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Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on measuring instruments**

(presented by the Commission pursuant to Article 250 (2)  
of the EC-Treaty)

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## EXPLANATORY MEMORANDUM

### **1. BACKGROUND INFORMATION**

#### **1.1 Context**

In September 2000, the Commission submitted the proposal for a European Parliament and Council Regulation (EC) on measuring instruments COM(2000) 566 – C5-0478/2000–2000/0233 (COD) for adoption by the co-decision procedure laid down in Article 251 of the Treaty establishing the European Community.

On 3 July 2001, the European Parliament adopted a series of amendments at its first reading. On this occasion the Commission gave its position on each amendment, indicating which amendments it could accept and which amendments could not be included.

In the light of these developments, the Commission has drafted this amended proposal.

#### **1.2 Principles**

The Commission has made two types of amendments.

Firstly, in response to the first reading by the European Parliament, a number of new provisions have been accepted. The majority of these serve either to remove ambiguities or to elaborate further on a specific idea in the original proposal. In addition, there are some new ideas, which expand on the original text but do not change the fundamental principles.

Secondly, the Commission has introduced some rewording that takes account of issues raised during preliminary discussions in Council and, in order to further transparency, it will use this opportunity to explain these changes. Where necessary, editing has been done to ensure consistency between this text and other applicable Community legislation and to ensure internal consistency within the text itself.

### **2. EXPLANATION OF THE MAIN AMENDMENTS**

#### **2.1 Scope and object**

A key element of the proposal is that a Member State retains the option to prescribe legal metrological control, but where it does, only instruments complying with the directive may be used. In the light of the amendments 2, 7, 8 and the first part of 9 by the European Parliament, a recital to this end has been added to clarify this concept and Article 2 has been reworded.

In addition, the scope has been clarified by an expansion of the texts of the recital and Article 1. These changes take account of the European Parliament's amendments 1 and 6.

The Commission rejects the second half of amendment 9, because it is a repeat of part of Article 6, which is the classical free circulation article in the New Approach. Article 6 is more transparent and binds all Member States, even those which do not impose legal metrological control.

After the free circulation Article 6.1, the former Article 14.1, which makes the directive total, has been added as Article 6.2 (new). This clarifies the text as now all articles concerning 'placing on the market and putting into use' are grouped together.

The free circulation Article 6.1 is refined by means of the new Article 6.3 in order to allow Member States to differentiate according to objective criteria mentioned in the article. The provisions allowed under Article 6.3 (new) are specified in the instrument specific annexes. The wording of Article 6.3 (new) is comparable to the articles specifying the conditions for entry into service in Directive 89/106 on construction products (Article 6) and Directive 92/42 on boiler efficiency (Article 4).

As a consequence of Article 6.3 (new) a 'putting into use' paragraph has been added to the instrument specific annexes, MI-001, MI-002, MI-003 and MI-004. This paragraph consists of two elements. The first element is an option for Member States to impose minimum precision depending on the use, e.g. different instruments depending on domestic use or industrial use. The second element concerns the indication of the conditions in the instrument specific annex which depend on Article 6.3 (new).

Article 6.2 (old) concerned public procurement. The Commission proposes to replace it by the formulation in Article 6.4 (new) that covers the period until utilities are liberalised when they are no longer covered by public procurement. Before liberalisation, utilities will not be permitted to require instruments that deviate from the minimum specified in the relevant instrument annex. This provision will ensure the widest internal market in the run-up to liberalisation.

## **2.2 Definitions and essential requirements**

The Commission rejects amendment 5 because the proposed addition limits the recital to only a subset of measuring instruments, namely those consisting of a set of devices and sub-assemblies, while the recital as it stands refers to all measuring instruments as defined in Article 3(a).

In line with the European Parliament's amendments 3 and the first part of 11, the responsibility of the manufacturer has been clarified. As regards the second part of the definition of manufacturer the Commission wishes to maintain its original proposal, for the following three reasons:

1. It is the market reality that non-manufacturing companies place measuring instruments on the market under their own name, modify instruments or make new assemblies.
2. Such operators should by law be held to be fully responsible and to take all necessary measures to bear those responsibilities.
3. It is therefore an important and binding notion for a non-manufacturing company to « take all necessary measures to bear those responsibilities ».

The definition of subassemblies as well as of authorised representative, subject of amendments 10, 12 and 19, have been expanded. The change to the definition of 'placing on the market' has been raised during preliminary discussions in Council.

The essential requirements in Annex I for durability, reliability, suitability and protection have been clarified in line with the amendments 22 to 25. In addition, the amendments 26 and 27 concerning the indication of measuring results have been included.

The Commission proposes to add a provision to the instrument specific annexes, MI-001, MI-002, MI-003 and MI-004, concerning the conformity assessment, which allows conformity assessment to be done according to the degree of precision declared by the manufacturer.

