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## COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	30 November 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 30.11.2016 amending Delegated Regulations (EU) No 1059/2010, (EU) No 1060/2010, (EU) No 1061/2010, (EU) No 1062/2010, (EU) No 626/2011, (EU) No 392/2012, (EU) No 874/2012, (EU) No 665/2013, (EU) No 811/2013, (EU) No 812/2013, (EU) No 65/2014, (EU) No 1254/2014, (EU) 2015/1094, (EU) 2015/1186 and (EU) 2015/1187 with regard to the use of tolerances in verification procedures

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Delegations will find attached document C(2016) 7765 final.

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Encl.: C(2016) 7765 final



Brussels, 30.11.2016  
C(2016) 7765 final

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

**of 30.11.2016**

**amending Delegated Regulations (EU) No 1059/2010, (EU) No 1060/2010, (EU) No 1061/2010, (EU) No 1062/2010, (EU) No 626/2011, (EU) No 392/2012, (EU) No 874/2012, (EU) No 665/2013, (EU) No 811/2013, (EU) No 812/2013, (EU) No 65/2014, (EU) No 1254/2014, (EU) 2015/1094, (EU) 2015/1186 and (EU) 2015/1187 with regard to the use of tolerances in verification procedures**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

#### **Background**

EU legislation on the energy efficiency of products provides for the following energy efficiency requirements to be set: 1. minimum energy efficiency requirements for placing products on the market under the Ecodesign Directive (Directive 2009/125/EC of the European Parliament and of the Council); and 2. defined performance levels that have to be achieved for products to be classified in a particular energy class on an A to G (or A+++ to D) scale under the Energy Labelling Directive (Directive 2010/30/EU of the European Parliament and of the Council). The two Directives are implemented based on the ‘new approach’ principle, meaning that suppliers (manufacturers and importers) have to test their own products to make sure they comply with the requirements set out in implementing measures (in the case of ecodesign) or in delegated acts (in the case of energy labelling). Suppliers include these test results in a ‘self-declaration’ of compliance, which is a requisite to be allowed to display the CE marking (indicating conformity). As a rule, they do not need to have their products tested by third parties before placing them on the market, but they must, on request, provide the technical documentation for those products.

It is the Member States’ duty to check whether suppliers comply with the requirements set out in the Energy Labelling and Ecodesign regulations. Member States therefore carry out market surveillance in the form of spot-checks on the products placed on the market, and test products’ performance against the values declared by suppliers. There are, however, inevitable differences in the measurement equipment used by suppliers and by surveillance authorities across the EU. A good measurement is meaningless without knowing the quantification of the doubt about the measurement result (uncertainty). Tolerance is the acceptable uncertainty. A certain degree of variation in the measured values therefore has to be tolerated, in order to account for the differences in measurement equipment. The level of variation allowed (i.e. the tolerance) differs according to the product and parameter being measured, and is set on the basis of careful consideration by technical experts. In view of this, the product-specific Ecodesign and Energy Labelling regulations always contain an annex indicating the tolerated level of variation for each measured parameter, and the procedure that Member State market surveillance authorities must follow to decide whether or not a product complies with the implementing or delegated act.

The measured value recorded is sometimes the average of several measured results, or is calculated from measurement results in another way.

#### **Closing an unintended loophole**

Member State authorities have identified cases where manufacturers have systematically used the tolerances – intended to apply only to the verification procedure – to make it appear that their products perform better than is actually indicated by their measured performance.

The following forms of misuse have been observed in the application of both Ecodesign and on Energy Labelling regulations:

1. The manufacturer declares more favourable values in the technical documentation file than were actually measured to comply with ecodesign requirements, reach a higher energy efficiency class, or suggest better performance.

*Example* If measuring the product's performance as being value X would lead to the product being classified in class B, but a value of X-7 % would lead to a classification in class A, the manufacturer declares the value X-7 % in the technical documentation file and the product is labelled as being class A. If the verification tolerance is 15 %, there is little chance of market surveillance finding this product non-compliant in a single surveillance action (although repeated surveillance actions may eventually uncover a deliberate understatement).

