COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

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common position of the Council on the adoption of a Directive of
the European Parliament and of the Council on Measuring Instruments

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council: 15.09.2000

Date of the opinion of the European Economic and Social Committee: 28.02.2001

Date of the opinion of the European Parliament, first reading: 03.07.2001

Date of transmission of the amended proposal: 06.02.2002

Date of adoption of the common position: 22.07.2003

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The proposal aims to harmonise national legislation concerning instruments for legal measurement (e.g. water, gas and electricity meters, petrol pumps, taximeters, exhaust gas meters.).

The legislation is of the New Approach type. It specifies essential requirements and leaves technical specifications to manufacturers and standards. It also allows the manufacturer a choice of conformity assessment procedures.

3. COMMENTS ON THE COMMON POSITION

3.1. General remarks

The common position has been accepted in Council by unanimity.

The main elements of the political agreement are suppressing Annex II and withdrawing Annex MI-010.

Annex II concerned non-mandatory testing methods, which, given that they can change quickly in the light of technical innovation, are just as well treated by means of standardisation, which simplifies the document and contributes to a simpler layout and more clarity.
Annex MI-010 concerns alcohol breathalysers, the results of which are used as legal evidence. Several Member States indicated that they therefore needed testing of the instruments to be performed by national authorities, which rules out conformity assessment by notified bodies anywhere in the Community, as foreseen by the proposal. If a national court disputes the results produced by an instrument, national authorities need to adapt specifications of the instruments rapidly to conform to the national jurisprudence. These issues make harmonisation of the technical product requirements impossible.

For these reasons the Commission can agree with the suppression of Annex II and the withdrawal of the proposal in Annex MI-010.

3.2. Effect of the amendments by Parliament in first reading

3.2.1. Amendments that have been included in the amended proposal and in the common position

The amendments with the following numbers have been included in the amended proposal, in some cases with modifications. The proposals by the Commission have been followed in the common position for the following amendments: 1, 2, 3, 4, 6, 7, 8, 9a, 10, 11, 12, 13, 15, 17, 18, 20, 21, 22, 23, 24, 26 and 27.

Amendment 1 - Recital 2 (Public interest objectives): the amendment is a clarification.

Amendment 2 - New recital 4a (Application of optionality), now recital 5: in accordance with the amendment the new recital clarifies that there is an option for Member States to prescribe metrological control for types of instruments in the future. However, the wording has been modified in order to prevent any misunderstandings about the scope of Member States' obligations.

Amendment 3 - New Recital 4b (now recital 6) (Definition of manufacturer): there is full support for the objective of the amendment. The modification of the proposed wording makes the substance of the amendment even clearer.

Amendment 4 - Recital 11 (now recital 13) (Affixing of markings during manufacturing process): the amendment has been accepted with the wording slightly changed in order to reflect more closely the character of a recital.

Amendment 6 - Article 1 (List of instrument-specific annexes): the amendment has been accepted because the instrument-specific annexes contain mandatory provisions and it is useful to list those annexes in Article 1 (together with the purely consequential change of leaving out "evidential breath analyzers").

Amendment 7 - Article 1 (Reasons for legal metrological control): the substance of this amendment has been inserted into the definition of "legal metrological control" in Art. 3.

Amendments 8 and 9a - Article 2 (Object and requirements): The whole paragraph 1 has been restructured in order to make the provision legally sound. As the consequence of the treatment of amendment 7 (i.e. to introduce the text in Article 3 and not in Article 1), it has not been possible to delete the entire reference to "legal metrological control".

Amendment 10 - Article 3 (Definition of "sub-assembly"): the substance of the amendment has been accepted with only editorial modifications to the suggested wording.
Amendment 11 - Article 3 (Definition of "manufacturer"): the substance of the amendment has been taken on board, including the deletion of the term "lawfully".

Amendment 12 - Article 3 (Definition of authorised representative): the amendment is a clarification.

Amendment 13 - Article 5, paragraph 2 (Conformity marking), now Article 6, paragraph 2: While the Commission had accepted the amendment in its modified proposal, the Council went further by allowing that both types of markings described be affixed during the fabrication process. The addition "if justified" should normally preclude any misuse of this flexible provision.

