Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC (Text with EEA relevance)

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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[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Directive 2009/142/EC of the European Parliament and of the Council[(3)] lays down rules for the placing on the market and the putting into service of appliances burning gaseous fuels (‘appliances’).

(2) Directive 2009/142/EC is based on the ‘new approach’ principles, as set out in the Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards[(4)]. Thus, it sets out only the essential requirements applying to appliances, 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[(5)]. 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 that sector and should be maintained and even further promoted.

(3) Experience acquired 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 thus ensure legal certainty as regards the definitions relating to its scope, the content of the Member States' communications of the types of gas and corresponding supply pressures used on their territory and certain essential requirements.

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(4) Since the scope, essential requirements and conformity assessment procedures have to 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 thus ensures uniform implementation throughout the Union.

(5) Decision No 768/2008/EC of the European Parliament and of the Council[(6)] lays down common principles and reference provisions intended to apply across sectoral legislation 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[(7)] lays down rules on the accreditation of conformity assessment bodies, provides a framework for the market surveillance of products and for controls on products from third countries, and lays down the general principles of the CE marking.

(7) The scope of this Regulation should reflect the scope of Directive 2009/142/EC. This Regulation should apply to domestic and non-domestic appliances intended for a number of specified applications and to fittings designed to be incorporated into such appliances.

(8) This Regulation covers appliances and fittings which are new to the Union market when they are placed on the market; that is to say, they are either new appliances and fittings made by a manufacturer established in the Union or appliances and fittings, whether new or second-hand, imported from a third country.

(9) Appliances possessing a historic or artistic value within the meaning of Article 36 of the Treaty on the Functioning of the European Union (TFEU) and not put into service, such as antique and other appliances serving exhibition or collection purposes, should not be considered as appliances covered by this Regulation.

(10) This Regulation should apply to all forms of supply, including distance selling.

(11) This Regulation should aim to ensure the functioning of the internal market of appliances and of fittings as regards gas safety risks and energy efficiency.

(12) This Regulation should not apply in respect of aspects covered more specifically by other Union harmonisation legislation. This includes the measures adopted pursuant to Directive 2009/125/EC of the European Parliament and of the Council[(8)].

(13) This Regulation should prevent 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 should not affect the possibility for Member States, when implementing other Union acts, to impose requirements which affect the energy efficiency of products, including appliances, as long as such measures are compatible with the TFEU.

(14) Directive 2009/28/EC of the European Parliament and of the Council[(9)] 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[(10)] 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[(11)] requires Member States to take sufficient measures to progressively reduce energy consumption in different areas, including in buildings.

(15) This Regulation should not affect the obligation for Member States to adopt 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 those Directives that national measures may in certain circumstances limit the installation of appliances which comply with the rational use of energy requirement of this Regulation, provided that such measures do not constitute an unjustifiable market barrier.

(16) Member States should take the necessary steps to ensure that appliances are made available on the market and put into service only where they do not compromise the health and safety of persons, domestic animals or property, when normally used.

(17) This Regulation should not affect the Member States' entitlement to lay down rules concerning commissioning or periodic inspections of appliances or other measures such as installer training or certification, in order to ensure the correct installation, use and maintenance of appliances, including precautionary safety measures. Those rules and measures are essential in preventing gas poisoning, including from carbon monoxide (CO), and the leakage of any substances harmful to health and safety.

(18) This Regulation should not affect the Member States' entitlement to lay down requirements as they may deem necessary concerning installation aspects, space ventilation conditions and aspects relating to the safety of the building itself and its energy performance, provided that those requirements do not impose design requirements on appliances.

(19) As this Regulation does not cover risks caused by appliances in the case of incorrect installation, maintenance or use, Member States should be encouraged to take measures to ensure that the public is made aware of the health and safety risks related to combustion products and the need for proper precautionary safety measures, inter alia in relation to emissions of carbon monoxide.

(20) 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 is put into service is very important for its safe and correct functioning,

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therefore that aspect should be taken into consideration 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.

(21) In order to avoid barriers to trade with regard to appliances on grounds relating to the fact that the gas supply conditions are not yet harmonised and to ensure that economic operators are sufficiently informed, Member States should communicate to the other Member States and to the Commission the types of gas and corresponding supply pressures used on their territory and any changes thereof in good time.

(22) The communication of the gas types and supply pressures by Member States should contain the necessary information for economic operators. In that framework, the primary source of the gaseous fuel supplied is not relevant for the characteristics, the performance and the compatibility of appliances with the communicated gas supply conditions.

(23) When determining the gas families and gas groups used on their territory, Member States are encouraged to take into account the ongoing standardisation work concerning gas qualities and thus ensure, across the Union, a coherent and coordinated approach towards harmonisation of gaseous fuels via standardisation.

(24) When, in accordance with Directive 2009/73/EC of the European Parliament and of the Council[(12)] and the ongoing standardisation work of CEN on 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 that they update in a timely manner their communication of the types of gas in the event that the quality of the supplied gas does not remain within the already communicated quality range.

(25) 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 renewable energies and in particular biogas in the total energy consumption, they are encouraged to consider the possibilities of injecting such gases into the gas distribution network.

(26) 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 into service of appliances that are compatible with the local gas supply conditions.

(27) Appliances covered by this Regulation and complying with it 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.

(28) The appliance category marking indicated on the appliance or its data plate establishes a direct link with the gas families and/or gas groups for which an appliance 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.

(29) The essential requirements laid down in this Regulation should be observed in order to ensure that appliances are safe when normally used at the desired performance level.

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(30) 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 and safety protection and rational use of energy.

(31) Economic operators should be responsible for the compliance of appliances 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 and safety of persons and domestic animals, protection of consumers and of property, and rational use of energy, and to guarantee fair competition on the Union market.

(32) 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 or fittings 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.

(33) The manufacturer, having detailed knowledge of the design and production process, is best placed to carry out the conformity assessment procedure. Conformity assessment should therefore remain solely the obligation of the manufacturer.

(34) The manufacturer should provide sufficient and detailed information on the intended use of the appliance 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.

(35) This Regulation should not apply to any natural person who manufactures an appliance on a non-professional basis and uses it exclusively for his own purposes.

(36) In order to facilitate 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.

(37) It is necessary to ensure that appliances 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 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 the CE marking on appliances and fittings and documentation drawn up by manufacturers are available for inspection by the competent national authorities.

(38) The distributor makes an appliance 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