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COMMISSION NOTICE

**on the application of energy labelling requirements in the light of the Court Order of 5
October 2023 in Case C-761/22**

(Text with EEA relevance)

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Introduction

Following a request for a preliminary ruling from Landgericht Bochum (Bochum Regional Court, Germany) on the interpretation of Article 6, first paragraph, point (a), of Regulation (EU) 2017/1369 of the European Parliament and of the Council¹ in the context of Commission Delegated Regulation (EU) No 65/2014² on the energy labelling of domestic ovens and range hoods, the Court held in its Order of 5 October 2023³:

‘51 [...] the questions referred for a preliminary ruling should be answered as follows:

- *point (a) of the first paragraph of Article 6 of Regulation 2017/1369 is to be interpreted as meaning that suppliers and dealers of a product are required, in their visual advertisements or technical promotional materials for a specific model of that product, to make reference to the energy efficiency class of that product and the range of the efficiency classes shown on the label of the product group concerned where that product group has been the subject of a delegated act adopted on the basis of Directive 2010/30 and not of a delegated act adopted on the basis of Regulation 2017/1369;*
- *where that delegated act does not provide for the manner in which such reference is to be made by those suppliers and dealers, and until such time as a delegated act is adopted for the product group concerned on the basis of Article 16 of Regulation 2017/1369, they are to make reference, in their visual advertisements and technical promotional materials, to that energy efficiency class and range of efficiency classes in the same way as that adopted on the label of that product group, provided that such a presentation remains legible and visible having regard to the nature, size and commercial imperatives of such advertising and promotional material;*
- *if such a presentation is not feasible, those suppliers and dealers must in any event opt for an equivalent presentation that meets the consumer information requirements as well as the legibility and visibility requirements as they result from Regulation 2017/1369.’*

Summary of the Order

¹ Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1, ELI: <http://data.europa.eu/eli/reg/2017/1369/oj>).

² 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, ELI: http://data.europa.eu/eli/reg_del/2014/65/oj).

³ [Order of 5 October 2023, Verband Wirtschaft im Wettbewerb, C-761/22, ECLI:EU:C:2023:756.](https://eur-lex.europa.eu/eli/reg/2023/1756/oj)

Although this case was specific to ovens and range hoods, it lays down a principle that has horizontal consequences for all products covered by energy labelling regulations adopted on the basis of Directive 2010/30/EU⁴ that do not explicitly require the range of energy classes to be shown in visual advertisements and promotional material. The main findings of the Court are the following:

Under Article 6, first paragraph, point (a), of Regulation (EU) 2017/1369, **suppliers and dealers of a product covered by an energy labelling delegated act adopted under Directive 2010/30/EU have an obligation to make reference to the energy efficiency class of that product and to the range of efficiency classes on the label of the product group concerned in visual advertisements or technical promotional material, even if the delegated act on the product in question does not require such a reference.**

The Court made clear that in those circumstances and until such time as a delegated act is adopted for the product group concerned under Regulation (EU) 2017/1369, suppliers and resellers have a **certain discretion** as to *how* to make reference to the energy efficiency class and the range of efficiency classes in their visual advertisements and technical promotional material. However, that discretion is limited, in particular, by the need to ensure that the average, reasonably well-informed and observant, circumspect consumer can easily identify the energy efficiency class of the product and the range of efficiency classes shown on the label. This will inform them about the energy consumption of the product, so they can compare the consumption with that of products in the same group in other visual advertisements or other technical promotional material and therefore make informed purchasing choices.

The Court recalled that it is well known that the letters linked to the different energy efficiency classes and their ranges appear in an arrow symbol whose background colour corresponds to that of the letter concerned. This is based on the dark green to red colour scale of the energy label, which is common to all Union acts on energy labelling. Since consumers have long been familiar with this colour scale and arrow symbol, when the producers and dealers concerned opt for a graphic representation of those classes and ranges in their visual advertisements and technical promotional material, they must at the very least comply with the colour of that scale and symbol, unless the advertising or promotional material concerned is printed in black and white⁵.