### **2.3 Changes affecting the Committee for Measuring Instruments**

Given the need for some flexibility to adapt the legislation to change, the Commission has considered the European Parliament's amendment 17 in the light of the preliminary discussions in the Council. It proposes to introduce a regulatory area of activities by the Committee for Measuring Instruments and to shift the tasks earmarked by the European Parliament from the advisory area to the regulatory area. This proposal reflects the will expressed by the European Parliament to be kept involved in an area, which remains highly complex and predominantly of a technical nature. It will allow the European Union to smoothly and rapidly incorporate change induced by international developments, which in the area of legal metrology may influence the essential requirements indicated in Article 12.2.

### **2.4 Expansions or clarification of the text**

As suggested by European Parliament's amendments 4 and 13, the Commission has included the option of affixing the required markings at different stages.

Based on the intention expressed by Parliament in its amendment 14, the Commission has added text, where necessary, to reference each Annex in the appropriate articles.

In Article 8, in line with amendment 15, the Commission proposes to clarify the right of Member States to designate notified bodies for instruments in areas covered by the Directive, for which the Member State does not require legal metrological control. This covers concerns that have been raised in this respect during preliminary discussions in Council. Further, the Commission proposes to clarify the criteria applying to a notified body by means of a reference to harmonised standards, also a clarification discussed in Council.

The Commission accepts amendment 20 simplifying market surveillance.

The Commission proposes the better formulation of the transition period in amendment 21 by the European Parliament.

The Commission rejects amendments 16, 18, 28 and 29, which would result in integrally copying the annexes III and IV into the body of the directive. It would swell the text of the articles without justification, because there is no hierarchy between articles and annexes. In fact, the Commission proposal is already a simplification

because text habitually contained in each of the Conformity assessment annexes has been regrouped in Annex IV. It would be arbitrary to include Annex IV in the body of the directive while many important points of conformity assessment remain in the Annexes A-H1. On the other hand, the Commission proposes, for reason of transparency, to include a reference to Annex IV in Article 7 similar to the reference to Annex III in Article 8.

The Commission proposes to replace “CE conformity marking” by “CE marking” as this is clear and reduces the text. Article 13.4 has been simplified and allows small instruments to be marked in the technical documentation. A provision has been added to instrument specific annex MI-008 according to which instruments, which are sold in batches, need not be marked individually.

Article 14 (new) has been added in order to take account of unduly affixed CE-marking, which is in line with current practice under the New Approach.

Former Article 14 has been split up and reworded slightly as Article 15 and Article 16 in order to ensure consistency between this text and other applicable Community legislation. The former Article 14.1, which makes the directive total, has been moved to Article 6.2 (new) so that in Article 15 (new) only ‘market surveillance’ remains. Article 16 (new) groups the ‘safeguard clause’ procedure.

Articles°15-20 have been renumbered to Articles°17-22.

In the light of Article 250, paragraph 2 of the Treaty, the Commission modifies its proposal as follows.

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on measuring instruments**

**(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<sup>1</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

Whereas:

- (1) A number of measuring instruments are covered by specific Directives, adopted on the basis of Directive 71/316/EEC on common provisions for both measuring instruments and methods of metrological control<sup>4</sup>. Specific directives that are technically outdated should be repealed and replaced by an independent directive, which is in the spirit of Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards<sup>5</sup>. Specific Directives that are not outdated should remain governed by Directive 71/316/EEC.
- (2) Measuring instruments can be used for a variety of measurement tasks. Those responding to reasons of public **interest such as public health, safety and order, of protection of the environment and the consumer, of levying taxes and duties and of fair trading, which affect** the daily life of citizens in many ways directly and indirectly, require the use of legally controlled measuring instruments.
- (3) Legal metrological control should not lead to barriers to the free movement of measuring instruments, the provision concerned should be the same in all Member States and proof of conformity accepted throughout the Community.
- (4) Legal metrological control requires conformity with specified performance requirements. The performance requirements that the measuring instruments must

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ L 202, 6.9.1971, p. 1.

<sup>5</sup> OJ C 136, 4.6.1985, p. 1.

meet should provide a high level of protection. The assessment of conformity should provide a high level of confidence.

