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A3-0084/93

***I

R E P O R T

of the Committee on Economic and Monetary Affairs and Industrial Policy

- on the Commission proposal for a Council directive amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medical devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels), and 73/23/EEC (electrical equipment designed for use within certain voltage limits)
 - on the Commission proposal for a Council decision amending the Council Decision of 13 December 1990 concerning the modules for the various phases of the conformity assessment procedures (90/683/EEC), supplementing it with provisions relating to the arrangements for affixing and using the CE conformity marking
- (COM(92) 0499 fin. - C3-0038/93, C3-0039/93 - SYN 336 A+B)

Rapporteur: Mr Gérard CAUDRON

PE 203.784/fin.
Or. EN

* Consultation procedure requiring a single reading
**| Cooperation procedure (first reading)

**|| Cooperation procedure (second reading) requiring the votes of a majority of the current Members of Parliament
*** Parliamentary assent requiring the votes of a majority of the current Members of Parliament

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By letter of 3 February 1993 the Council informed the European Parliament that it was reconsulting it pursuant to Article 100 A of the EEC Treaty on the modification of the proposal for a Council Regulation (EEC) concerning the affixing and use of the CE mark of conformity on industrial products into a Council Directive and a Council Decision (COM(92) 499 fin.).

At the sitting of 8 February 1993 the President of Parliament announced that he had referred this proposal to the Committee on Economic and Monetary Affairs and Industrial Policy as committee responsible and the Committee on Legal Affairs and Citizens Rights for its opinion.

At its meeting of 27 January 1993 the Committee on Economic and Monetary Affairs and Industrial Policy confirmed Mr Gérard Caudron as rapporteur.

At its meetings of 18 February 1993, 25 February 1993 and 8 March 1993 it considered the Commission proposal and draft report.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Beumer, chairman; Desmond, vice-chairman; Patterson, vice-chairman; Fuchs, vice-chairman; Caudron, rapporteur; Peter Beazley, de la Camara, Herman, Hoppenstedt, Christopher Jackson, Lulling, Metten, Pierros, Read, Rogalla, Sboarina, Siso Cruellas, Thyssen, von Wogau.

At its meeting of 17 February 1993 the Committee on Legal Affairs and Citizens Rights decided not to deliver an opinion.

The report was tabled on 8 March 1993.

The deadline for tabling amendments is 5 p.m. on Tuesday 9 March 1993.

A.

on the Commission proposal for a Council directive amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medical devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels), and 73/23/EEC (electrical equipment designed for use within certain voltage limits)

Commission text (1)

Amendments

(Amendment No. 1)

Article 12

The Council Directive of 19 February 1973 on electrical equipment designed for use within certain voltage limits (73/23/EEC) is hereby amended as follows:

1. The following recital is added:

- 'Whereas Decision 90/683/EEC establishes the modules for the various phases of the conformity assessment procedures which are intended to be used in the technical harmonization directives (OJ No. L 380, 31.12.1990, p. 13),

The Council Directive of 19 February 1973 on electrical equipment designed for use within certain voltage limits (73/23/EEC) is hereby amended as follows:

1. The following recitals are added:

- 'Whereas Decision 90/683/EEC establishes the modules for the various phases of the conformity assessment procedures which are intended to be used in the technical harmonization directives (OJ No. L 380, 31.12.1990, p. 13),

- 'Whereas the choice of procedures must not lead to a lowering of standards of electrical safety already established throughout the Community'.

1) For full text see COM(92) 0499 - OJ No. C 28, 2.2.1993.

DRAFT LEGISLATIVE RESOLUTION

(Cooperation procedure: first reading)

embodying the opinion of the European Parliament

on the Commission proposal for a Council directive amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medical devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels), and 73/23/EEC (electrical equipment designed for use within certain voltage limits)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(92) 499 fin. - SYN 336 A)¹
 - having been consulted by the Council pursuant to Article 100A of the EEC Treaty (C3-0038/93),
 - having regard to the report of the Committee on Economic and Monetary Affairs and Industrial Policy (A3-0084/93),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
 4. Instructs its President to forward this opinion to the Council and Commission.

A.

Commission proposal for a Council Decision amending the Council Decision of 13 December 1990 concerning the modules for the various phases of the conformity assessment procedures (90/683/EEC), supplementing it with provisions relating to the arrangements for affixing and using the CE conformity marking

Commission text (1)

Amendments

(Amendment No. 2)
Article 2, paragraph 3

The Commission will report periodically on the functioning of this Decision, and on whether conformity assessment procedures are working satisfactorily or need to be modified.

The Commission will report periodically on the functioning of this Decision, and on whether conformity assessment and CE marking procedures are working satisfactorily or need to be modified.

No later than the end of the transitional period in 1997, ou plus tôt dans le cas d'urgence constaté, the Commission will also report back on any special problems raised by the incorporation of the low voltage Directive 73/23/EEC within the scope of CE marking procedures, and, in particular, whether safety is being compromised. The Commission shall also review any problems raised by the issue of overlapping Council Directives, and whether any further Community measures are required.

