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*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to making available on the market of non-automatic weighing instruments (recast) (COM(2011)0766 – C7-0430/2011 – 2011/0352(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Zuzana Roithová

(Recast – Rule 87 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to making available on the market of non-automatic weighing instruments (recast)
(COM(2011)0766 – C7-0430/2011 – 2011/0352(COD))**

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0766),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0430/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 28 March 2012¹,
 - having regard to the the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts²,
 - having regard to the letter of 27 March 2012 from the Committee on Legal Affairs to the Committee on the Internal Market and Consumer Protection in accordance with Rule 87(3) of its Rules of Procedure,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0257/2012),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

¹ Not yet published in the Official Journal.

² OJ C 77, 28.3.2002, p. 1.

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Recital 10

Text proposed by the Commission

(10) When placing a non-automatic weighing instrument on the market, every importer should indicate on the non-automatic weighing instrument his name and the address at which he can be contacted. ***Exceptions should be provided for in cases where the size or nature of the non-automatic weighing instrument does not allow it. This includes cases where the importer should have to open the packaging to put his name and address on the instrument.***

Amendment

(10) When placing a non-automatic weighing instrument on the market, every importer should indicate on the non-automatic weighing instrument his name and the address at which he can be contacted.

Justification

It is not admissible to make exceptions on the grounds of size for weighing instruments. Since these should, moreover, be subject to regular controls by the Member States (cf. Article 3(3)), the marking should be affixed on the instrument itself.

Amendment 2

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) All obligations imposed on economic operators by this Directive should also apply in the case of distance selling.

Amendment 3
Proposal for a directive
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) When issuing a single EU declaration of conformity could cause specific problems due to the complexity or scope of that single EU declaration, it should be possible to replace that single EU declaration by individual EU declarations of conformity relevant for the particular non-automatic weighing instrument.

Amendment 4

Proposal for a directive
Recital 35

Text proposed by the Commission

Amendment

(35) It is necessary to provide for transitional arrangements that allow making available on the market and putting into service non-automatic weighing instruments that have already been placed on the market in accordance with Directive 2009/23/EC.

(35) It is necessary to provide for transitional arrangements that allow ***economic operators a reasonable period of time to make*** available on the market and putting into service non-automatic weighing instruments that have already been placed on the market in accordance with Directive 2009/23/EC. ***Economic operators should be able to sell stocks of non-automatic weighing instruments that are already in the distribution chain on the date of application of national measures transposing this Directive.***

Amendment 5

Proposal for a directive
Article 2 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) ‘weighing instrument’ means a measuring instrument serving to determine

(1) ‘weighing instrument’ means a measuring instrument serving to determine

the mass of a body by using the action of gravity on that body *or serving* to determine other mass-related magnitudes, quantities, parameters or characteristics;

the mass of a body by using the action of gravity on that body. *A weighing instrument may also serve* to determine other mass-related magnitudes, quantities, parameters or characteristics;

Amendment 6
Proposal for a directive
Article 2 – point 9

Text proposed by the Commission

(9) ‘economic operators’ means *the* manufacturer, *the* authorised representative, *the* importer *and the* distributor;

Amendment

(9) ‘economic operator’ means *a* manufacturer, *an* authorised representative, *an* importer *or the* distributor;

Amendment 7
Proposal for a directive
Article 2 – point 11

Text proposed by the Commission

(11) ‘harmonised standard’ means *harmonised* standard as defined in Article 2(1)(c) of Regulation (EU) No [...] [European Standardisation];

Amendment

(11) ‘harmonised standard’ means standard as defined in Article 2(1)(c) of Regulation (EU) No [...] [European Standardisation];

Amendment 8
Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

1. Member States shall take all steps to ensure that only instruments that meet the requirements of this Directive may be made available on the market.

Amendment

1. Member States shall take all steps to ensure that only instruments that meet the *applicable* requirements of this Directive may be made available on the market.

Amendment 9

Proposal for a directive
Article 3 – paragraph 3

Text proposed by the Commission

3. Member States shall take all steps to ensure that instruments continue to conform to the requirements of this Directive .

Amendment

3. Member States shall take all steps to ensure that instruments continue to conform to the ***applicable*** requirements of this Directive.

