



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.1.2004  
COM(2004) 40 final

2000/0233 (COD)

**OPINION OF THE COMMISSION**

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,  
on the European Parliament's amendments  
to the Council's common position regarding the  
proposal for a**

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

**on measuring instruments**

**AMENDING THE PROPOSAL OF THE COMMISSION  
pursuant to Article 250 (2) of the EC Treaty**

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**1. INTRODUCTION**

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the amendments adopted by the Parliament.

**2. BACKGROUND**

- On 15 September 2000, the Commission transmitted to the European Parliament and to the Council its proposal for a Directive COM (2000) 566 final / 2000/0233(COD).
- The European Economic and Social Committee delivered an opinion on 28 February 2001.
- In the first reading the European Parliament delivered its opinion with 29 amendments on 03 July 2001.
- The Commission adopted an amended proposal on 06 February 2002 COM (2002) 0037).
- The Council adopted its Common Position unanimously and with the support of the Commission on 22 July 2003.
- On 17 December 2003 the European Parliament adopted, at the second reading, a resolution containing 27 amendments to the Common Position.

**3. PURPOSE OF THE PROPOSAL**

A number of measuring instruments have been harmonised in the seventies under optional harmonisation: Member States were allowed to maintain national regulation alongside the harmonised Community regulation based on Old Approach Directives. These directives have not been updated for technological progress.

Meanwhile Member States have to different degrees expanded national technical regulations, often based, wholly or in part, on international recommendations. Such national rules fragment the Internal Market.

In order to achieve full harmonisation, expand the scope of Community harmonisation and modernise conformity assessment procedures, it is therefore necessary to update Community regulation to include the application, by the manufacturer, of an approved and supervised Quality System as an alternative to third party verification of products.

The proposal concerns the placing on the market and putting into use of legally controlled measuring instruments. It has the characteristics of the New Approach. The proposal (Common Position) repeals 10 existing Community directives.

In line with the principle of subsidiarity, the proposal does not harmonise national law that imposes legal measurement. This remains the competence of the Member State and hence may differ from one to another. However, when measurement is imposed, it can only be carried out by means of an instrument conforming to the proposal.

#### **4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT**

The European Parliament adopted 27 amendments to the Common Position of the Council at the second reading.

The Commission accepts the amendments proposed by the European Parliament. The amendments are in line with the objectives of the Commission's original proposal and the Council Common Position.

##### **4.1. Amendments accepted by the Commission**

The Amendments proposed by the European Parliament can be grouped for ease of reference as follows:

##### **Amendments with regard to subsidiarity/optionality:**

- **Amendments 1, 2 and 8** clarify that the Directive allows Member States not to regulate tasks by instruments covered by the Directive, but in those cases requires Member States to communicate the reasons thereof to the Commission. Providing this information will help avoid unfair competition with instruments that are regulated.
- **Amendments 9, 10, 14, 17 second alinea and 26** are changes to the wording to enhance clarity and in coherence with amendments 1, 2 and 8.

The Commission accepts amendments 1, 2, 8, 9, 10, 14, 17 second alinea and 26, as they clarify the underlying concept of subsidiarity already reflected in the Commission Proposal and the Common Position. Introducing an obligation of Member States to inform the Commission about measuring tasks not regulated will lead to an enhanced transparency at Community level.

### **Amendments with regard to in-use requirements:**

- **Amendments 25 and 29** delete provisions which spelled out that Member States can maintain their in-use requirements for instruments covered by the Directive.

The essential requirement on durability specifies, in general terms, that instruments shall maintain their metrological characteristics over time. Therefore, a recital on the use of the instruments is justified (amendment 29), while an article on in-use requirements is not within the remit of the Directive, which concerns first-use (amendment 25). The Commission accepts amendments 25 and 29.

### **Amendments with regard to sub-assemblies:**

- **Amendments 4, 5 and 13** introduce references to sub-assemblies, clarifying that they may be separately subject to conformity assessment procedures foreseen by the Directive.

The Commission accepts amendments 4, 5 and 13, as they clarify the procedures for sub-assemblies and are in line with the Common Position.

### **Amendments with regard to the review of conformity assessment procedures:**

- **Amendments 6 and 27** introduce the need for consistent conformity assessment procedures as expressed in the Council Resolution of 10 November 2003 and invite the Commission to review consistency of conformity assessment procedures and to propose, if necessary, the appropriate measures.
- **Amendment 32** introduces a Joint Declaration of the European Parliament, the Council and the Commission with regard to the envisaged review of conformity assessment procedures and with regard to the intention of the European Commission to submit necessary proposals in this regard.

The Commission accepts amendments 6, 27 and 32. Ensuring a speedy review of the Council Decision on conformity assessment and ensuring coherence of certification between directives has been of particular importance to the European Parliament. The Commission is dedicated to carry out the review of the new approach and will, if necessary, propose modifications to the Directive before its transposition as foreseen in its 2004 work programme. Including the respective references in the Directive underlines the importance given to this review by the Commission.

### **Amendments with regard to the incorporation of Annexes II and III into the articles of the Directive:**

- **Amendments 15, 16, 17 first alinea, 18 and 19** relate to the incorporation of the text of Annex III of the Directive into Article 8 (a) and of the text of Annex II into Article 9 (a) of the Directive.

The Commission accepts amendments 15, 16, 17 first alinea, 18 and 19, as they are lay-out changes which do not modify the substance of the Commission Proposal and the Common Position.

**Amendments with regard to the Measuring Instruments Committee and to delegated tasks:**

- **Amendment 30** introduces a recital emphasizing that interested parties should be consulted with regard to the activities of the Measuring Instruments Committee.
- **Amendment 24** deletes two of the tasks originally delegated to the Commission.

The Commission accepts amendments 30 and 24. The Commission considers it good administrative practice that Member States consult interested parties and does itself regularly carry out the appropriate consultations. Amendment 30 reflects this administrative practice. With regard to the delegation of tasks to the Commission, the Commission can agree to amendment 24.

**Amendments with regard to presumption of conformity and OIML normative documents:**

- **Amendment 31** specifies in the definition of the “normative document” that OIML documents are subject to Article 13 (1) procedure in order to give presumption of conformity.
- **Amendments 20, 22 and 23** clarify that also parts of OIML normative documents can be identified and published in a list under Article 13 (1) of the Directive.
- **Amendment 21** is a rewording of the original provision meant to clarify the different solutions to comply with essential requirements and in particular the concept of presumption of conformity.

The Commission accepts amendments 31, 20, 21, 22 and 23, as these amendments precise and clarify the Commission Proposal and the Common Position.

**4.2. Amendments rejected by the Commission**

No amendments have been rejected by the Commission.

**5. CONCLUSION**

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.