1) For full text see COM(92) 0499 - OJ No. C 28, 2.2.1993.

DRAFT LEGISLATIVE RESOLUTION

(Cooperation procedure: first reading)
embodying the opinion of the European Parliament
on the Commission proposal for a Council Decision amending the
Council Decision of 13 December 1990 concerning the modules for the
various phases of the conformity assessment procedures
(90/683/EEC), supplementing it with provisions relating to the arrangements
for affixing and using the CE conformity marking

The European Parliament,

- having regard to the Commission proposal to the Council (COM(92) 499 fin. - SYN 336 B)¹
- having been consulted by the Council pursuant to Article 100A of the EEC Treaty (C3-0039/93),
- having regard to the report of the Committee on Economic and Monetary Affairs and Industrial Policy (A3-0084/93),
- 1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
- 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
- 3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
- 4. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 28, 2.2.1993.

B.
Explanatory statement

Background

1. The European Commission's proposal for a Council Regulation concerning the affixing and use of the CE mark of conformity on industrial products (COM(92) 499 fin.) was approved by the Parliament in its plenary session on 6 April 1992 on the basis of a report by Mr Caudron (A3-0121/92). Nine amendments were adopted by the Parliament to the Commission's report.
2. From the start there was considerable controversy about the legal basis of the Commission's proposal, and in particular, whether it was appropriate for the Commission to have proposed a regulation in order to codify and amend a series of existing directives. Your rapporteur noted the problem in his original report, but did not adopt a specific position on it.
3. As a result of the subsequent discussions within the Council it was decided that it would be better to change the legal basis of the proposal and to put forward two legal instruments instead of the single instrument of a regulation. Firstly there would be a directive modifying the existing "new approach" directives. Secondly there would be a Council decision laying down the rules for the use of EC marking in any future directives. This would take the form of a modification of the already adopted Council decision of 13 December 1991, on the modules for conformity on which Parliament's opinion was also prepared by your rapporteur.
4. The "new approach" directives that would be modified by the new directive are the following:
 - 87/404/EEC : simple pressure vessels
 - 88/378/EEC : safety of toys
 - 89/106/EEC : construction products
 - 89/336/EEC : electromagnetic compatibility
 - 89/392/EEC : machinery
 - 89/686/EEC : personal protective equipment
 - 90/384/EEC : non-automatic weighing instruments
 - 90/385/EEC : active implantable medical devices
 - 90/396/EEC : appliances burning gaseous fuels
 - 91/263/EEC : telecommunications terminal equipment
 - 92/42/EEC : new hot-water boilers fired with liquid or gaseous fuels
5. In addition the Commission has taken this opportunity of including the so-called "low voltage directive" (73/23/EEC - electrical equipment designed for use within certain voltage limits) within the scope of the new directive, and thus extending the affixing of the CE marking to the concerned electrical products. Although the low voltage directive is an "old approach" directive a number of the products concerned already have to bear CE marking in order to conform with the essential requirements of other new approach directives, and it is felt by the Commission that their inclusion within the new proposal would firstly not be too complicated and secondly would help to avoid confusion. The main problem with including the low voltage directive is that CE marking requires conformity assessment procedures, and that these are lacking in the low voltage directive. The Commission is, therefore, proposing that the manufacturers declaration of

conformity (Module A in the Council decision on modules for conformity assessment) be introduced into the low voltage directive.

6. Once there was general agreement to modify the existing Commission proposal in the above manner there was some discussion as to whether this could be presented to the Parliament as a common position of the Council. As a result of informal contacts between Commission, Council and Parliament it was agreed that it would be more appropriate to reconsult the Parliament, and thus to grant the latter a second first reading on proposals which now have a completely different legal basis.

Observations

7. In the view of your rapporteur three main sets of issues need to be examined:

- Can the proposed new legal basis be accepted?
- Have Parliament's amendments in the original first reading been taken sufficiently into account?
- Should the low voltage directive be included in the new proposals?

(i) Can the proposed new legal basis be accepted?

8. In the view of your rapporteur the proposed new legal basis poses no problems of substance. Indeed it offers the positive advantage of ensuring greater transparency and legal clarity in that the precise modifications to the existing new approach directives are established from the outset. Moreover it seems sensible to incorporate the rules for future use of EC marking within the existing Council decision on conformity assessment. For these reasons your rapporteur can accept the proposed changes in legal form. He welcomes, however, the fact that the Parliament has been reconsulted rather than being presented with a common position, as this latter could have constituted an unfortunate precedent for the future.

(ii) Have Parliament's amendments in the original first reading been taken sufficiently into account?