Amendment 10

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

Instruments used for the applications listed in points (a) to (f) of Article 1(2) must satisfy the essential requirements set out in Annex I and bear the CE marking and the inscriptions provided for in point 1 of Annex III .

Amendment

Instruments used ***or intended to be used*** for the applications listed in points (a) to (f) of Article 1(2) must satisfy the essential requirements set out in Annex I and bear the CE marking and the inscriptions provided for in point 1 of Annex III .

Amendment 11

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. When placing on the market their instruments used for the applications listed in points (a) to (f) of Article 1(2), manufacturers shall ensure that they have been designed and manufactured in accordance with the essential requirements set out in Annex I.

Amendment

1. When placing on the market their instruments ***intended to be*** used for the applications listed in points (a) to (f) of Article 1(2), manufacturers shall ensure that they have been designed and manufactured in accordance with the essential requirements set out in Annex I.

Amendment 12

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 2

Text proposed by the Commission

When placing on the market their instruments not used for the applications listed in points (a) to (f) of Article 1(2), manufacturers shall ensure that they bear the inscriptions provided for in point 2 of Annex III.

Amendment

When placing on the market their instruments not ***intended to be*** used for the applications listed in points (a) to (f) of Article 1(2), manufacturers shall ensure that they bear the inscriptions provided for in point 2 of Annex III.

Amendment 13

Proposal for a directive

Article 6 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. For the instruments used for the applications listed in points (a) to (f) of Article 1(2), manufacturers shall draw up the required technical documentation and carry out the relevant conformity assessment procedure referred to in Article 14 or have it carried out.

Amendment

2. For the instruments ***intended to be*** used for the applications listed in points (a) to (f) of Article 1(2), manufacturers shall draw up the required technical documentation and carry out the relevant conformity assessment procedure referred to in Article 14 or have it carried out.

Amendment 14

Proposal for a directive

Article 6 – paragraph 2 – subparagraph 3

Text proposed by the Commission

For the instruments not used for the applications listed in points (a) to (f) of Article 1(2), manufacturers shall affix the inscriptions provided for in point 2 of Annex III.

Amendment

For the instruments not ***intended to be*** used for the applications listed in points (a) to (f) of Article 1(2), manufacturers shall affix the inscriptions provided for in point 2 of Annex III.

Amendment 15

Proposal for a directive

Article 6 – paragraph 3

Text proposed by the Commission

3. For the instruments used for the applications listed in points (a) to (f) of Article 1(2), manufacturers shall keep the technical documentation and the EU declaration of conformity for 10 years after the instrument has been placed on the market.

Amendment

3. For the instruments ***intended to be*** used for the applications listed in points (a) to (f) of Article 1(2), manufacturers shall keep the technical documentation and the EU declaration of conformity for 10 years after the instrument has been placed on the market.

Amendment 16
Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission

7. Manufacturers shall ensure that the instrument is accompanied by instructions and information in a language which can be easily understood by consumers and other end-users, as determined by the Member State concerned.

Amendment

7. Manufacturers shall ensure that the instrument is accompanied by instructions and ***safety*** information in a language which can be easily understood by consumers and other end-users, as determined by the Member State concerned. ***Such instructions and safety information as well as any labelling shall be clear, understandable and intelligible.***

Amendment 17

Proposal for a directive
Article 6 – paragraph 6

Text proposed by the Commission

6. Manufacturers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted ***on the instrument*** or, where that is not possible, on its packaging or in a document accompanying the instrument. The address must indicate a single point at which the manufacturer can be contacted.

Amendment

6. Manufacturers shall indicate, ***on the instrument***, their name, registered trade name or registered trade mark the ***postal, or, if available, the website*** address at which they can be contacted or, where that is not ***reasonably*** possible, on its packaging or in a document accompanying the instrument. The address must indicate a single point at which the manufacturer can be contacted. ***The contact details shall be in a language easily understood by end-***

Amendment 18

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Before placing on the market an instrument used for the applications listed in points (a) to (f) of Article 1(2), importers shall ensure that the appropriate conformity assessment procedure has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation, that the instrument bears the CE marking, the inscriptions provided for in point 1 of Annex III and is accompanied by the required documents, and that the manufacturer has complied with the requirements set out in Article 6(5) and (6).