- (5) The performance of measuring instruments is particularly sensitive to the electromagnetic environment. Immunity of measuring instruments to electromagnetic interference forms an integral part of this Directive and the immunity requirements of Council Directive 89/336/EEC of 3 May 1989 on electromagnetic compatibility<sup>6</sup>, as last amended by Directive 93/68/EEC<sup>7</sup>, would therefore not apply.
- (6) **Member States should retain the option to prescribe legal metrological control. Where legal metrological control is prescribed, only measuring instruments complying with common requirements should be used.**
- (7) **The responsibilities of the ‘manufacturer’ for compliance with the requirements of this directive should be specifically stated.**
- (8) Community legislation should specify essential requirements that do not impede technical progress. The legal requirements should therefore preferably be performance requirements. Regulations to remove technical barriers to trade should follow the new approach provided for in the Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards.
- (9) European technical standards should therefore be drawn up whose technical and performance specifications comply with the essential requirements laid down by this Directive. Conformity with the specifications of those standards would give rise to a presumption of conformity with the essential requirements laid down by this Directive. Standards harmonised at European level are drawn up by private bodies and must retain their non-mandatory status. For this purpose, the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) are recognised as being the bodies that are competent to adopt harmonised standards that follow the general guidelines for co-operation between the Commission and those two bodies signed on 13 November 1984.
- (10) The drawing up of harmonised standards by CEN and CENELEC is to be carried out at the request of the Commission pursuant to 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>8</sup>, as amended by Directive 98/48/EC<sup>9</sup>. In relation to standardisation, it is advisable for the Commission to be assisted by the Committee set up under Directive 98/34/EC. The Committee will, if necessary, consult technical experts.
- (11) In certain specialised fields the technical and performance specifications of internationally agreed normative documents can also comply, in part or in full, with the product specifications laid down in legislation. In those cases the use of these internationally agreed normative documents can be an alternative to the use of European technical standards.

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<sup>6</sup> OJ L 139, 23.5.1989, p. 19.

<sup>7</sup> OJ L 220, 30.8.1993, p. 1.

<sup>8</sup> OJ L 204, 21.7.1998, p. 37.

<sup>9</sup> OJ L 217, 5.8.1998, p. 18.

- (12) Conformity with the essential requirements laid down by this Directive can also be provided by specifications that are not supplied by a European technical standard or internationally agreed normative document. The use of European technical standards or internationally agreed normative documents should therefore be optional.
- (13) The state of the art in measurement technology is subject to constant evolution which may lead to changes in the needs for conformity assessments. Therefore, for each category of measurement there must be an appropriate procedure or a choice between different procedures of equivalent stringency. The procedures adopted are as required by Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE marking, which are intended to be used in the technical harmonisation Directives<sup>10</sup>. **Provision should be made that the CE marking can be affixed during the fabrication process.**
- (14) In accordance with Article 2 of the Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>11</sup>, measures necessary for the implementation of this Directive should be adopted by use of the advisory procedure provided for in Article 3 of that Decision **or by use of the regulatory procedure provided for in Article 2 of that Decision.**
- (15) The Member States should actively survey their markets and take all appropriate measures to prevent non-complying instruments from being placed on their markets or being used. Adequate co-operation among the market surveillance authorities of the Member States is therefore necessary to ensure a Community-wide effect of the market surveillance activities.
- (16) Member States should take all appropriate measures to ensure that measuring instruments that carry the CE marking and supplementary marking are correctly placed on the market. Manufacturers should be informed of the grounds on which negative decisions in respect of their products were taken, and the legal remedies available to them.
- (17) This Directive should repeal the Community legislation in respect of the measuring instruments covered by the following Council Directives:
- 71/318/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to gas meters<sup>12</sup>, as last amended by Commission Directive 82/623/EEC<sup>13</sup>;
  - 71/319/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to meters for liquids other than water<sup>14</sup>;
  - 71/348/EEC of 12 October 1971 on the approximation of the laws of the Member States relating to ancillary equipment for meters for liquids other than

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<sup>10</sup> OJ L 220, 30.8.1993, p. 23.

<sup>11</sup> OJ L 184, 17.7.1999, p. 23.

<sup>12</sup> OJ L 202, 6.9.1971, p. 21.

<sup>13</sup> OJ L 252, 27.8.1982, p. 5.

<sup>14</sup> OJ L 202, 6.9.1971, p. 32.

water<sup>15</sup>, as last amended by the Act of Accession of Austria, Finland and Sweden;

- 73/362/EEC of 19 November 1973 on the approximation of the laws of the Member States relating to material measures of length<sup>16</sup>, as last amended by Commission Directive 85/146/EEC<sup>17</sup>;
- 75/33/EEC of 17 December 1974 on the approximation of the laws of the Member States relating to cold water meters<sup>18</sup>;
- 75/410/EEC of 24 June 1975 on the approximation of the laws of the Member States relating to continuous totalizing weighing machines<sup>19</sup>;
- 76/891/EEC of 4 November 1976 on the approximation of the laws of the Member States relating to electrical energy meters<sup>20</sup>;
- 77/95/EEC of 21 December 1976 on the approximation of the laws of the Member States relating to taximeters<sup>21</sup>;
- 77/313/EEC of 5 April 1977 on the approximation of the laws of the Member States relating to measuring systems for liquids other than water<sup>22</sup> as amended by Commission Directive 82/625/EEC<sup>23</sup>;
- 78/1031/EEC of 5 December 1978 on the approximation of the laws of the Member States relating to automatic checkweighing and weight grading machines<sup>24</sup>;
- 79/830/EEC of 11 September 1979 on the approximation of the laws of the Member States relating to hot-water meters<sup>25</sup>.