Amendment 15 - Article 8 (Criteria for designation of bodies), now Article 9: the amendment is accepted, because it clarifies the retaining of the right of Member States without national legislation concerning a specific instrument to designate a notified body.

Amendment 17 - Article 12 (Functions of the Measuring Instruments Committee), now Article 13: the part of the amendment aiming at excluding the modifications of details of the specific annexes from the task of the Measuring Instruments Committee has been rejected. However, the substance of the amendment has been acknowledged by strengthening the need for consultation of interested parties concerning the mentioned details of the specific annexes.

Amendment 18 - Article 13 (Markings - here: Identification number), now Article 14: The amendment for the deletion of an additional sentence is accepted, given that the conformity assessment annexes are clear on this point and that the sentence is therefore superfluous.

Amendment 20 - Article 14 (Confidentiality), now Article 15: The amendment is accepted. The approach has been followed not to refer to issues of "confidentiality" in the body of the text, because such provisions might give a false impression of the scope of the Directive and lead to different interpretations in the Member States.

Amendment 21 - Article 17, now Article 21 (Transitional provisions): the Commission accepted the reduced period of validity of 5 years for existing approvals of indefinite duration, but the Council has in the light of applicability preferred to treat all in a similar way and to maintain 10 years for all existing approvals, i.e. those with 10 year validity and those with indefinite duration.

Amendment 22 - Annex I, point 5 (Specification of a time period under the heading "durability"): the substance of the amendment, has been accepted which is in line with the new approach concept of enhanced responsibility of the manufacturer.

Amendment 23 - Annex I, point 6 (Reliability): in line with the amendment the sentence can be deleted.

Amendment 24 - Annex I, point 7.2 (Suitability for the intended user): the amendment was accepted as a simplification.

Amendment 26 - Annex I, point 10.2 (Unambiguous indications of results): the substance of the amendment has been accepted as serving a useful clarification objective. The Council has preferred however to use the wording "metrologically controlled indications" instead of "primary indication".
Amendment 27 - Annex I, point 10.5 (Data reading): the substance of the amendment has been accepted, but the wording changed in order to clarify that the accessibility to the customer should be guaranteed in any case.

3.2.2. Amendments that have been included in the amended proposal but rejected in the common position

Amendments 19 and 25 were included in the amended proposal, but have not been retaken as such in the common position.

Amendment 19 - Article 13, now Article 14 (Markings on main device): The new Article 4 contains a general clause that all provisions should also be applicable - mutatis mutandis - to sub-assemblies. For logical reasons the additional provision of Article 14 (4) should refer to those elements not being sub-assemblies.

Amendment 25 - Annex I, point 8.1 (Serious influence): In substance the major part of the amendment has been accepted. However, the word “serious” has not been included as it could lead to misunderstandings, as if restricting the negative influence to "serious" cases and leaving open the decision in which cases an influence would have to be regarded as serious or not.

3.2.3. Amendments that have been rejected in the amended proposal and in the common position

The amendments 5, 9b, 14, 16, 28 and 29 were rejected by the Commission in its amended proposal and have not been retaken in the common position.

Amendment 5 - Recital 14 (Prevention of non-complying instruments being placed on the market) - now recital 15: The amendment has been rejected because it might lead to misunderstandings in the sense of restricting the scope of the Member States' obligations.

Amendment 9b - Article 2 (Decision on future regulation of instruments): the rights and obligations of those Member States that do not exert legal metrological control on some types of instruments are better and sufficiently dealt with in other parts of the text, for example in new recital 5 and in article 9.

Amendments 14 and 29 - Annex IV (now Annex III) and new Article 7a - (Technical documentation): there is no good reason for shifting the provisions in Annex III to a separate article in the body of the text and thus prefers to stick to the structure of the Commission's proposal in this regard.

Amendments 16 and 28 - Article 8a new and Annex III (now Annex II): there is no support for the idea expressed in the amendments of shifting the criteria for the designation of national bodies from the annexes to the body of the text.
3.3. Other modifications

Other modifications in the common position have been minor and mainly concern the reshuffling of articles in order to better reflect the current practice in the New Approach legislation, without materially changing them. This also applies to the changes in the annexes.