Amendment

2. Before placing on the market an instrument ***intended to be*** used for the applications listed in points (a) to (f) of Article 1(2), importers shall ensure that the appropriate conformity assessment procedure has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation, that the instrument bears the CE marking, the inscriptions provided for in point 1 of Annex III and is accompanied by the required documents, and that the manufacturer has complied with the requirements set out in Article 6(5) and (6).

Amendment 19

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Where an importer considers or has reason to believe that an instrument used for the applications listed in points (a) to (f) of Article 1(2) is not in conformity with the essential requirements set out in Annex I, he shall not place the instrument on the market until it has been brought into conformity. Furthermore, where the instrument presents a risk, the importer shall inform the manufacturer and the market surveillance authorities to that effect.

Amendment

Where an importer considers or has reason to believe that an instrument ***intended to be*** used for the applications listed in points (a) to (f) of Article 1(2) is not in conformity with the essential requirements set out in Annex I, he shall not place the instrument on the market until it has been brought into conformity. Furthermore, where the instrument presents a risk, the importer shall inform the manufacturer and the market surveillance authorities to that effect.

Amendment 20

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Before placing on the market an instrument not used for the applications listed in points (a) to (f) of Article 1(2) importers shall ensure that the instrument bears the inscriptions provided for in point 2 of Annex III and that the manufacturer has complied with the requirements set out in Article 6(5) and (6).

Amendment

Before placing on the market an instrument not ***intended to be*** used for the applications listed in points (a) to (f) of Article 1(2) importers shall ensure that the instrument bears the inscriptions provided for in point 2 of Annex III and that the manufacturer has complied with the requirements set out in Article 6(5) and (6).

Amendment 21

Proposal for a directive

Article 8 – paragraph 3

Text proposed by the Commission

3. Importers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the instrument or, where that is not possible, on its packaging or in a document accompanying the instrument.

Amendment

3. Importers shall indicate, ***on the instrument***, their name, registered trade name or registered trade mark and the ***postal, or, if available, the website*** address at which they can be contacted or, where that is not possible, on its packaging or in a document accompanying the instrument. ***The contact details shall be in a language easily understood by end-users and market surveillance authorities.***

Amendment 22

Proposal for a directive

Article 8 – paragraph 4

Text proposed by the Commission

4. Importers shall ensure that the instrument is accompanied by instructions and information in a language which can be easily understood by consumers and other end-users, as determined by the

Amendment

4. Importers shall ensure that the instrument is accompanied by instructions and ***safety*** information in a language which can be easily understood by consumers and other end-users, as determined by the

Member State concerned.

Member State concerned.

Amendment 23

Proposal for a directive Article 8 – paragraph 5

Text proposed by the Commission

5. Importers shall ensure that, while an instrument used for the applications listed in points (a) to (f) of Article 1(2) is under their responsibility, storage or transport conditions do not jeopardise its compliance with the essential requirements set out in Annex I.

Amendment

5. Importers shall ensure that, while an instrument *intended to be* used for the applications listed in points (a) to (f) of Article 1(2) is under their responsibility, storage or transport conditions do not jeopardise its compliance with the essential requirements set out in Annex I.

Amendment 24

Proposal for a directive Article 8 – paragraph 8

Text proposed by the Commission

8. For the instruments used for the applications listed in points (a) to (f) of Article 1(2), importers shall, for 10 years after the instrument has been placed on the market keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request.

Amendment

8. For the instruments *intended to be* used for the applications listed in points (a) to (f) of Article 1(2), importers shall, for 10 years after the instrument has been placed on the market keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request.

Amendment 25

Proposal for a directive Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Before making an instrument used for the applications listed in points (a) to (f) of Article 1(2) available on the market,

Amendment

2. Before making an instrument *intended to be* used for the applications listed in points (a) to (f) of Article 1(2) available on

distributors shall verify that the instrument bears the CE marking, the inscriptions provided for in point 1 of Annex III, that it is accompanied by the required documents and by instructions and information in a language which can be easily understood by consumers and other end-users in the Member State in which the instrument is to be made available on the market, and that the manufacturer and the importer have complied with the requirements set out in Article 6(5) and (6) and Article 8(3).

the market, distributors shall verify that the instrument bears the CE marking, the inscriptions provided for in point 1 of Annex III, that it is accompanied by the required documents and by instructions and information in a language which can be easily understood by consumers and other end-users in the Member State in which the instrument is to be made available on the market, and that the manufacturer and the importer have complied with the requirements set out in Article 6(5) and (6) and Article 8(3).