9. The issue of greatest concern for your rapporteur in the original Commission proposal was that the CE mark could well be perceived by consumers as a quality mark rather than a mere "European passport" for products in conformity with Community essential requirements to travel freely around the Community. Another term rather than "mark" would thus be preferable. No replacement term seemed ideal for this purpose, but your rapporteur considered, at the very least, that the term "mark" should be replaced by the more neutral "marking". This was accepted by the Parliament in its Amendment 9. Your rapporteur thus welcomes the fact that the term "EC marking" has now been taken over by the Commission at all points in its new proposal.

10. Another amendment which the Parliament had tabled was to the former Article 4.1 concerning identification of the year in which the mark was affixed. This was a matter of particular sensitivity for the toy industry and the Parliament had suggested its deletion in its Amendment 3. This has now been dropped from the draft Council Decision, and will now apply to Directive 88/378/EEC on the safety of toys, so that the main political problem appears to be resolved.

11. Parliament's Amendment 5 had dealt with the issue of potential confusion between the CE mark and other marks. The new text of the draft Council Decision (in Article 3-2 (i) and (j)) does not directly follow the Parliament's proposal but it is a clear improvement on the original text, and appears to be acceptable.
 12. Parliament's Amendment 6 made new proposals concerning transitional regime. The first part of the amendment has been followed by the Commission in the draft Council decision (in Article 3-2 (j)), and this seems to be a satisfactory outcome.
 13. Parliament's Amendment 7 laid down fairer and more detailed procedures than those provided by the Commission in its original text in those cases where Member States or notified bodies found that the CE marking had been improperly fixed. Your rapporteur welcomes the fact that the Commission's new text (Article 3-2 (1)) closely follows the Parliament's amendment in spirit, if not in precise wording.
The second half of the amendment concerned the date by which Member States were to adopt the necessary national provisions. Parliament had suggested that the date be put back, and the Commission has decided to propose this.
 14. Amendment 8 of the Parliament called for a report on the functioning of the Commission's EC marking procedures. The form of this amendment is no longer appropriate, but your rapporteur believes that the principle of a Commission report not just on conformity assessment but also on CE marking procedures is worth maintaining. He has consequently retabled the amendment in a new form in the first part of his proposed Amendment 1 to the draft Council Decision.
 15. Parliament's Amendment 4 had sought to modify the original Article 4(2) and to make it more flexible. This Article was widely criticised as impracticable, and has been dropped by the Commission. This can be accepted by your rapporteur. Parliament's Amendments 1 and 2 have also not been followed by the Commission, but your rapporteur does not insist on these points.
- (iii) **Should the low voltage directive be included in the proposals?**
16. This appears to be the most contentious item in the Commission's new proposals. The low voltage directive (73/23/EEC) is not a new approach directive but an old approach directive which has worked in a generally satisfactory way since 1973. Moreover it has had very light bureaucratic requirements, and has not included compulsory conformity evaluation procedures. Instead a private certification system has been developed, the CENELEX certification agreement.
 17. The Commission is in favour of including the low voltage directive within the scope of the new CE marking rules since the low voltage directive has certain similarities with the new approach directives (indeed it was the prototype for the new approach) and also because many products covered by the low voltage directive already have to bear CE marking in order to ensure conformity with the essential requirements of other new approach directives, such as those on construction products or electromagnetic compatibility. To perturb the functioning of the low voltage Directive as little as possible the Commission is proposing that only Module A, the manufacturer's declaration of conformity, be introduced into the Directive.

18. A certain amount of opposition has been raised to this proposed solution. Certain manufacturers of products which can be used in a number of different ways, such as transformers or cables (which can be used in simple toys or in complex medical equipment, etc.) are unhappy with introducing a simple manufacturers' declaration of conformity (Module A) in all cases. Moreover certain national delegations within the Council would like to include Modules (such as Module B or Module C) which provide for greater safeguards than a simple manufacturers' declaration of conformity in such cases as where European standards have not yet been developed or where new products are being introduced.
19. Your rapporteur has held discussions with representatives of the concerned industries on these points. He notes that there is a clear divergence of opinion between them on some of the above points but that in their majority they are prepared to accept inclusion of the low voltage directive within EC marking rules. They would like the Commission, however, to report back on any problems encountered before the end of the transitional period in 1997, and also to tackle the issues posed by the considerable number of overlapping Community directives.
20. Your rapporteur also understands that the Council is generally favourable to the introduction of the low voltage directive within the present text, and that there is a hard core of Member States which want to rely only on Module A. The Commission is happy that a possible compromise could consist in adopting its present proposal, but with a declaration in the Council Minutes that tougher certification procedures than Module A should be followed by manufacturers in cases where products are not covered by European standards, and where safety considerations are involved.
21. Your rapporteur could only accept such a solution if the Declaration was not only sufficiently clear and tough, but also properly notified in time to the European Parliament, so that it could comment on it before its final adoption. Your rapporteur also believes that the problems posed by the low voltage directive and those of overlapping directives need to be examined by the Commission before the end of the transitional period in 1997. The second part of his Amendment 1 has thus been tabled to this purpose.

1. OJ No. C 28, 2.2.1993.

