because they are essential requirements.

- (6) The maintenance or improvement of the level of safety attained in Member States constitutes one of the essential aims of this Directive and of safety as defined by the essential requirements.
- (7) The essential safety and health requirements should be observed in order to ensure that appliances burning gaseous fuels are safe. Energy conservation is considered essential. These requirements should be applied with discernment to take account of the state of the art at the time of construction.
- (8) This Directive should therefore only contain essential requirements. To facilitate proof of conformity with the essential requirements, it is necessary to have harmonised standards at Community level in particular as to the construction, operation and installation of appliances burning gaseous fuels so that products complying with them may be assumed to conform to the essential requirements. These standards, harmonised at Community level, are drawn up by private bodies and must remain non-mandatory texts. For that purpose the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (Cenelec) and the European Telecommunications Standards Institute (ETSI) are recognised as the competent bodies for the adoption of harmonised standards in accordance with the general guidelines for cooperation between the Commission, the European Free Trade Association (EFTA) and those three bodies signed on 28 March 2003<sup>(5)</sup>. ‘Harmonised standard’ means a technical specification (European standard or harmonisation document) adopted by CEN, Cenelec or ETSI or by two or three of those bodies upon a remit from the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services<sup>(6)</sup> and the above mentioned general guidelines for cooperation.
- (9) The Council has adopted a series of Directives designed to remove technical barriers to trade in accordance with the principles established in Resolution of 7 May 1985 on a new approach to technical harmonisation and standards<sup>(7)</sup>; each of these Directives provides for the affixing of the CE marking. The Commission, in its Communication of 15 June 1989 on a global approach to certification and testing<sup>(8)</sup>, proposed that common rules be drawn up concerning a CE marking with a single design. The Council, in its Resolution of 21 December 1989 on a global approach to conformity assessment<sup>(9)</sup>, approved as a guiding principle the adoption of a consistent approach such as this with regard to the use of the CE marking. The two basic elements of the new approach which should be applied are the essential requirements and the conformity assessment procedures.
- (10) A check on compliance with the relevant technical requirements is necessary in order to provide effective protection for users and third parties. The existing certification

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procedures differ from one Member State to another. In order to avoid multiple inspections, which are in effect barriers to the free movement of appliances burning gaseous fuels, arrangements should be made for the mutual recognition of certification procedures by the Member States. In order to facilitate mutual recognition of certification procedures, harmonised Community procedures and the criteria for appointing the bodies responsible for carrying out these procedures should be set up.

- (11) The Member States' responsibility on their territory for safety, health and energy conservation covered by the essential requirements should be recognised in a safeguard clause providing for an adequate Community procedure.
- (12) The addressees of any decision taken under this Directive should be informed of the reasons for such a decision and the legal remedies available to them.
- (13) This Directive is without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives in Annex VI, Part B,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 151, 17.6.2008, p. 12.](#)
- (2) Opinion of the European Parliament of 20 October 2009 (not yet published in the Official Journal) and Council Decision of 26 November 2009.
- (3) [OJ L 196, 26.7.1990, p. 15.](#)
- (4) See Annex VI, Part A.
- (5) [OJ C 91, 16.4.2003, p. 7.](#)
- (6) [OJ L 204, 21.7.1998, p. 37.](#)
- (7) [OJ C 136, 4.6.1985, p. 1.](#)
- (8) [OJ C 231, 8.9.1989, p. 3](#) and [OJ C 267, 19.10.1989, p. 3.](#)
- (9) [OJ C 10, 16.1.1990, p. 1.](#)