Amendment 26

Proposal for a directive Article 9 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Before making an instrument not used for the applications listed in points (a) to (f) of Article 1(2) available on the market, distributors shall verify that the instrument bears the inscriptions provided for in point 2 of Annex III and that the manufacturer and the importer have complied with the requirements set out in Article 6(5) and (6) and Article 8(3).

Amendment

Before making an instrument not *intended to be* used for the applications listed in points (a) to (f) of Article 1(2) available on the market, distributors shall verify that the instrument bears the inscriptions provided for in point 2 of Annex III and that the manufacturer and the importer have complied with the requirements set out in Article 6(5) and (6) and Article 8(3).

Amendment 27

Proposal for a directive Article 9 – paragraph 3

Text proposed by the Commission

3. Distributors shall ensure that, while an instrument used for the applications listed in points (a) to (f) of Article 1(2) is under their responsibility, storage or transport conditions do not jeopardise its compliance with the essential requirements set out in Annex I.

Amendment

3. Distributors shall ensure that, while an instrument *intended to be* used for the applications listed in points (a) to (f) of Article 1(2) is under their responsibility, storage or transport conditions do not jeopardise its compliance with the essential requirements set out in Annex I.

Amendment 28
Proposal for a directive
Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall ensure that instruments which were lawfully placed on the market before [the date set out in the second subparagraph of Article 42(1)] may be made available on the market by distributors without further product requirements.

Amendment 29
Proposal for a directive
Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

Economic operators shall, on request, ***identify*** the following to the market surveillance authorities:

Economic operators shall, on request, ***specify*** the following to the market surveillance authorities:

Amendment 30
Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

Amendment

Economic operators shall ***be able to*** present the information referred to in the first paragraph for a period of 10 years after they have been supplied with the instrument and for a period of 10 years after they have supplied the instrument.

Economic operators shall present the information referred to in the first paragraph for a period of 10 years after they have been supplied with the instrument and for a period of 10 years after they have supplied the instrument. ***Economic operators shall not be required to update that information after supply is finalised.***

Amendment 31
Proposal for a directive
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

***Obligations of economic operators
concerning the products in stock***

Member States shall ensure that the obligations of economic operators concerning the products in stock are applied in accordance with Article 41.

Amendment 32

Proposal for a directive
Article 13 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The conformity of instruments to the essential requirements set out in Annex I may be certified by either of the following procedures as selected by the ***applicant***:

1. The conformity of instruments to the essential requirements set out in Annex I may be certified by either of the following procedures as selected by the ***manufacturer or his authorised representative***:

Amendment 33
Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission

Amendment

2. The EU declaration of conformity shall have the model structure set out in Annex III of Decision No 768/2008/EC, shall contain the elements specified in the relevant modules set out in Annex II to this Directive and shall be continuously updated. It shall be translated into the language or languages required by the Member State in which market the instrument is placed or made available.

2. The EU declaration of conformity shall have the model structure set out in Annex III of Decision No 768/2008/EC, shall contain the elements specified in the relevant modules set out in Annex II to this Directive and shall be continuously updated. It shall be translated into the language or languages required by the Member State in which market the instrument is placed or made available.
Upon request of the market surveillance

authority, the economic operator shall provide a copy of the EU declaration of conformity in paper form or by electronic means and shall ensure that it is translated into the language or languages required by the Member State in which market the non-automatic weighing instruments is placed or made available.

Amendment 34
Proposal for a directive
Article 14 – paragraph 4

Text proposed by the Commission

4. By drawing up the EU declaration of conformity, the manufacturer shall assume responsibility for the compliance of the instrument.

Amendment

4. By drawing up the EU declaration of conformity, the manufacturer shall assume responsibility for the compliance of the instrument ***with the requirements laid down in this Directive.***

Amendment 35
Proposal for a directive
Article 19 – paragraph 1

Text proposed by the Commission

1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with Article 24.

Amendment

1. Member States shall designate a ***single*** notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with Article 24.

Amendment 36
Proposal for a directive
Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall, on an annual basis, provide the Commission with details of

the activities of their market surveillance authorities and of any plans for and increase of market surveillance, including the allocation of more resources, the increase of efficiency and the building of the necessary capacity for achieving those goals.