(18) Manufacturers should be offered the possibility to exercise the rights obtained before the entry into force of this Directive, during a reasonable period. Transitional arrangements are therefore necessary.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
*Scope*

This Directive applies to the devices and systems with a measuring function defined in the instrument specific annexes. ~~MI-001 to MI-011~~ **concerning water meters (MI-001), gas**

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<sup>15</sup> OJ L 239, 25.10.1971, p. 9.

<sup>16</sup> OJ L 335, 5.12.1973, p. 56.

<sup>17</sup> OJ L 54, 23.2.1985, p. 29.

<sup>18</sup> OJ L 14, 20.1.1975, p. 1.

<sup>19</sup> OJ L 183, 14.7.1975, p. 25.

<sup>20</sup> OJ L 336, 4.12.1976, p. 30.

<sup>21</sup> OJ L 26, 31.1.1977, p. 59.

<sup>22</sup> OJ L 105, 28.4.1977, p. 18.

<sup>23</sup> OJ L 252, 27.8.1982, p. 10.

<sup>24</sup> OJ L 364, 27.12.1978, p. 1.

<sup>25</sup> OJ L 259, 15.10.1979, p. 1.

**meters (MI-002), active electrical energy meters and measurement transformers (MI-003), heat meters (MI-004), measuring systems for the continuous and dynamic measurement of quantities of liquids other than water (MI-005), automatic weighing instruments (MI-006), taximeters (MI-007), material measures (MI-008), dimensional measuring instruments (MI-009), evidential breath analysers (MI-010) and exhaust gas analysers (MI-011).**

*Article 2*  
*Subject matter*

This Directive establishes the essential requirements that the devices and systems referred to in Article 1 have to satisfy ~~if they are subject to legal metrological control in a Member State,~~ and the conformity assessment that they have to undergo in those circumstances, with a view to their placing on the market and putting into use, **for those tasks for which a Member State prescribes legal metrological control for reasons of public interest, such as public health, safety and order, protection of the environment and the consumer, levying taxes and duties and fair trading.**

It is a specific Directive in respect of requirements for electromagnetic immunity in the sense of Article 2(2) of Directive 89/336/EEC.

*Article 3*  
*Definitions*

For the purposes of this Directive:

- (a) 'measuring instrument' means any device or system with a measurement function that is covered by the scope and object of this Directive, as laid down in Articles 1 and 2;
- (b) 'sub-assembly' means a hardware device that functions independently and together with other sub-assemblies **and/or measuring instruments**, with which it is compatible, makes up a measuring instrument,
- (c) 'legal metrological control' means the control of the measurement tasks of a measuring instrument, prescribed by the Member States for reasons of public health, public safety, public order, protection of the environment, levying of taxes and duties, protection of the consumers and fair trading;
- (d) 'manufacturer' means the physical or legal person who **has responsibility for the conformity of the measuring instrument to the appropriate requirements of this Directive, and who**
  - carries out the technical design of a measuring instrument, or has it carried out on his behalf, and
  - manufactures the measuring instrument, or has it manufactured on his behalf, and
  - places it ~~lawfully~~ on the market ~~under his own name~~,or,

the physical or legal person who

- takes responsibility for the conformity of the measuring instrument to the appropriate requirements of this Directive, and
  - has taken all necessary measures to bear those responsibilities, and
  - places the measuring instrument ~~lawfully~~ on the market ~~under his own name~~;
- (e) ~~‘placing on the market’ means the first passing of the product from the stage of manufacture to the stage of distribution and/or use on the Community market~~ **making available for the first time in the Community an instrument intended for an end user, whether for reward or free of charge;**
- (f) ‘putting into use’ means the first use of a product for the purposes for which it was intended;
- (g) ‘authorised representative’ means the physical or legal person **who is established within the Community and is** authorised by **the** manufacturer, in writing, to act on his behalf for specified tasks **within the meaning and provisions of this Directive.** ~~An authorised representative must be established within the Community if he is to act under this Directive;~~
- (h) ‘harmonised standard’ means a technical specification adopted by the European Committee for Standardization (CEN) or the European Committee for Electrotechnical Standardization (CENELEC) or jointly by both, at the request of the Commission pursuant to Directive 98/34/EC, and prepared in accordance with the General Guidelines agreed between the Commission and the European standards organisations;
- (i) ‘normative document’ means a document containing normative elements drawn up by the Organisation Internationale de Métrologie Légale.

#### *Article 4*

##### *Essential requirements and assessment of conformity*

1. A measuring instrument shall meet the essential requirements laid down in Annex I and the relevant instrument specific Annex.
2. The conformity of a measuring instrument with the essential requirements shall be assessed in accordance with the provisions of Article 7.
3. Where a measuring instrument consists of a number of sub-assemblies and where specific annexes exist laying down the essential requirements for all of these sub-assemblies that together make up the measuring instrument, the provisions of this Directive shall apply *mutatis mutandis* to each of these sub-assemblies.

