

Measuring instruments: trading transactions and use of legally controlled instruments

2000/0233(COD) - 22/07/2003 - Council position

The common position has been accepted in Council by unanimity. It is fully in line with the main objective of the Commission's proposal. A unified legal framework for the internal market in measuring instruments and the necessary clarification of all the metrological requirements have to be combined with the objective of consumer protection. The notion of balancing simplifications, which follow from the "new approach" and greater responsibility of the manufacturer with necessary safeguards in the interest of the common good, has been respected and- where necessary - strengthened. The Council has taken great interest in technically sound and advanced solutions in a dynamically changing environment (especially concerning the instrument-specific annexes) as well as in the administrative applicability of the provisions. The Directive maintains the flexibility for those Member States, which do not regulate a specific type of instrument at the moment, but might choose to do so in the future. The Council has been in a position to accept the greater part of the EP amendments, at least in substance, in an effort to meet Parliament's concerns and to follow good legislative practice on a number of important points. 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. It should be noted that the Commission can agree with the suppression of Annex II and the withdrawal of the proposal in Annex MI-010. As regards amendments by Parliament that have been included in the amended proposal and in the common position, these concern the following: - the clarification of public interest objectives; - the clarification of the application of optionality, the amendment 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; - the clarification of the recital concerning the definition of the manufacturer; - the affixing of markings during manufacturing process); - the 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"); - reasons for legal metrological control: the substance of this amendment has been inserted into the definition of "legal metrological control" in Art. 3; - 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". - the definition of "sub-assembly" : the substance of the amendment has been accepted with only editorial modifications to the suggested wording; - the definition of "manufacturer" : the substance of the amendment has been taken on board, including the deletion of the term "lawfully"; - the definition of authorised representative : the amendment is a clarification; - conformity marking : 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; - the criteria for designation of bodies : 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; - the functions of the Measuring Instruments Committee : 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. - markings - here: Identification number : 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; - confidentiality : 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; - 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; - 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; - reliability : in line with the amendment the sentence can be deleted; - suitability for the intended user : the amendment was accepted as a simplification; - 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"; - 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. Concerning the amendments that have been included in the amended proposal but rejected in the common position, these refer to: markings on main device; serious influence; prevention of non-complying instruments being placed on the market and decisions on future regulation of instruments. 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.