Amendment 37
Proposal for a directive
Article 35 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Member States shall provide adequate funding to their market surveillance authorities in order to ensure that their activities are coherent and effective across the Union.

Amendment 38
Proposal for a directive
Article 36 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. Where the market surveillance authorities of one Member State have taken action pursuant to Article 20 of Regulation (EC) No 765/2008, or where they have sufficient reason to believe that an instrument covered by this Directive presents a risk to the aspects of public interest protection covered by this Directive, they shall carry out an evaluation in relation to the instrument concerned covering all the requirements laid down in this Directive. The relevant economic operators shall cooperate as necessary with the market surveillance authorities.

1. Where the market surveillance authorities of one Member State have taken action pursuant to Article 20 of Regulation (EC) No 765/2008, or where they have sufficient reason to believe that an instrument covered by this Directive presents a risk to the aspects of public interest protection covered by this Directive, they shall carry out an evaluation in relation to the instrument concerned covering all the **relevant** requirements laid down in this Directive. The relevant economic operators shall cooperate as necessary with the market surveillance authorities.

Amendment 39

Proposal for a directive
Article 36 – paragraph 7

Text proposed by the Commission

7. Where, within **two** months of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified.

Amendment

7. Where, within **three** months of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified.

Amendment 40
Proposal for a directive
Article 36 – paragraph 8

Text proposed by the Commission

8. Member States shall ensure that appropriate restrictive measures are taken in respect of the instrument concerned without delay.

Amendment

8. Member States shall ensure that appropriate restrictive measures are taken in respect of the instrument concerned, ***such as withdrawal of the instrument from their market***, without delay.

Amendment 41
Proposal for a directive
Article 40 – paragraph 1

Text proposed by the Commission

Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are enforced.

Amendment

Member States shall build upon existing mechanisms to ensure correct application of the regime governing the CE marking and shall take appropriate action in the event of improper use of the marking. Member States shall lay down rules on penalties applicable to infringements ***by economic operators*** of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are enforced. ***Such rules may include criminal penalties for serious infringements.***

Amendment 42
Proposal for a directive
Article 40 – paragraph 2

Text proposed by the Commission

The penalties *provided for* shall be effective, proportionate and dissuasive.

Amendment

The penalties *referred to in the first paragraph* shall be effective, proportionate ***to the seriousness of the offence***, and dissuasive.

Amendment 43
Proposal for a directive
Article 40 – paragraph 3

Text proposed by the Commission

Member States shall notify those provisions to the Commission by [the date set out in the second subparagraph of Article 42(1)] *at the latest* and shall notify to it without delay any subsequent amendment affecting them.

Amendment

Member States shall notify those provisions to the Commission by [the date set out in the second subparagraph of Article 42(1)] and shall notify to it without delay any subsequent amendment affecting them. ***The Commission shall make those provisions publicly available by publishing them on the internet.***

Amendment 44
Proposal for a directive
Article 42 – paragraph 2

Text proposed by the Commission

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Amendment

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive. ***The Commission shall make those texts publicly available by publishing them on the internet.***

Amendment 45
Proposal for a directive
Annex I – point 8 – point 8.1

Text proposed by the Commission

8.1. Design and construction of the instruments shall be such that the instruments will preserve their metrological qualities when properly used and installed and when used in an environment for which they are intended. The value of the mass must be indicated.

Amendment

8.1. Design and construction of the instruments shall be such that the instruments will preserve their metrological qualities when properly used and installed and when used in an environment for which they are intended ***or in an environment which can be reasonably foreseen***. The value of the mass must be indicated.

Amendment 46
Proposal for a directive
Annex I – point 8 – point 8.3 – paragraph 1

Text proposed by the Commission

8.3. The requirements of points 8.1 and 8.2 shall be met on a lasting basis during a period of time that is normal in view of the intended use of such instruments.

Amendment

8.3. The requirements of points 8.1 and 8.2 shall be met on a lasting basis during a period of time that is normal in view of the intended ***or reasonably foreseen*** use of such instruments.

Amendment 47
Proposal for a directive
Annex II – part 4 – point 4.3 – paragraph 1

Text proposed by the Commission

A notified body chosen by the manufacturer shall carry out appropriate examinations and tests in order to check the conformity of the instruments with the approved type described in the EU-type examination certificate and with the appropriate requirements of this Directive.

