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from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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to:	Mr Javier SOLANA, Secretary-General/High Representative
Subject:	Commission staff working document accompanying the Proposal for a Directive of the European Parliament and of the Council on the repeal of 8 metrology directives - Impact Assessment summary

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Delegations will find attached Commission document SEC(2008) 2909.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.12.2008  
SEC(2008) 2909

**COMMISSION STAFF WORKING DOCUMENT**

**Accompanying the**

**Proposal for a**

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

**on the repeal of 8 metrology directives**

**Impact Assessment Summary**

[COM(2008) 801 final]

{SEC(2008)2910}

{SEC(2008)2968}

This impact assessment concerns the repeal of 8 "Old Approach" metrology Directives and if needed the extension of the scope of Directive 2004/22/EC on measuring instruments. It is an item in the Commission Legislative Work Program for 2008 (ENTR/015).

It concerns 8 metrology directives in the following 6 sectors:

- Cold Water Meters for Non-Clean Water (Directive 75/33/EEC)
- Alcohol Meters and Alcohol Tables (Directive 75/765/EEC and 75/766/EEC)
- Medium and Above-Medium Accuracy Weights (Directive 71/317/EEC and 74/148/EEC)
- Tyre Pressure Gauges for Motor Vehicles (Directive 86/217/EEC)
- Standard Mass of Grain (Directive 71/347/EEC)
- Calibration of Ship Tanks (Directive 71/349/EEC)

All but one of these directives are of the so-called optional type. The instruments described in each directive must be accepted by Member States and this was useful in the 1970's when there were trade barriers due to differing Member State regulations. In addition to applying the directives, Member States are allowed to keep their own national laws containing technical specifications.

Under the conditions of WTO/TBT agreement of 1995 Member States that choose to regulate are obliged to base their laws on international standards. National laws will therefore be based on international standards, which often have also been transposed into European standards. On top of this the 'Cassis de Dijon' jurisprudence by the European Court of Justice prohibits disproportionate national requirements and obliges mutual recognition of products legally marketed in other Member States. In addition since 1993 the WELMEC type approval agreement has given a framework for inter-governmental cooperation regarding the mutual recognition of conformity assessment specifically of non-harmonised measuring instruments based on international standards.

In line with the Commission's approach to simplification (COM(2005)535) the general objective is to simplify the acquis of European law by repealing obsolete legislative acts, which have little or no practical impact and therefore have become irrelevant. The specific objective is to simplify the EU acquis in the areas covered by eight old approach metrology Directives while maintaining the free circulation of measuring instruments in the internal market and not hindering technological progress.

In the key issues document for the public consultation the Commission services presented three options.

Option 1: "Old approach" Directives exist in addition to national rules (current situation). Without any new EU action, the old Directives would exist until technical progress has completely overtaken the technological specifications. It is expected that the market will continue evolving quickly to include products more technologically advanced and no longer covered by the old directives.

Option 2 is the repeal of the Old Approach directives without any change to Directive 2004/22/EC on measuring instruments. National rules can continue to exist. Under this option the free movement of measuring instruments within the Internal Market would implicitly rely on the Mutual Recognition Principle and horizontal legislation framing its correct functioning. The existing WELMEC type approval agreement gives a framework for mutual recognition of national conformity assessment. Under WTO/TBT obligations, Member States would need to base their laws on international standards. Alternatively, instead of national regulation,

Member States could rely on the voluntary application of European standards. For the updating and development of such standards the Commission could, if needed, give a mandate to the European Standardisation Organisations.

Option 3 is to add new annexes for each instrument to Directive 2004/22/EC on measuring instruments and the repeal of the directives. This option does not allow any national rules, although Member States remain free to choose the tasks for which they want to prescribe legal metrological control. For these tasks they may only allow instruments conformity assessed on the essential requirements in the directive to be used on their territory. New Approach harmonisation prescribes essential requirements and allows any technological specification that complies with these requirements. It should be noted that Article 2 of Directive 2004/22/EC on measuring instruments allows Member States to opt out from requiring the use on their territory of instruments complying with the directive, but using the opt-out does not allow any alternative national rules and therefore means having no rules.

From the public consultation and an external study it appears that there are no obstacles to trade in the 6 sectors covered by the 8 old approach directives. It is also apparent that the directives are less and less used and fully covered by international standards. The current situation (option 1) has not hampered technological advance and where there is additional national legislation it apparently fully takes into account mutual recognition and international standards.

The options are the two possible outcomes of the simplification objective: repeal (option 2) or re-regulation (option 3). Both would achieve the objective of simplification and therefore other criteria are added to compare to them. It would appear that where there are no reported barriers to trade and no other overriding policy needs, there only remain the issues of a high level of protection versus administrative costs which are the distinguishing impacts between options. A high level of protection is ensured either by national law based on international standards (options 1 and 2) or by harmonisation (option 3). Alternatively, when there are no national laws (options 1 and 2) or when Member States opt out of requiring harmonised instruments (option 3), there is no guaranteed protection and no administrative costs.

All costs are of an equal magnitude across the options, i.e. the protection benefits of national law come at the cost of low to medium administrative costs which are equal to those of harmonisation. Where there are no laws there are no protection benefits and no administrative costs.

Based on the assessment of impacts there is no option that stands out. As there are no barriers to trade, option 3 of harmonisation does not offer any benefit that cannot be achieved either by the market in an unregulated context or by national regulation based on international standards taking the concept of mutual recognition fully into account. What is more, a substantial number of Member States have indicated that they could opt out of harmonisation if the scope of Directive 2004/22/EC on measuring instruments is extended which effectively compromises the very aim of harmonisation.

For reasons of simplification and subsidiarity, therefore, option 2 of repeal without extending the scope of Directive 2004/22/EC on measuring instruments could be deemed the most appropriate.

This report commits only the Commission's services involved in its preparation and does not prejudge the final form of any decision to be taken by the Commission.