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**PROPOSAL**

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from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
dated:	4 December 2008
Subject:	Proposal for a Directive of the European Parliament and of the Council repealing Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC, and 86/217/EEC regarding metrology

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Secretary-General of the European Commission to Mr Javier SOLANA, Secretary-General/High Representative.

Encl.: COM(2008) 801 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.12.2008  
COM(2008) 801 final

2008/0227 (COD)

Proposal for a

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

**repealing Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC,  
75/33/EEC, 76/765/EEC, 76/766/EEC, and 86/217/EEC regarding metrology**

{SEC(2008)2909}

{SEC(2008)2910}

{SEC(2008)2968}

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### **1. BACKGROUND**

#### **1.1. Existing legislation**

The proposal concerns the following 8 metrology Directives:

- Directive 75/33/EEC on Cold Water Meters for Non-Clean Water;
- Directives 76/765/EEC and 76/766/EEC on Alcohol Meters and Alcohol Tables;
- Directives 71/317/EEC and 74/148/EEC on Medium and Above-Medium Accuracy Weights respectively;
- Directive 86/217/EEC on Tyre Pressure Gauges for Motor Vehicles;
- Directive 71/347/EEC on Standard Mass of Grain;
- Directive 71/349/EEC on Calibration of Ship Tanks.

These Directives are of the so-called optional type, with the exception of Directive 76/766/EEC on alcohol tables which provides for a total harmonisation. The instruments described in each directive must be accepted by Member States and this was useful in the 1970s when there were trade barriers due to differing Member State regulation. In addition to applying the Directives, Member States were allowed to have national laws containing technical specifications different from the Directives. These national laws have often been further developed to keep pace with technological progress and are based on international or European standards and contain mutual recognition clauses giving the requirement that instruments with similar level of performance are accepted as well. It should also be noted that both international and European standards are voluntary and do not require national law or harmonised directives in order to be applied by manufacturers and will often be the most used technical specification if there is no regulation.

#### **1.2. The need for review**

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 concern instruments increasingly less in use. Technological advance has been taken into account by international standards and additional national legislation based on the principle of mutual recognition. In particular with regard to the alcohol measurement of wines and spirit drinks and determining the mass of grain, existing European regulations<sup>1</sup> already refer to international standards including the international standards for alcohol tables, thereby retaking for the most part the substance of Directive 76/766/EEC on alcohol tables.

As international standards exist, also for the outdated technologies and alcohol tables, it would seem reasonable to expect that Member States, who as a consequence of subsidiarity would choose to maintain their current provisions in case the Directives were repealed, would

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<sup>1</sup> Commission Regulation (EEC) No 2676/90 of 17 September 1990 determining Community methods for the analysis of wines (OJ L 272, 3.10.1990, p.1), Commission Regulation (EC) No 2870/2000 of 19 December 2000 laying down Community reference methods for the analysis of spirit drinks (OJ L 333, 29.12.2000, p.20) and Commission Regulation 824/2000 of 19 April 2000 establishing procedures for the taking-over of cereals by intervention agencies and laying down methods for analysis for determining the quality of cereals (OJ L 100, 20.04.2000, p.31).

in doing so not resurrect new barriers to trade. The expectation is that there would be no change compared to the current situation.

### **1.3. Impact assessment of policy alternatives**

As part of the policy on better regulation<sup>2</sup> the Commission implemented an impact assessment of policy alternatives, which considered three alternatives: no action, repealing the Directives and repeal combined with extending the scope of Directive 2004/22/EC on measuring instruments to include the instruments in the repealed directives.

On the basis of impact assessment as such, there is no preferred option. This is due to the lack of trade barriers and due to the directives being increasingly less used.

The repeal of the 8 metrology Directives would be in line with the Commission's approach to simplify the acquis of European law by repealing obsolete legislative acts<sup>3</sup>, which have little or no practical impact and therefore have become irrelevant. It would also be fully in accordance with the principle of subsidiarity.

The option of a repeal combined with extending the scope of Directive 2004/22/EC does not appear appropriate, as a harmonisation is not necessary. This is due to the fact that the current situation of mutual recognition of the national rules based upon international standards functions satisfactorily and there are no problems for free movement. Furthermore, there is no evidence of a common need for a higher level of consumer protection. In addition, a substantial number of Member States are expected, in the case of extending the scope of Directive 2004/22/EC, to make use of the possibility, provided for in Article 2 of that Directive to optout of the harmonisation.