Amendment

An accredited in-house body or a notified body chosen by the manufacturer shall carry out appropriate examinations and tests in order to check the conformity of the instruments with the approved type described in the EU-type examination certificate and with the appropriate requirements of this Directive.

Amendment 48
Proposal for a directive
Annex II – part 5 – point 5.4 – paragraph 1

Text proposed by the Commission

A notified body chosen by the manufacturer shall carry out appropriate examinations and tests to check the conformity of the instruments with the applicable requirements of this Directive.

Amendment

An accredited in-house body or a notified body chosen by the manufacturer shall carry out appropriate examinations and tests to check the conformity of the instruments with the applicable requirements of this Directive.

Amendment 49

Proposal for a directive

Annex II – part 6 – point 6.4 – paragraph 1

Text proposed by the Commission

A notified body chosen by the manufacturer shall carry out appropriate examinations and tests, set out in the relevant harmonised standards and/or technical specifications, or equivalent tests, to check the conformity of the instrument with the applicable requirements of this Directive, or have them carried out. In the absence of such a harmonised standard and/or technical specification the notified body concerned shall decide on the appropriate tests to be carried out.

Amendment

An accredited in-house body or a notified body chosen by the manufacturer shall carry out appropriate examinations and tests, set out in the relevant harmonised standards and/or technical specifications, or equivalent tests, to check the conformity of the instrument with the applicable requirements of this Directive, or have them carried out. In the absence of such a harmonised standard and/or technical specification the notified body concerned shall decide on the appropriate tests to be carried out.

EXPLANATORY STATEMENT

Background

This report brings modifications to a proposal of the European Commission recasting Directive 2009/23/EC on the harmonisation of the laws of the Member States relating to non-automatic weighing instruments. It has been presented in November 2011 in the framework of the implementation of the New Legislative Framework (NLF) adopted in 2008 as "the goods package" covering the complementary instruments, Decision 768/2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC and Regulation 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93. The present proposal is part of a package, aligning nine product directives to the NLF.

The existing Directive 2009/23/EC on non-automatic weighing instruments sets out essential requirements and selects the appropriate conformity assessment procedures which manufacturers have to apply in order to demonstrate that their products comply with these essential requirements, before they are made available on the EU market.

The NLF was adopted to remedy shortcomings in existing Union harmonisation legislation in order to complete the Single Market, with fair competition and safe products. Inconsistent implementation and enforcement in the Member States of the existing Union harmonisation, together with complex regulation, has made it increasingly difficult for both economic operators and authorities to correctly interpret and apply legislation, which lead to unequal market conditions and also unsafe products placed on the market. "The goods package" gives the overall framework to streamline product legislation, in order to make it more uniform and comprehensible for both economic operators and market surveillance authorities.

However, the provisions of the NLF Decision are not directly applicable. To ensure that all economic sectors subject to Union harmonisation legislation benefit from the improvements of the NLF, the provisions of the NLF Decision need to be integrated into the existing product legislation.

After the adoption of the legal framework in NLF in 2008 the Commission has started an evaluation process on harmonised European product legislation in order to identify instruments to be revised in order to implement the NLF.

A number of directives have been identified here while they will need revision within the next 3 - 5 years due to revision clauses or for sector specific reasons (need to clarify scope, need to up-date safety requirements, etc.). The vast majority of the existing European product legislation will need revision for these reasons and will be dealt with individually according to the Commission work programme.

The 9 proposals in the package presented in November 2011, including Directive 2004/23/EC are not part of the first mentioned group of product directives, but have been identified as suitable for an alignment with the NLF due to their common structure. The sectors covered by

the directives are all very important industrial sectors which are subject to a strong international competition, and the assessments are, that those industries will benefit from the simplification and creation of a level playing field for European companies targeted by the NLF.

The changes made to the provisions of this Directive concern: the definitions, the obligations of economic operators, the presumption of conformity provided by harmonised standards, the Declaration of Conformity (DoC), CE marking, notified bodies, the safeguard clause procedure and the conformity assessment procedures.

The intention of the proposal is restricted to a pure alignment with the horizontal provisions in 768/2008/EC and the new terminology within the Lisbon Treaty, including new rules on comitology.