*Article 5*  
*Conformity marking*

1. The conformity of a measuring instrument with all the obligations contained in this Directive shall be indicated by the presence on it of the CE marking and the supplementary metrology marking as specified in Article 13.
2. The CE marking and supplementary metrology marking shall be affixed by, or under the responsibility of the manufacturer. **The CE marking may be affixed on the instrument during the fabrication process. The supplementary metrology marking shall be affixed after the assessment of conformity specified in Article 7.**
3. The affixing of markings on a measuring instrument that are likely to deceive third parties as to the meaning and/or form of the CE marking or the supplementary metrology marking shall be prohibited. Any other marking may be affixed to a measuring instrument, provided that the visibility and legibility of the CE marking and the supplementary metrology marking is not thereby reduced.

*Article 6*  
*Placing on the market and putting into use*

1. A Member States shall not impede for reasons covered by this Directive the placing on the market and putting into use of any measuring instrument that carries the CE conformity marking and supplementary metrology marking in accordance with Article<sup>o</sup>5.
- ~~2. Member States shall ensure that the use of any measuring instrument that carries the CE conformity marking and supplementary metrology marking in accordance with Article 5 shall not be impeded by rules or conditions in respect of aspects covered by this Directive which are imposed by contracting entities in pursuit of the relevant activities, as referred to in Article 2 of Council Directive 93/38/EEC<sup>26</sup>.~~
- 2. Member States shall take all appropriate measures to ensure that measuring instruments that carry the CE conformity marking and supplementary metrology marking according to Article 5 may be placed on the market and put into use only if they satisfy the requirements of this directive.**
- 3. A Member State requiring legal metrological control as referred to in Article 2 may require a measuring instrument to satisfy provisions for its putting into use, which are duly justified by local climatic conditions and/or by requirements in relation to the measuring characteristics. These provisions are specified in the relevant instrument specific annexes referred to in Article 1.**
- 4. Member States shall ensure that rules or conditions by public bodies or private bodies acting as a public undertaking or acting as a public body on the basis of a monopoly position, do not impede the putting into use of measuring instruments referred to in paragraph 1 which satisfy the provisions referred to in paragraph 3.**

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<sup>26</sup> OJ L 199, 9.8.1993, p. 84.

*Article 7*  
*Assessment of conformity*

Assessment of conformity of a measuring instrument with its essential requirements shall be carried out by the application, at the choice of the manufacturer, of one of the conformity assessment procedures listed in the specific annex concerning that instrument.

**The manufacturer shall provide technical documentation as set out in Annex IV.**

The conformity assessment modules making up the procedures are described in Annexes A to H1.

*Article 8*  
*Notification*

1. Member States shall notify to the other Member States and the Commission the bodies which they have designated to carry out the tasks pertaining to the conformity assessment modules referred to in Article 7, together with the identification numbers given by the Commission according to paragraph 4, the kind(s) of measuring instrument for which each body has been designated and in addition, where relevant, the instrument classes, the measuring range, the measurement technology, and any other instrument characteristic limiting the scope of the notification.
2. Member States shall apply the criteria set out in Annex III for the designation of such bodies. **Bodies that meet the criteria laid down in the national standards which transpose the relevant harmonised standards shall be presumed to meet the corresponding criteria. If a Member State does not prescribe legal metrological control, as referred to in Article 2, which would require the use of an instrument defined in Article 1, it may legislate to enable the designation of a body competent for such an instrument.**
3. A Member State that has notified a body shall withdraw such notification if it finds that the body no longer meets the criteria referred to in paragraph 2. It shall forthwith inform the other Member States and the Commission of any such withdrawal of a notification.
4. Each of the bodies to be notified shall be given an identification number by the Commission. The Commission shall publish the list of bodies notified, together with the information in respect of the scope of the notification referred to in paragraph 1, in the C series of the *Official Journal of the European Communities* and shall ensure that the list is kept up to date.

*Article 9*  
*Harmonised standards and normative documents*

1. Member States shall presume conformity with the essential requirements referred to in Article 4 in respect of a measuring instrument that complies with the elements of the national standards implementing the European harmonised standard for that measuring instrument that correspond to those elements of this European harmonised standard whose references have been published in the C series of the *Official Journal of the European Communities*.

Where a measuring instrument complies only in part with the elements of the national standards referred to in the first subparagraph, Member States shall presume conformity with the essential requirements corresponding to the elements of the standards with which the instrument complies.

Member States shall publish the references of the national standards referred to in the first subparagraph.

2. Member States shall presume conformity with the essential requirements referred to in Article 4 in respect of a measuring instrument that complies with the normative document referred to in Article 4 ~~11~~ **12(21)(ea)**, whose references have been published in the C series of the *Official Journal of the European Communities*.

Where a measuring instrument complies only in part with the normative document referred to in the first subparagraph, Member States shall presume conformity with the essential requirements corresponding to the normative elements with which the instrument complies.

Member States shall publish the references of the normative document referred to in the first subparagraph.