2. The values declared by the manufacturer in the technical documentation file should have led to non-compliance or to a lower energy efficiency class. Nevertheless, the manufacturer placed the product on the market with a declaration of conformity or with a higher energy efficiency class, as the declared values were within the verification tolerance from the limit value.

*Example* The limit imposed by an ecodesign requirement is X. The corresponding value declared by the manufacturer in the technical documentation file is X-7 %, meaning the product is non-compliant. The product is still placed on the market with a CE marking, as the manufacturer believes this is authorised since X-7 % is still within the tolerance allowed for verification (X-15 %).

3. In the label and product fiche as required by an Energy Labelling regulation, or in other product information required by an Ecodesign regulation, the manufacturer declared values that were more favourable than those given in the technical documentation file. The difference remained within the verification tolerance.

*Example* The yearly energy consumption stated by the manufacturer in the technical documentation file is X, while the value declared on the energy label is X-5 %. The manufacturer believes this is authorised as X-5 % is within the 10 % verification tolerance for yearly energy consumption.

In all of these cases, it should have been clear that the tolerances provided for in the verification procedures are intended for use only by the market surveillance authorities. Their sole purpose is to allow for unavoidable differences in calibration between the measuring equipment used by the authorities and that used by manufacturers. Having no margin of tolerance could unduly penalise some manufacturers. The tolerances are not, however, intended to give manufacturers any margin for manipulating or misrepresenting the results of the measurements they carried out on their own products.

These forms of misuse lead to the placing on the market of products that: 1. do not fulfil the applicable ecodesign requirements; 2. are claimed by manufacturers to belong to higher energy efficiency classes than they should; or 3. are claimed by manufacturers to perform better than they do in reality for certain criteria regulated under ecodesign or energy labelling legislation. This abusive practice (whether intentional or otherwise) threatens to undermine the objectives of the two Directives. These practices also harm honest companies that suffer as a result of unfair competition from suppliers who 'over-declare' the performance of their products instead of improving them so as to reach the required standards.

## 2. CONSULTATIONS AND IMPACT ASSESSMENT PRIOR TO THE ADOPTION OF THE ACT

### Consultation with interested parties

#### Consultation methods, main sectors targeted and general profile of respondents

International and EU stakeholders and Member State experts were consulted in the Ecodesign Consultation Forum, which was established by the Ecodesign Directive. The Forum is composed of experts from the Member States and a balanced representation of stakeholders, namely environmental and consumer NGOs, retailers and manufacturers. In practice, the Consultation Forum is also used for discussing the delegated acts that the Commission is planning introducing under the Energy Labelling Directive. At the Consultation Forum meeting of 20 November 2012, the Commission services presented working documents proposing a revision of the existing Ecodesign and Energy Labelling measures, with the aim to clarify the intended purpose of the verification tolerances. The Commission incorporated the comments from Member States and stakeholders and amended the draft documents before conducting a written consultation within the Forum, which lasted from July to September 2013.

All relevant working documents and studies were circulated to the experts and stakeholders, and published in the Commission's Communication and Information Resource Centre for Administrations, Businesses and Citizens (CIRCABC) system, alongside the comments received from stakeholders in writing.

#### Summary of responses and how they have been taken into account

All Member States, many European industry representatives and consumer and environmental NGOs strongly supported the Commission's intention to prevent such abuse. They also pointed out that this would be essential to maintain the credibility of Energy Labelling and Ecodesign in the eyes of consumers.

The consultation also revealed that the practice of misusing the verification tolerances has been the 'general rule' in the European lighting industry, and is even described in harmonised standards. When a clarification of the use of tolerances was introduced (albeit a less comprehensive measure than the amendment being proposed here) during the general revision of the Lamp Labelling Directive (Commission Directive 98/11/EC, now Commission Delegated Regulation (EU) No 874/2012), lamp suppliers were forced to downgrade most of their halogen lamps from class C to class D. While re-labelling in this way should be encouraged, as it provides consumers with more accurate information, if the Ecodesign regulations on lighting products (Commission Regulations (EC) No 244/2009, (EC) No 245/2009 and (EU) No 1194/2012) were clarified in a similar way, a strict application of the tolerances would lead to certain technologies, most notably some types of mains-voltage halogen bulbs, being banned. By contrast, the intention of the legislators, at the time of drafting the related implementing measure in 2009, was to keep those lamps on the market. This intention was re-confirmed in 2015, when Regulation 244/2009 was amended to allow the continued placing on the market of mains-voltage halogen bulbs until 2018 (instead of 2016). The related annexes to the lighting Ecodesign Regulations should, therefore, instead

be clarified in the ongoing review of the Regulations. If the placing on the market of the concerned lamps is still deemed necessary in the review, the requirement levels can be adjusted, so that the revised regulations imposing a strict application of the verification tolerances do not ban the lamps in practice.