Procedure

The alignment to the NLF Decision requires a number of substantive amendments to the provisions of this Directive. The technique of recasting has been chosen in line with the Interinstitutional Agreement of 28 November 2001.

Pursuant to Rule 87 of the Rules of Procedure of the European Parliament, the committee responsible for legal affairs has examined the proposal, based on the reports from the Consultative Working Party (legal services of the Parliament, the Council and the Commission), and considered that it entails no substantive changes other than those identified as such in the proposal or those identified by the CWP.

Rapporteur's Position

Your Rapporteur considers this alignment of nine product directives with the NLF, as an important step towards the completion of the EU single market.

The NLF introduces a simplified regulatory environment for products and allows more consistent implementation of technical norms, which will help improving the functioning of the single market, by ensuring equal treatment of non-compliant products and of economic operators, as well as an equal assessment of notified bodies throughout the EU market.

It is your Rapporteur's opinion, that an alignment of the 9 product directives with the NLF will increase the confidence of both producers and consumers, by clarifying obligations for economic operators and provide Member States authorities with more effective tools to carry out market surveillance controls, all leading to a reduction of non-compliant and unsafe products on the market.

The Commission's proposals in the alignment package are based on a broad stakeholder consultation, including several hundreds of SMEs and their experiences with the Goods package, which is much appreciated by the Rapporteur.

Your Rapporteur supports the Commission's general intention of a pure alignment of the 9

product directives with the horizontal measures in Decision 768/2008, but would nevertheless suggest some changes to Directive 2009/23/EC on non-automatic weighing instruments for further clarification and sectoral adjustments with the following objectives:

1. Further Align the Directive to the NLF and Ensure Legal Certainty

Your Rapporteur considers important to bring a number of changes to the proposed Directive in order to reach a higher level of consistency with the terms used by the Decision No 768/2008/EC and eliminate the possible inconsistencies in the text which could otherwise create legal uncertainty.

It is also important to clarify the legal situation for products which have been legally placed on the market in compliance with the current Directive before the new Directive applies, but which are still in stock. The non-retroactive nature of EU legislation should be emphasized and it should be clarified that these products can still be made available on the market after the date of application of the new Directive.

In addition, your Rapporteur considers that the Commission should have the obligation to publish on the Internet the national provisions of transposed Directive and relevant sanctions (principle of transparency).

2. Enhance Consumer Protection

The NLF contributes to increase consumer confidence in the single market. Therefore a number of modifications are also linked to your Rapporteur's objective to take full benefit of the NLF provisions related to consumer protection. In that respect, some amendments would allow the new directive to cover a wider scope of situations which fall under the essential safety requirements, when also the use reasonably foreseen should be taken in consideration during the design phase of the product (cf. article 16 on general requirements of regulation 765/2008). Consumer protection would also be deepened by precisising that instructions, safety information and labelling must be reliable, understandable and transparent.

3. Cut Down Red Tape

The NLF should contribute to improving the free movement of goods within the European Union. However, a cumbersome bureaucracy would prevent the free flow of goods. Therefore, your Rapporteur has scrutinised the proposed Directive in order to cut-down red tape wherever possible. Thus, it is proposed in the report to modernise the current procedures by allowing the EU DoC to be supplied not only in paper form, but also through the electronic means and to bring down the red tape for economic operators regarding the identification of economic operators.

As expressed earlier, the Rapporteur supports the simplification and modernisation of procedures provided in the NLF, but wants to underline at the same time that a need for flexibility can be necessary regarding some obligations created by the new framework. For instance, it is proposed to add an exception to the rule on 'one single DoC' for cases where the providing a single document creates specific problems due to its complexity or extent. Here it should be possible to provide all relevant DoCs separately.

Higher flexibility is allowed to what concerns the single EU DoC, which as the rule coming from the Article 5 of the Decision is supplemented by an exception for the cases which create specific problems due to its complexity or extent.

4. Ensure a Better Market Surveillance for our Products

Even if the Rapporteur is aware of the forthcoming new regulation on market surveillance prepared by the Commission's services, the last set of changes is focusing on ensuring a higher level of market surveillance of products. To this end, your Rapporteur proposes to increase the market surveillance in distance selling through ensuring that all relevant information requirements are also displayed in electronic commerce, to establish an annual information requirement of Member States to the Commission about their market surveillance activities, to call on the Member States to provide the adequate funding to their market surveillance authorities. Finally, the Rapporteur stressed the need for appropriate actions to be taken by the Member States against improper use of CE marking.