#### *Article 10* *Committee on standards and technical regulations*

Where a Member State or the Commission considers that a European harmonised standard as referred to in Article 9(1) does not fully meet the essential requirements referred to in Article 4, the Member State or the Commission shall bring the matter before the Standing Committee set up under Directive 98/34/EC, giving its reasons for doing so. The Committee shall deliver an opinion without delay.

In the light of the Committee's opinion, the Commission shall inform the Member States whether or not it is necessary to withdraw the references of the national standards from the publication referred to in the third subparagraph of Article 9(1).

#### *Article 11* *Measuring Instruments Committee*

1. The Commission shall be assisted by a Standing Committee, the Measuring Instruments Committee, composed of representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.
- 3. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.**

*Article 12*  
*Functions of the Measuring Instruments Committee*

1. On request by a Member State or on its own initiative, the Commission, acting in accordance with the procedure referred to in Article 11(2), may take any appropriate measure to:

(a) ~~amend instrument specific annexes in respect of:~~

~~— the maximum permissible errors and accuracy classes;~~

~~— the rated operating conditions;~~

~~— the critical change values;~~

~~— the list of conformity assessment procedures [referred to in Article 7]—  
reference is unnecessary here;~~

(b) ~~amend the test programmes laid down in Annex II;~~

(~~a~~) request **identify normative documents drawn up by** the Organisation Internationale de Métrologie Légale **or indicate parts thereof** ~~to draw up a normative document containing normative elements~~ conformity with which provides presumption of conformity with the corresponding essential requirements of this Directive;

(~~b~~) publish the references of the normative document referred to in point (~~a~~) in the C series of the *Official Journal of the European Communities*.

**2. On request by a Member State or on its own initiative, the Commission, acting in accordance with the procedure referred to in Article 11(3), may take any appropriate measure to take into account international developments and to:**

**(a) amend instrument specific annexes in respect of:**

– **the maximum permissible errors and accuracy classes,**

– **the rated operating conditions,**

– **the critical change values,**

– **the list of conformity assessment procedures;**

**(b) amend the test programmes laid down in Annex II;**

**3.** Where a Member State or the Commission considers that a normative document whose references have been published in the C series of the *Official Journal of the European Communities* in accordance with paragraph ~~2~~**1**(~~b~~), does not fully meet the essential requirements referred to in Article 4, that Member State or the Commission shall bring the matter before the Measuring Instruments Committee, giving its reasons for doing so.

The Commission, acting in accordance with the procedure referred to in Article 11(2), shall inform the Member States whether or not it is necessary to

withdraw the references of the normative document concerned from the publication referred to in the third subparagraph of Article 9(2).

### *Article 13* *Markings*

1. The CE ~~conformity~~-marking referred to in Article 5 consists of the letters CE according to the design laid down in paragraph I.B(d) of the Annex to Decision 93/465/EEC. The CE marking shall be at least 5 mm high.
2. The supplementary metrology marking referred to in Article 5 consists of the capital letter M and the year of its affixing, surrounded by a rectangle. The height of the rectangle shall be equal to the height of the CE marking. The supplementary metrology marking shall immediately follow the CE marking.
3. The identification number of the notified body concerned referred to in Article 8, if prescribed by the conformity assessment procedure, shall follow the CE ~~conformity~~ marking and supplementary metrology marking. The measuring instrument shall carry no identification number of a notified body where that is not prescribed by the conformity assessment procedure. ~~The measuring instrument shall carry no identification number of a notified body where that is not prescribed by the conformity assessment procedure.~~
4. When a measuring instrument consists of a set of devices **and/or sub-assemblies** operating together, the markings shall be present on the instrument's main device.

When a measuring instrument is too small or too sensitive to carry the markings referred to in paragraph 1-~~3~~, the markings shall be ~~carried by the packing in which the instrument is offered for sale or, if applicable, the container in which the instrument is supplied~~ **indicated on the technical documentation.**

5. The CE ~~conformity~~ marking and supplementary metrology marking shall be indelible. The identification number of the notified body concerned shall be indelible or self destructive upon removal. All markings shall be clearly visible or easily accessible.

### *Article 14* *Unduly affixed marking*

1. **Where a Member State establishes that the CE marking and/or supplementary metrology marking has been affixed unduly, the manufacturer or his authorized representative established within the Community shall be obliged to make the instrument conform as regards the provisions concerning the CE marking and/or supplementary metrology marking and to end the infringement under the conditions imposed by the Member State.**
2. **The Member State must take all appropriate measures to restrict or prohibit the placing on the market of the instrument in question or to ensure that it is withdrawn from the market in accordance with the procedures laid down in Article 16.**

*Article 14-15*  
*Market surveillance*

- ~~1. Member States shall take all appropriate measures to ensure that measuring instruments that carry the CE conformity marking and supplementary metrology marking according to Article 5 shall be placed on the market and put into use only if, when correctly installed and used in accordance with the manufacturer's instructions, they satisfy the essential requirements referred to in Article 4, and they have undergone conformity assessment in accordance with Article 7.~~
2. The competent authorities of the Member States shall assist each other in the fulfilment of their obligations to carry out market surveillance.