The Court provided further guidance on how to provide the energy class and the range of classes in either written or visual form⁶:

‘By way of example and without prejudice to other possible solutions, they may mention, in a legible and visible manner, the energy efficiency class of the product concerned and the range of energy efficiency classes by means of an expression easily understandable to the average consumer, who is reasonably well-informed and reasonably observant and circumspect, such as ‘the energy efficiency class of this model/product is [relevant letter] within a range from [first letter] to [last letter]’, or

⁴ 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 (OJ L 153, 18.6.2010, p. 1, ELI: <http://data.europa.eu/eli/dir/2010/30/oj>).

⁵ Order, paragraph 47.

⁶ Order, paragraph 50.

else indicate the letter of the energy efficiency class concerned in an arrow whose background colour must be that of the corresponding letter of the range of energy efficiency classes and specify alongside that arrow the extent of the range by means of an equivalent statement or symbol easily understandable to such a consumer. The positioning, size and font of those references must be chosen in such a way that they are legible and visible and thus clearly stand out, for the consumer, in the advertising or promotional material concerned. Where such suppliers and dealers opt for the arrow symbol, they may be guided by the graphic presentation adopted by the Commission in delegated regulations adopted on the basis of Article 16 of Regulation 2017/1369 for other product groups, as reproduced in paragraph 18 of this order.’

Implications of the Order

In light of this, the Commission considers that **economic operators, wherever possible and until the adoption of a relevant/specific delegated act on the basis of Regulation (EU) 2017/1369, should use a letter in an arrow alongside the range**, in line with the practice in delegated regulations adopted under Regulation (EU) 2017/1369. For domestic oven cavities, this would look like the pictogram in Figure 1.



Figure 1: Appropriate indication for oven cavities

The **Commission will make such pictograms available** in the European Product Registry for Energy Labelling⁷ and automatically retrievable via Application Programming Interfaces (APIs)⁸ in the course of 2024 for any registered product in each of the relevant product groups.

The Order only concerned visual advertisements and technical promotional material. It did not expressly address online distance selling, for which specific provisions apply⁹ and were also included in delegated acts adopted under Directive 2010/30/EU (including for nested displays of labels)¹⁰. However, the same underlying logic behind consumer information would seem to apply also in the context of online distance selling. If an operator uses pictograms such as that in Figure 1 (that is to say, including the applicable range) in the context of the ‘nested display’ of labels for online distance selling instead of the style prescribed in the delegated acts adopted under Directive 2010/30/EU (that is to say, with no range indication), the Commission considers that national market surveillance authorities may also consider the use of such a

⁷ <https://eprel.ec.europa.eu/screen/home>.

⁸ Information is available at https://energy-efficient-products.ec.europa.eu/suppliers_en#more-energy-labelling-tools, notably further guidance and information on the syntax of APIs is available in the Wiki <https://webgate.ec.europa.eu/fpfis/wikis/display/EPREL/EPREL+Public+site+-+API>.

⁹ Annex VII of Delegated Regulation (EU) No 65/2014 with regard to the energy labelling of domestic ovens and range hoods lays down the format of the class arrow in the case of nested display.

¹⁰ The class arrow with the ‘nested display’ mechanism was first introduced by Commission Delegated Regulation (EU) No 518/2014 of 5 March 2014 with regard to labelling of energy-related products on the internet, amending Commission 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 and (EU) No 812/2013.

format as achieving the objective of consumer information for the purpose of nested displays when carrying out their activities.

How to determine the applicable range of energy efficiency classes

As regards **what range of energy efficiency classes is applicable** in any given situation, the Commission first notes that the Order expressly refers to the range of the ‘*efficiency classes shown on the label*’¹¹. While this range may in principle depend on when a certain unit was placed on the market¹², the delegated acts adopted under Directive 2010/30/EU have all been in force long enough for the top labelling classes to have been phased-in for some time. This means that consumers are unlikely to find many or any products labelled in accordance with a previously applicable range of classes provided for under the respective regulations.