The Commission's investigation has not identified systematic problems in other industry sectors (only anecdotal and inconclusive evidence was found). However, it is appropriate to clarify the purpose of verification tolerances for all regulations so as to provide legal certainty to market surveillance authorities when they act against such misuse. Only in this way can future abuse be prevented and a level playing field guaranteed for all economic actors, while ensuring that the improvement potential of the measures is achieved.

In an effort to fully clarify the purpose of verification tolerances, Member State and industry experts suggested replacing the entire verification annex rather than inserting a clarifying paragraph into the verification annex to each Regulation, as was originally planned.

### International stakeholders

The World Trade Organisation technical barriers to trade (TBT) committee was notified of the proposed measure on 5 February 2016.

### **Impact assessment**

The proposed amendments will not introduce new energy labelling requirements. They are intended to clarify the market surveillance procedure — which is already set out in each Regulation to be amended — with regard to the use of verification tolerances. The proposals will therefore not have any new effect that has not already been approved by the legislators. Instead, by amending the wording of the Regulations, the proposals aim to ensure that they achieve the desired positive effect.

The total amount of energy savings that has been lost as a result of the misuse of verification tolerances is difficult to estimate, as there are no systematic statistics on this form of misuse. Tolerances for certain regulated parameters can, however, be as high as 19 %. The average saving from product efficiency measures is about 35 TWh, meaning that even 5 % of savings lost due to systematic misuse of the tolerances by industry in a particular product group would amount to an average of 1.5 TWh of lost savings in one product group alone. The Ecodesign and Energy Labelling Regulations cover more than 20 product groups.

## **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

### **Summary of the proposed action**

The Commission's proposal is to replace the existing verification annexes to the ecodesign and labelling regulations with new ones. The draft new annexes describe in more detail the verification procedure that Member State authorities should follow. The intended use of the verification tolerances is clarified by requesting that the authorities, when checking that the

product complies with the requirements set out in the Regulation, look for suppliers employing the different forms of misuse of the verification tolerances. If they detect misuse of this type, the authorities must declare the product non-compliant on these grounds. The new annexes integrate the tolerances from the original annexes without modifying the values, as the objective of the clarification exercise is not to revise the individual verification tolerances.

The amendments will take immediate effect when the proposed Delegated Regulation enters into force.

### **Legal basis**

The Delegated Regulation implements the Energy Labelling Directive (Directive 2010/30/EU), in particular Article 10 of this Directive.

### **Subsidiarity principle**

The Regulation is implemented in accordance with Article 10 of Directive 2010/30/EU.

### **Principle of proportionality**

In accordance with the principle of proportionality, the proposed Delegated Regulation does not go beyond what is necessary to achieve its objective.

The form of the implementing measure is a Delegated Regulation, which is directly applicable in all Member States. This ensures that neither national authorities nor the EU institutions will incur any costs in transposing the implementing legislation into national law.

### **Choice of instrument**

Proposed instrument: Delegated Regulation.

The proposed instrument is an amending Commission Delegated Regulation, because only by amending the Commission Delegated Regulations adopted under Directive 2010/30/EU can requirements be fully harmonised throughout the EU (including the date of entry into force). This ensures the free movement of complying products. National administrations will thus not incur any costs for transposing these requirements into national legislation.

## **4. BUDGETARY IMPLICATION**

The proposal has no implications for the EU budget.

## **5. ADDITIONAL INFORMATION**

### **Review/revision/sunset clause**

The proposal does not include a review clause, because the Commission Delegated Regulations to be amended already have review clauses, which remain unchanged.

### **European Economic Area**

The proposed Regulation concerns an EEA matter and should therefore extend to the European Economic Area.