In particular, the competent authorities shall exchange information concerning the extent to which instruments they examine comply with the obligations of this Directive, and the results of such examinations.

Each Member State shall inform the other Member States and the Commission which competent authorities it has designated for such exchange of information.

~~Information exchanged shall be kept confidential.~~

*Article 16*  
*Safeguard clause*

31. If a Member State establishes that all or part of the measuring instruments of a particular model, that bear the CE conformity marking and the supplementary metrology marking, do not satisfy the ~~conditions set out in paragraph 1~~ **metrological characteristics set out in this directive, when correctly installed and used in accordance with the manufacturer's instructions**, it shall take all appropriate measures to withdraw those instruments from the market, prohibit or restrict their further being placed on the market, or prohibit or restrict their further being used.

When deciding on the measures, the Member State shall take account of the systematic or incidental nature of the non-compliance. Where the Member State has established that the non-compliance is of a systematic nature, it shall immediately inform the Commission of the measures taken, indicating the reasons for its decision.

42. The Commission shall enter into consultation with the parties concerned as soon as possible.

**a)** Should the Commission find that the measures taken by the Member State concerned are justified, it shall immediately inform the Member State that took the action thereof, as well as the other Member States.

The competent Member State shall take appropriate action against whomsoever has affixed the markings and shall inform the Commission and the other Member States thereof.

**If the non-compliance is attributed to shortcomings in the standards or normative documents, the Commission shall, after having consulted the parties**

**concerned, bring the matter as soon as possible before the appropriate Committee referred to in Article 10 or Article 11.**

**b)** Should the Commission find that the measures taken by the Member State concerned are not justified, it shall immediately inform the Member State that took the action thereof, as well as the manufacturer concerned or his authorised representative.

~~If the non-compliance is attributed to shortcomings in the standards or normative documents, the Commission shall, after having consulted the parties concerned, bring the matter as soon as possible before the appropriate Committee referred to in Article 10.~~

The Commission shall ensure that the Member States are kept informed of the progress and outcome of the procedure.

#### *Article ~~15~~**17***

#### *Decisions entailing refusal or restriction*

Any decision taken by a Member State pursuant to this Directive which requires the withdrawal from the market of a measuring instrument, or prohibits or restricts the placing on the market or putting into use of an instrument, shall state the exact grounds on which it is based. Such a decision shall be notified forthwith to the party concerned, who shall at the same time be informed of the legal remedies available to him under the laws in force in the Member State concerned and of the time limits to which such remedies are subject.

#### *Article ~~16~~**18***

#### *Repeals*

The following Directives are repealed as from [1 July 2002] without prejudice to Article ~~17~~**19**:

- Directive 71/318/EEC;
- Directive 71/319/EEC;
- Directive 71/348/EEC;
- Directive 73/362/EEC;
- Directive 75/33/EEC;
- Directive 75/410/EEC;
- Directive 76/891/EEC;
- Directive 77/95/EEC;
- Directive 77/313/EEC;
- Directive 78/1031/EEC;
- Directive 79/830/EEC.

*Article ~~17~~19*  
*Transitional provisions*

By way of derogation from Article 6.2, Member States shall permit, for measurement tasks for which they have prescribed the use of a legally controlled measuring instrument, the placing on the market and putting into use of measuring instruments that satisfy the rules applicable before [two years after 1 July 2002] until the expiration of the validity of the type approval of those measuring instruments or, in case of a type approval of indefinite validity, for a period of ~~ten~~ five years from [1 July 2002].

*Article ~~18~~20*  
*Transposition*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [1 July 2002] at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article ~~19~~21*  
*Entry into force*

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

*Article ~~20~~22*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**ANNEX I:**  
**Essential requirements**

*No change from the proposal in COM(2000) 566 other than in the following paragraphs:*

**5. Durability**

A measuring instrument shall be designed to maintain an adequate stability of its metrological characteristics over ~~reasonable~~ **the** period of time **specified by the manufacturer, taking into account normal conditions of use when the device is properly installed**, maintained and used according to the manufacturer's instruction ~~when~~ in the environmental conditions for which it is intended.

**6. Reliability**

A measuring instrument shall be designed to reduce as far as possible the effect of a defect that would lead to an inaccurate measurement result, unless the presence of such a defect is obvious ~~or can be easily and simply checked using devices apart from the instrument itself~~.

**7. Suitability**

7.2. A measuring instrument shall be suitable for its intended use taking account of the practical working conditions and ~~bearing in mind the intended user~~ shall not require unreasonable demands of the user in order to obtain a correct measurement result.

**8. Protection against corruption**

8.1 The metrological characteristics of a measuring instrument shall not be ~~inadmissibly~~ influenced **in an inadmissible way** by the connection to it of another device, by any feature of the connected device itself or by any remote device that communicates with the measuring instrument.