Second, the Court makes no mention of any implications in relation to ecodesign regulations applicable to the same products. Paragraph 24 of the Order expressly refers to the applicant in the main proceedings considering the range to be ‘*the range of efficiency classes between A+++ and D*’ (which is the range provided for on the label in accordance with Delegated Regulation (EU) No 65/2014). However, the ecodesign requirements set by Commission Regulation (EU) No 66/2014¹³ no longer allow domestic ovens to be placed on the market if their performance corresponds to class B or below¹⁴.

The Commission notes that if ecodesign limitations were to be taken into account when determining the range of classes to be shown, this would logically also apply to products regulated by delegated acts adopted under Regulation (EU) 2017/1369. However, those more recent acts already specify the use of pictograms (either for visual advertisement, technical promotional material or for nested labels in the context of online distance selling) that include the full range (A to G) as available on the label without taking account of limitations resulting from the corresponding ecodesign regulations. Changing practice in this regard would mean that the pictograms in recent acts could not be relied upon in all cases, which would create an unacceptable lack of legal certainty for economic operators.

Moreover, the limitations from ecodesign requirements are not in all cases applicable to the entirety of the scope of products concerned by the corresponding labels. For example, oven cavities of single-cavity ovens are subject to ecodesign requirements that today necessitate at least class A performance, whereas secondary cavities in multi-cavity ovens may also be class B. Another example is washing machines: from 1 March 2024, class G is no longer available for normal sized machines but is still available for machines with a smaller capacity. Using another range than the one available on the label as provided for in the energy labelling regulations could lead to consumer confusion when comparing products in the same product group but with different ranges indicated.

¹¹ Order, paragraphs 46, 51.

¹² Certain [product] regulations adopted under Directive 2010/30/EU provide for a range that changes over time (with the lowest class(es) disappearing and additional top class(es) added at specified times).

¹³ Commission Regulation (EU) No 66/2014 of 14 January 2014 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for domestic ovens, hobs and range hoods (OJ L 29, 31.1.2014, p. 33, ELI: <http://data.europa.eu/eli/reg/2014/66/oj>).

¹⁴ C or below for the second cavity in multi-cavity ovens, see further below.

The Commission therefore considers that **possible implications from corresponding ecodesign regulations should not be taken into account when determining the range of classes to be shown**. Instead, this should be addressed as part of rescaling measures as provided for in Regulation (EU) 2017/1369, and if specified in such measures, through the mechanism referred to in Article 11(10) of that Regulation ('greying out').

No direct applicability of Article 11(10) of Regulation (EU) 2017/1369 ('greying out')

By analogy with the directly applicable obligation that the Court has found Article 6, first paragraph, point (a), of Regulation (EU) 2017/1369 to impose, it could be argued that Article 11(10) of that Regulation ('greying out') should also be directly applicable even if it has not been specified how to apply 'greying out' in the relevant delegated act. However, the Commission takes the view¹⁵ that Article 11(10) of Regulation (EU) 2017/1369 should not be directly applicable in such cases (that is to say, in case where ecodesign requirements mean that the lowest energy label class(es) effectively become empty). As already noted, there is often no straightforward relationship between ecodesign limits and the lowest available energy class. Attempting to apply that Article 11(10) directly without a clear specification in the relevant delegated act would lead to consumer confusion and uncertainty for operators. For example, it would not be clear what colours to use for arrows although the Court has stressed the importance of this for consumers. Similarly, they might also find alternative appliances labelled with different ranges in the same shop even for products for which the label has long been rescaled in accordance with Regulation (EU) 2017/1369.

Timing

Taking into account the time necessary for adjustment, suppliers and dealers should align their advertising and promotional practices with the Court Order and this Notice as soon as possible. National market surveillance authorities are encouraged to communicate the implications of the Order on the basis of this Notice to economic operators and adapt their enforcement action accordingly. The Commission will take the necessary adjustment time into account when exercising its discretion with regard to infringement proceedings. With regard to enforcement of the obligations in accordance with the Court Order, this may require up to 6 months following the publication of this Notice in the Official Journal. With regard to pre-existing printed material, the Commission considers this may take up to 12 months.

¹⁵ Any definite interpretation of Union law is for the European Court of Justice alone.