Sectoral changes are also introduced by the Rapporteur on this text. In order to clarify the manufacturers right to use accredited in-house conformity assessment bodies under module A1, A2, C1 and Ca2, which were introduced by Decision 768/2008/EC and have been the practice for manufacturers of measuring instruments since, this is now explicitly included in the text of annex 2, part 2 and part 5.

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

Ref.: D(2012)22879

Mr Malcolm Harbour,
Chair of the Committee on the Internal Market
and Consumer Protection
ASP 13E130
Brussels

***Subject:** Proposal for a directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to making available on the market of non-automatic weighing instruments (recast) (COM(2011)0766 – C7-0430/2011 – 2011/0352(COD))*

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.

In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.

However, if in accordance with point 8 of the Interinstitutional Agreement, the committee responsible intends also to submit amendments to the codified parts of the proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal."

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsperson, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, after discussing it at its meeting of 26 April 2012, the Committee on Legal Affairs, by 23 votes in favour and no abstentions¹, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in accordance with Rule 87.

Yours faithfully,

Klaus-Heiner LEHNE

Encl.: Opinion of the Consultative Working Party.

¹ Raffaele Baldassarre, Sebastian Valentin Bodu, Piotr Borys, Françoise Castex, Sergio Gaetano Cofferati, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Vytautas Landsbergis, Eva Lichtenberger, Jiří Maštálka, Antonio López-Istúriz White, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Axel Voss, Cecilia Wikström, Tadeusz Zwiefka.

ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 27 March 2012

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

**Proposal for a directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to making available on the market of non-automatic weighing instruments
COM(2011)0766 of 21.11.2011 – 2011/0352(COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 1 February 2012 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At that meeting¹, an examination of the proposal for a directive of the European Parliament and of the Council recasting Directive 2009/23/EC of the European Parliament and of the Council of 23 April 2009 on non-automatic weighing instruments resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) As far as the explanatory memorandum is concerned, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.

¹ The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

2) In the recast text, the following should have been identified by using the grey-shaded type generally used for marking substantive changes:

- in Article 13(1)(a), second subparagraph, the proposed adding of the final wording "*For those instruments not submitted to Module B, Module D1 as set out in point 3 of Annex II or Module F1 as set out in point 5 of Annex II shall apply*" (marked with adaptation arrows in the recast text);

- in Article 42(1), first subparagraph, the words "*Articles 2(3) to (19), 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and Annex II*", as well as the entire text of the final sentence which reads as follows: "*They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive*";

- in Article 42(1), second subparagraph, the words "*from [day after the date set out in the first subparagraph]*".

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

C. PENNERA
Jurisconsult

H. LEGAL
Jurisconsult

L. ROMERO REQUENA
Director General

PROCEDURE

Title	Harmonisation of the laws of the Member States relating to making available on the market of non-automatic weighing instruments (Recast)			
References	COM(2011)0766 – C7-0430/2011 – 2011/0352(COD)			
Date submitted to Parliament	21.11.2011			
Committee responsible Date announced in plenary	IMCO 30.11.2011			
Committee(s) asked for opinion(s) Date announced in plenary	ITRE 30.11.2011	JURI 30.11.2011		
Not delivering opinions Date of decision	ITRE 19.12.2011			
Rapporteur(s) Date appointed	Zuzana Roithová 29.11.2011			
Discussed in committee	9.1.2012	28.2.2012	31.5.2012	10.7.2012
Date adopted	10.7.2012			
Result of final vote	+: -: 0:	28 0 0		
Members present for the final vote	Adam Bielan, Sergio Gaetano Cofferati, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, Cornelis de Jong, Christian Engström, Ismail Ertug, Vicente Miguel Garcés Ramón, Louis Grech, Philippe Juvin, Edvard Kožušník, Toine Manders, Sirpa Pietikäinen, Phil Prendergast, Mitro Repo, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Bernadette Vergnaud			
Substitute(s) present for the final vote	Raffaele Baldassarre, Ildikó Gáll-Pelcz, Morten Løkkegaard, Emma McClarkin, Konstantinos Poupakis, Marek Siwiec, Marc Tarabella			
Date tabled	25.7.2012			