## **2. AIMS AND OBJECTIVES OF THE PROPOSAL**

### **2.1. Simplification and better regulation**

It is proposed for the reasons set out above, to repeal the 8 directives. Whilst the options, repeal or re-regulation, are both possible outcomes of the simplification objective and both will fully achieve the objective of simplification, the option of repeal will entail less overhead at the European level and reduce the quantity of European legislation, whilst maintaining fully the internal market.

### **2.2. Legal Basis**

The legal basis for the 8 existing Directives is Article 95 of the EC Treaty.

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<sup>2</sup> Interinstitutional Agreement on better law-making, OJ C321, 31.12.2003, p1, and European Governance: Better lawmaking, COM(2002) 275 final, 5.6.2002

<sup>3</sup> Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment, COM(2005)535

### **3. COHERENCE WITH COMMUNITY PRINCIPLES**

#### **3.1. Proportionality**

The repeal is proportionate in the sense that the directives concern technology that is becoming out of date and in most cases are fully covered by international standards. National authorities currently use the WELMEC type approval agreement in order to exchange information for purposes of market surveillance in the non-harmonised field and periodic in-service controls for new technology and this system could also be implemented for national law on old technologies once the directives have been repealed.

#### **3.2. Subsidiarity**

Given the apparent lack of constraints and non-existing trade barriers, also in the case of technologically more developed instruments, it would appear that there is no need to replace current harmonisation by new Community law. In line with the principle of subsidiarity Member States are left to decide whether they want to regulate and if so, they are bound to base such national regulation on international standards and mutual recognition. In fact, Member States have already been able to do so and the effect of repeal is that this freedom will remain unchanged.

### **4. COHERENCE WITH COMMUNITY POLICIES**

#### **4.1. Competitiveness**

The existing Directives are virtually not applied and have been in practice superseded by national laws based on international standards which take into account technological progress. The free movement of goods is ensured due to the satisfactory application of the mutual recognition principle. Where needed, consumer protection is thereby assured, whilst mutual recognition relieves manufacturers of multiple conformity assessment.

#### **4.2. Sustainable development**

If a trade-off between protection benefits and administrative costs exists for weights and tyre pressure gauges, harmonisation is nowhere required in the light of a common policy need. National regulation based on international standards and the principle of mutual recognition can be equally effective as harmonisation.

#### **4.3. Other Community policies**

In the case of alcohol measurement of wines and spirit drinks and determining the mass of grain, existing European regulations<sup>4</sup> already refer to international standards including the international standards for alcohol tables. Directive 76/766/EEC on alcohol tables has for the most part been retaken in Community regulations which will remain in force.

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<sup>4</sup> Commission Regulation (EEC) No 2676/90 of 17 September 1990 determining Community methods for the analysis of wines (OJ L 272, 3.10.1990, p.1), Commission Regulation (EC) No 2870/2000 of 19 December 2000 laying down Community reference methods for the analysis of spirit drinks (OJ L 333, 29.12.2000, p.20) and Commission Regulation 824/2000 of 19 April 2000 establishing procedures for the taking-over of cereals by intervention agencies and laying down methods for analysis for determining the quality of cereals (OJ L 100, 20.04.2000, p.31).

## **5. REFERENCE TO THE WORK PROGRAMME**

The proposal is mentioned in the 2008 Commission legislative and work program<sup>5</sup>.

## **6. RELEVANCE FOR THE EEA**

This proposal is covered by the Agreement on the European Economic Area.

## **7. EXTERNAL CONSULTATION**

Stakeholders were consulted during the 8-week period up to 15 July 2008. The 14 reactions have been published on the Europa web site and presented in the report on the public consultation. Manufacturers do not report barriers to trade that would justify additional harmonisation through EU regulation. Consumers and buyers of instruments did not report lack of protection. Authorities did not report overriding policy needs that would require harmonisation.

Simultaneously an external consultant study was commissioned, the results of which have been published on the Europa web. It estimated that the 6 sectors covered by the 8 directives are small and there is no mention by stakeholders of any barriers to trade. It was noted that technological progress is being taken into account by means of voluntary international and European standardisation.

The Commission's minimum standards have been met and no reactions were excluded.