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

of 30.11.2016

**amending Delegated Regulations (EU) No 1059/2010, (EU) No 1060/2010, (EU) No 1061/2010, (EU) No 1062/2010, (EU) No 626/2011, (EU) No 392/2012, (EU) No 874/2012, (EU) No 665/2013, (EU) No 811/2013, (EU) No 812/2013, (EU) No 65/2014, (EU) No 1254/2014, (EU) 2015/1094, (EU) 2015/1186 and (EU) 2015/1187 with regard to the use of tolerances in verification procedures**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products<sup>1</sup>, and in particular Article 10(1) thereof,

Whereas:

- (1) Experience gained in implementing Commission Delegated Regulations adopted on the basis of Directive 2010/30/EU has revealed that the verification tolerances laid down in the delegated acts, and intended for use only by market surveillance authorities, have been used by some suppliers to establish the values required to be provided in the technical documentation or to interpret those values with a view to achieving a better energy labelling classification or to suggest, in other ways, better performance of their products.
- (2) The verification tolerances are designed to allow for variations that emerge in the measurements taken during verification tests, which are due to the differences in the measurement equipment used by suppliers and surveillance authorities across the Union. Verification tolerances should not be used by the supplier for establishing the values in the technical documentation or for interpreting those values in order to achieve a better energy labelling classification or to suggest better performance than has actually been measured and calculated. The parameters declared or published by the supplier should not be more favourable for the supplier than the values contained in the technical documentation.
- (3) To ensure fair competition, to realise the energy savings that the Regulations were designed to achieve, and to provide consumers with accurate information about the

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<sup>1</sup> OJ L 153, 18.6.2010, p. 1.

energy efficiency and functional performance of products, it should be clarified that the verification tolerances set out in the delegated acts may only be used by Member State authorities, for the purpose of verifying compliance.

- (4) Commission Delegated Regulations (EU) No 1059/2010<sup>2</sup>, (EU) No 1060/2010<sup>3</sup>, (EU) No 1061/2010<sup>4</sup>, (EU) No 1062/2010<sup>5</sup>, (EU) No 626/2011<sup>6</sup>, (EU) No 392/2012<sup>7</sup>, (EU) No 874/2012<sup>8</sup>, (EU) No 665/2013<sup>9</sup>, (EU) No 811/2013<sup>10</sup>, (EU) No 812/2013<sup>11</sup>, (EU) No 65/2014<sup>12</sup>, (EU) No 1254/2014<sup>13</sup>, (EU) 2015/1094<sup>14</sup>, (EU) 2015/1186<sup>15</sup> and (EU) 2015/1187<sup>16</sup> should therefore be amended accordingly,

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<sup>2</sup> Commission Delegated Regulation (EU) No 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJ L 314, 30.11.2010, p. 1).

<sup>3</sup> Commission Delegated Regulation (EU) No 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJ L 314, 30.11.2010, p. 17).

<sup>4</sup> Commission Delegated Regulation (EU) No 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJ L 314, 30.11.2010, p. 47).

<sup>5</sup> Commission Delegated Regulation (EU) No 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJ L 314, 30.11.2010, p. 64).

<sup>6</sup> Commission Delegated Regulation (EU) No 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJ L 178, 6.7.2011, p. 1).

<sup>7</sup> Commission Delegated Regulation (EU) No 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household tumble driers (OJ L 123, 9.5.2012, p. 1).

<sup>8</sup> Commission Delegated Regulation (EU) No 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJ L 258, 26.9.2012, p. 1).

<sup>9</sup> Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of vacuum cleaners (OJ L 192, 13.7.2013, p. 1).

<sup>10</sup> Commission Delegated Regulation (EU) No 811/2013 of 18 February 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of space heaters, combination heaters, packages of space heater, temperature control and solar device and packages of combination heater, temperature control and solar device (OJ L 239, 6.9.2013, p. 1).

<sup>11</sup> Commission Delegated Regulation (EU) No 812/2013 of 18 February 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of water heaters, hot water storage tanks and packages of water heater and solar device (OJ L 239, 6.9.2013, p. 83).

<sup>12</sup> Commission Delegated Regulation (EU) No 65/2014 of 1 October 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of domestic ovens and range hoods (OJ L 29, 31.1.2014, p. 1).