**10. Indication of result**

10.2 The indication of any result shall be clear and unambiguous and accompanied by such marks and inscriptions necessary to inform the user of the significance of the result. Easy reading of the presented result shall be permitted under normal conditions of use. Additional indications may be shown provided they cannot be confused **with the primary indication**.

10.5 A measuring instrument intended for domestic utility measurement purposes from which the measurement data can **remotely** read ~~either by a mobile data capture unit or remotely via a transmission link~~ shall **also** be fitted with a display accessible to the consumer. The reading of this display is the measurement result that serves as the basis for the price to pay.

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Annex MI-001

Water Meters

*No change from the proposal in COM(2000) 566 other than to add the following paragraphs.*

*Add after point 10:*

**Putting into use**

- a) **Where a Member State imposes measurement of residential use, it shall allow such measurement to be performed by means of any Class 1 meter.**
- b) **Where a Member State imposes measurement of commercial and/or light industrial use, it shall allow such measurement to be performed by any Class 1 meter. The Member State shall ensure that the flowrate range be determined by the distributor or the person legally designated for installing the meter, so that the meter is appropriate for the accurate measurement of consumption that is foreseen or reasonably foreseeable.**
- c) **As regards the requirements under 2, 3, 4 and 5 above a Member State may define the conditions for putting into use of instruments on the grounds given in Article 6.3.**

*Add after Conformity Assessment Paragraph:*

**The maximum permissible error shall be verified in the conformity assessment procedure on the basis of the class and flowrate range declared by the manufacturer.**

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Annex MI-002

Gas Meters

*No change from the proposal in COM(2000) 566 other than to add the following paragraphs.*

*Add after point 10:*

**Putting into use**

- a) **Where a Member State imposes measurement of residential use, it shall allow such measurement to be performed by means of any Class 1.5 meter.**

- b) Where a Member State imposes measurement of commercial and/or light industrial use, it shall allow such measurement to be performed by any Class 1 and/or Class 1.5 meter. The Member State shall ensure that the flowrate range be determined by the distributor or the person legally designated for installing the meter, so that the meter is appropriate for the accurate measurement of consumption that is foreseen or reasonably foreseeable.
- c) As regards the requirements under 2, 3, 4 and 5 above a Member State may define the conditions for putting into use of instruments on the grounds given in Article 6.3.

*Add after Conformity Assessment Paragraph:*

The maximum permissible error shall be verified in the conformity assessment procedure on the basis of the class and flowrate range declared by the manufacturer.

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Annex MI-003

Electricity Meters

*No change from the proposal in COM(2000) 566 other than to add the following paragraphs.*

*Add after point 10:*

**Putting into use**

- a) Where a Member State imposes measurement of residential use, it shall allow such measurement to be performed by means of any Class 2 meter.
- b) Where a Member State imposes measurement of commercial and/or light industrial use, it shall allow such measurement to be performed by any Class 1 and/or Class 2 meter. The Member State shall ensure that the flowrate range be determined by the distributor or the person legally designated for installing the meter, so that the meter is appropriate for the accurate measurement of consumption that is foreseen or reasonably foreseeable.
- c) As regards the requirement under 4 above a Member State may define the conditions for putting into use of instruments on the grounds given in Article 6.3.

*Add after Conformity Assessment Paragraph:*

**The maximum permissible error shall be verified in the conformity assessment procedure on the basis of the class and flowrate range declared by the manufacturer.**

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Annex MI-004

Heat Meters

*No change from the proposal in COM(2000) 566 other than to add the following paragraphs.*

*Add after point 10:*

**Putting into use**

- a) **Where a Member State imposes measurement of residential use, it shall allow such measurement to be performed by means of any Class 3 meter.**
- b) **Where a Member State imposes measurement of commercial and/or light industrial use, it shall allow such measurement to be performed by any Class 2 and/or Class 3 meter. The Member State shall ensure that the flowrate range be determined by the distributor or the person legally designated for installing the meter, so that the meter is appropriate for the accurate measurement of consumption that is foreseen or reasonably foreseeable.**
- c) **As regards the requirements under 1 above a Member State may define the conditions for putting into use of instruments on the grounds given in Article 6.3.**

*Add after Conformity Assessment Paragraph:*

**The maximum permissible error shall be verified in the conformity assessment procedure on the basis of the class and flowrate range declared by the manufacturer.**

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Annex MI-008

Material Measures

*No change from the proposal in COM(2000) 566 other than to add the following paragraphs.*

*Add in Chapter I to the introduction:*

**However, the requirement for the supply of a copy of the declaration of conformity may be interpreted as applying to the batch or consignment rather than each individual instrument.**

*Add in Chapter II to the introduction:*

**However, the requirement for the supply of a copy of the declaration of conformity may be interpreted as applying to the batch or consignment rather than each individual instrument. Also the requirement for the instrument to bear an accuracy class shall not apply.**

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