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<sup>5</sup> COM(2007)640, p33 - Metrology: Extension of the scope of Directive 2004/22/EC on measuring instruments and repeal of 8 "old approach" metrology Directives

Proposal for a

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

**repealing Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC, and 86/217/EEC regarding metrology**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission<sup>6</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>7</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>8</sup>,

Whereas:

- (1) Community policies on better regulation stress the importance of simplification of national and Community legislation as a crucial element in improving the competitiveness of enterprises and achieving the objectives of the Lisbon Agenda.
- (2) A number of measuring instruments are covered by specific Directives adopted on the basis of Council Directive 71/316/EEC of 26 July 1971 on the approximation of the laws of the member States relating to common provisions for both measuring instruments and methods of metrological control<sup>9</sup>.
- (3) Council Directives 71/317/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to 5 to 50 kilogramme medium accuracy rectangular bar weights and 1 to 10 kilogramme medium accuracy cylindrical weights<sup>10</sup>, 71/347/EEC of 12 October 1971 on the approximation of the laws of the Member States relating to the measuring of the standard mass per storage volume of grain<sup>11</sup>, 71/349/EEC of 12 October 1971 on the approximation of the laws of the Member States relating to the calibration of the tanks of vessels<sup>12</sup>, 74/148/EEC of 4 March 1974 on the approximation of the laws of the Member States relating to weights of from 1 mg to 50

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<sup>6</sup> OJ C, p. . .

<sup>7</sup> OJ C, p. . .

<sup>8</sup> OJ C, p. . .

<sup>9</sup> OJ L 202, 6.9.71, p.1.

<sup>10</sup> OJ L 202, 6.9.71, p.14.

<sup>11</sup> OJ L 239, 25.10.71, p.1.

<sup>12</sup> OJ L 239, 25.10.71, p.15.

kg of above-medium accuracy<sup>13</sup>, 75/33/EEC of 17 December 1974 on the approximation of the laws of the Member States relating to cold-water meters<sup>14</sup>, 76/765/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to alcoholometers and alcohol hydrometers<sup>15</sup>, 86/217/EEC of 26 May 1986 on the approximation of the laws of the Member States relating to tyre pressure gauges for motor vehicles<sup>16</sup>, adopted on the basis of Council Directive 71/316/EEC, are either technically outdated, not reflecting the state of the art in measurement technology or concern instruments not subject to technological development and increasingly less in use. Furthermore, national provisions are allowed to exist alongside the Community provisions.

- (4) While Council Directive 76/766/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to alcohol tables<sup>17</sup> provides for a total harmonisation, most of its content is included in the Community Regulations on alcohol measurement of wines and spirit drinks, namely Commission Regulation (EEC) No 2676/90 of 17 September 1990 determining Community methods for the analysis of wines<sup>18</sup> and Commission Regulation (EC) No 2870/2000 of 19 December 2000 laying down Community reference methods for the analysis of spirit drinks<sup>19</sup>. The international standards for alcohol tables are identical to those provided for in Directive 76/766/EEC and they can continue to be the base for national regulation.
- (5) Technical progress and innovation with regard to measuring instruments covered by the Directives being repealed is ensured in practice either by the voluntary application of the international and European standards which have been developed or by the application of national provisions implementing such new specifications. Furthermore, the free circulation within the internal market of all products concerned by them is ensured by the satisfactory application of Articles 28 to 30 of the EC Treaty and of the mutual recognition principle.
- (6) The repeal of the Directives should not lead to any new barriers to the free movement or to additional administrative burdens. Furthermore, while respecting the principles of proportionality and subsidiarity, there is no evidence of a common need for a higher level of consumer protection.
- (7) Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC and 86/217/EEC should therefore be repealed.
- (8) The repeal of the Directives should not affect existing EEC pattern approvals and EEC certificates until the end of their validity,

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<sup>13</sup> OJ L 84, 28.3.74, p.3.

<sup>14</sup> OJ L 14, 20.1.75, p.1.

<sup>15</sup> OJ L 262, 27.9.76, p.143.

<sup>16</sup> OJ L 152, 6.6.86, p.48.

<sup>17</sup> OJ L 262, 27.9.76., p.149.

<sup>18</sup> OJ L 272, 3.10.1990, p.1.

<sup>19</sup> OJ L 333, 29.12.2000, p.20.



HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC and 86/217/EEC are repealed with effect from {1 January 2010}.

*Article 2*

1. Member States shall adopt and publish, by {31 December 2009} at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from {1 January 2010}.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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.

*Article 3*

EEC pattern approvals and EEC certificates issued until {31 December 2009} under the Directives referred to in Article 1 shall remain valid.

*Article 4*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 5*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*