Changes to the recitals and articles

The changes of a detailed nature in the articles compared to the amended proposal of the Commission are as follows.

The recitals have been adapted in the following sense:

- a new statement (9) has been added concerning the distinction of classes for climatic conditions and different levels of consumer protection,
- the two statements on standardisation have been rationalised into one (10),
- the statement on market surveillance has been split into two (15, 16),
- a new statement highlights the existence of national in-service verification (18)
- a new statement explains the standing practice for working groups in the committee (20).

In Article 3 (definitions), the definition of “subassembly” (b) has been limited to those mentioned in the instrument specific annexes and that of “manufacturer” (d) simplified.

Article 4 (formerly Article 4.3) concerns the applicability to subassemblies.

Article 5 (formerly Article 4.1) includes a new standard language clause.

Subsequent articles are numbered one higher.

Article 7.3 (formerly 6.3) has been limited to giving Member States the competence to legislate on "putting into use" of measuring instruments where this is justified by climatic conditions.

Article 7.4 (formerly mentioned in the MI-annexes under ‘putting into use’) now specifies that conditions under which Member States may differentiate the use of instruments for specific applications. All classes of instruments must have one or more areas of application in each Member State, as a consequence there will exist an EU-wide market for each classes.

In Article 7 the former article 6.4 concerning public or monopoly undertakings in the utilities sector has been lifted, because it is not specific to measuring instruments and a standard Article 7.5 has been added concerning the treatment of instruments for demonstration purposes.

A standard language clause has been added to Article 8 on conformity assessment (formerly Article 7).

Article 10.3 has been added, emphasising the choice of manufacturer of any technical specification that complies with the essential requirements. The new Article 10.4 concerns the results of durability testing that are mentioned in the technical documentation.
Article 12.5 has been added ensuring that interested parties are fully informed about Measuring Instruments Committee draft measures.

Article 13.4 has been added in order to make the relevant OIML work at national level more transparent to interested parties.

Article 15 reintroduces the obligation of Member States to perform adequate market surveillance (first point). The elements of administrative co-operation between surveillance authorities have been listed (second point).

Article 17 (formerly Article 14) concerns unduly fixed markings.

A new article 19 mentions the option of Member States to require verification of instruments in use that are subject to legal metrological control.

In Article 20, Directive 75/33/EEC (cold water meters) has been repealed only for clean water meters.

A new Article 23 has been added requiring a report after 7 years about the scope of the directive and its application.

Changes to the annexes

In annex I (essential requirements) the definition of direct sales (for which no precedent exists in the acquis) has been improved, a definition of climatic environments and of utilities have been added.

The complex former Table 1 has been replaced by a simpler table concerning only climatic environments and the E3 electromagnetic class has been added.

Under requirement 1.4 rules for testing have been included. The testing rules for ambient humidity was contained in the former Annex II, point 3.2.

Under requirement 7.6 "in service"-testing has been added, which is the consequence of adding the new article 19.

The labelling requirements in requirement 9 have been increased.

The former Annex II has been deleted and durability testing where deemed necessary retaken in the instrument specific annexes (MI-00x).

In annex II (formerly III) a clause has been added to point 6 requiring director’s pay to be independent of results and tasks carried out.

In annex III (formerly IV) the elements of the technical documentation have been expanded.

In annex MI-001 durability testing for water meters have been included under point 7.2. The putting into use clause has been simplified to reflect that there are no classes that Member States may refer to.

In annex MI-002 durability testing for gas meters have been included under point 4. Requirements for volume conversion devices, which are often used, have been added.

In annex MI-003, transformers have been taken out and the text simplified.
In annex MI-004, a new class 1 concerns heat meters that can be used in Member States that do not prescribe legal metrological control. Durability testing for heat meters has been included under point 5.

4. CONCLUSION

The Commission can agree with the suggested changes to its proposal, because the common position does not imply a fundamental shift away from the proposal adopted by the Commission.