<sup>13</sup> Commission Delegated Regulation (EU) No 1254/2014 of 11 July 2014 with regard to energy labelling of residential ventilation units (OJ L 337, 25.11.2014, p. 27).

<sup>14</sup> Commission Delegated Regulation (EU) 2015/1094 of 5 May 2015 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of professional refrigerated storage cabinets (OJ L 177, 8.7.2015, p. 2).

<sup>15</sup> Commission Delegated Regulation (EU) 2015/1186 of 24 April 2015 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of local space heaters (OJ L 193, 21.7.2015, p. 20).

<sup>16</sup> Commission Delegated Regulation (EU) 2015/1187 of 27 April 2015 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of solid fuel boilers and packages of a solid fuel boiler, supplementary heaters, temperature controls and solar devices (OJ L 193, 21.7.2015, p. 43).

HAS ADOPTED THIS REGULATION:

*Article 1*

**Amendments to Delegated Regulation (EU) No 1059/2010**

Annex V to Delegated Regulation (EU) No 1059/2010 is amended in accordance with Annex I to this Delegated Regulation.

*Article 2*

**Amendments to Delegated Regulation (EU) No 1060/2010**

Annex VII to Delegated Regulation (EU) No 1060/2010 is amended in accordance with Annex II to this Delegated Regulation.

*Article 3*

**Amendments to Delegated Regulation (EU) No 1061/2010**

Annex V to Delegated Regulation (EU) No 1061/2010 is amended in accordance with Annex III to this Delegated Regulation.

*Article 4*

**Amendments to Delegated Regulation (EU) No 1062/2010**

Annexes VII and VIII to Delegated Regulation (EU) No 1062/2010 are amended in accordance with Annex IV to this Delegated Regulation.

*Article 5*

**Amendments to Delegated Regulation (EU) No 626/2011**

Annex VIII to Delegated Regulation (EU) No 626/2011 is amended in accordance with Annex V to this Delegated Regulation.

*Article 6*

**Amendments to Delegated Regulation (EU) No 392/2012**

Annex V to Delegated Regulation (EU) No 392/2012 is amended in accordance with Annex VI to this Delegated Regulation.

*Article 7*

**Amendments to Delegated Regulation (EU) No 874/2012**

Annex V to Delegated Regulation (EU) No 874/2012 is amended in accordance with Annex VII to this Delegated Regulation.

*Article 8*  
**Amendments to Delegated Regulation (EU) No 665/2013**

Annex VII to Delegated Regulation (EU) No 665/2013 is amended in accordance with Annex VIII to this Delegated Regulation.

*Article 9*  
**Amendments to Delegated Regulation (EU) No 811/2013**

Annex VIII to Delegated Regulation (EU) No 811/2013 is amended in accordance with Annex IX to this Delegated Regulation.

*Article 10*  
**Amendments to Delegated Regulation (EU) No 812/2013**

Annex IX to Delegated Regulation (EU) No 812/2013 is amended in accordance with Annex X to this Delegated Regulation.

*Article 11*  
**Amendments to Delegated Regulation (EU) No 65/2014**

Annex VIII to Delegated Regulation (EU) No 65/2014 is amended in accordance with Annex XI to this Delegated Regulation.

*Article 12*  
**Amendments to Delegated Regulation (EU) No 1254/2014**

Annex IX to Delegated Regulation (EU) No 1254/2014 is amended in accordance with Annex XII to this Delegated Regulation.

*Article 13*  
**Amendments to Delegated Regulation (EU) 2015/1094**

Annex X to Delegated Regulation (EU) No 2015/1094 is amended in accordance with Annex XIII to this Delegated Regulation.

*Article 14*  
**Amendments to Delegated Regulation (EU) 2015/1186**

Annex IX to Delegated Regulation (EU) No 2015/1186 is amended in accordance with Annex XIV to this Delegated Regulation.

*Article 15*  
**Amendments to Delegated Regulation (EU) 2015/1187**

Annex X to Delegated Regulation (EU) No 2015/1187 is amended in accordance with Annex XV to this Delegated Regulation.

*Article 16*  
**Entry into force**

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

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

Done at Brussels, 30.11.2016

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*