

COMMISSION OF THE EUROPEAN COMMUNITIES

THIS DOCUMENT CANCELS AND REPLACES
THE VERSION PREVIOUSLY DISTRIBUTED

SEC(81) 1878 final
Brussels, 25th February 1982

COMMUNICATION FROM THE COMMISSION
of 15 December 1981

concerning the operation of the
Council Directive of 19 February 1973 on the harmonization of the
laws of the Member States relating to electrical equipment designed
for use within certain voltage limits (73/23/EEC) - the "Low Voltage
Directive"

SEC(81) 1878 final

INTRODUCTION

This communication is published in connection with efforts to protect and to reinforce Community achievement with regard to the free movement of goods within the Community.

As the Commission has emphasized on other occasions, free trade is fundamental to the harmonious development of economic activities within the Community, and the restoration or maintenance of the competitiveness of its industries; it is indispensable if the current economic crisis is to be overcome.

The electrical engineering industry is an important one in the Community. Its annual output is estimated at 80 000 million ECU, and the volume of trade in the equipment concerned between Community countries is in the order of 35 000 million ECU per year.

Free trade in this industry as well as the commercialization of electrical equipment are governed by Council Directive of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits¹. The proportion of products covered by this Directive is estimated at 70% of turnover in the electrical engineering sector.

Given the wide variety of goods covered, and the volume of trade in them, this Directive is of concern not only to industrial and commercial circles but also directly to every consumer in the Community.

The satisfactory operation of the arrangements established by the low voltage Directive requires, to an extent greater than do other Community rules on the free movement of goods, the cooperation of all concerned, whether in a public or in a private capacity.

While the operation of this directive has in the past been problematic in some respects, judgments delivered by the Court of Justice of the European Communities, notably in Case 815/79 Cremonini and Vrankovich,² now permit a clear definition to be made of the rights and obligations of all concerned.

.../...

¹
² OJ L 77, 26.3.1973.
European Court Reports 1980 p. 3583.

The Commission therefore feels it necessary to publish this communication, which is addressed to all concerned, setting out the main rules for the operation of the Low Voltage Directive.

The Commission hopes in this way to secure a better understanding by the market of the real scope of the Directive and of the opportunities it affords of developing intra-Community trade in electrical appliances and equipment.

For its part the Commission will take special care to ensure, as it is required to do by Article 155 of the EEC Treaty, that the Low Voltage Directive is implemented by the Member States in accordance with the orientations set out in this Communication, so that its uniform and correct application may remove the barriers and difficulties encountered by producers, importers and dealers over the last few years.

o

o o

Moreover the Commission would like to point out more generally the advantages which a system based on the reference to standards as provided by the Low Voltage Directive offers both to the realization of free movement of goods within the Community and to the innovation activity of firms.

Indeed, this directive limits itself to imposing the fundamental safety objectives and in order to achieve these objectives makes reference to voluntary harmonized technical standards which are drawn up by standards bodies.

In this way the system does not overload legislation with detailed technical specifications nor delay adaptation to technical progress by reiterated legislative procedures. Consequently it is a flexible and adaptable system from the technical point of view and thus creates favorable conditions for industrial innovation. Moreover, it stimulates the drawing up of harmonized standards and already offers at the same time the advantage of permitting, subject to certain conditions, the free movement of goods which conform with national standards.

In the light of these advantages the Commission will examine carefully whether recourse to this system is possible and useful in other sectors before submitting proposals for directives on the elimination of technical barriers to trade to the Council.

OPERATION OF THE LOW VOLTAGE DIRECTIVE

1. PRELIMINARY REMARKS

In the preliminary ruling it delivered on 2 december 1980 in Case '815/79 Gemonini and Vrankovich (Pretura Penale di Como), the Court of Justice of the European Communities provided substantial underpinning to Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits, generally referred to as the "Low Voltage Directive".

In that judgment, the Court explained clearly the effect of the main provisions of the Directive, and thus put an end to any uncertainty which might arise in interpreting them.

In the light of this ruling the Commission believes that it would be useful to briefly indicate the legal framework of the Directive and the way in which it operates for the information of all concerned, notably for :

- (i) manufacturers,
- (ii) certification and standards bodies in the electrical engineering field,
- (iii) importers,dealers and users,
- (iv) Member States.

2. THE LEGAL FRAMEWORK OF THE LOW VOLTAGE DIRECTIVE

2.1. Purpose

The purpose of the Directive is to permit the free movement of electrical equipment in the Community provided it is in conformity with the safety objectives which the Directive lays down. It is a "total harmonization" directive so that the measures it contains replace national rules in the field in question.

.../...

2.2. Scope

The Directive applies to all electrical equipment designed for use with a voltage rating of between 50 and 1000V for alternating current and between 75 and 1500V for direct current, other than equipment listed in an Annex (Annex II).

Broadly, it covers, in the main, consumer goods and equipment designed to operate within those voltage limits, including domestic electrical appliances, hand tools, lighting equipment, electric wiring, cables and piping, and installation equipment.

It covers all safety aspects of this equipment, including protection from hazards of mechanical origin.

2.3. Conditions for placing equipment on the market and for free movement

2.3.1. The Directive lays down eleven "safety objectives" (Article 2 and Annex I).

These are the only mandatory provisions which products must comply with if they are to be placed on the market and to qualify for freedom of movement in the Community (Articles 2 and 3).

Goods are presumed to conform to these objectives where the equipment has been manufactured in accordance with technical standards which in their order laid down in the Directive, are as follows :

- harmonized standards, drawn up in accordance with Article 5 by bodies which Member States have notified to the Commission and the other Member States;
- where harmonized standards as defined in Article 5 have not yet been drawn up and published, international rules established by two international bodies, the International Commission on the rules for the Approval of Electrical Equipment (CEE) or the International Electrotechnical Commission (IEC) (Article 6(1)), and published in accordance with the procedure laid down in Article 6 (2) and (3);

.../...

- where harmonized standards within the meaning of Article 5 or safety provisions published in accordance with Article 6 are not yet in existence, the standards in force in the Member State of manufacture (Article 7).

Equipment which does not conform with the standards defined in Articles 5, 6 and 7 may nevertheless be placed on the market provided it respects the "safety objectives" referred to in Article 2, and listed in detail in Annex I (Article 8 (1)).

2.3.2. The presumption that goods conform to these technical standards is certified by the "conformity mark" or "certificate of conformity" issued by the authorized national bodies, or by the manufacturer's "declaration of conformity" (Article 10).

The marks, certificates and declarations of conformity are recognized by all Member States, and allow the marketing and free movement of the goods (Articles 3 and 10). Where goods do not conform with the the technical standards it may nevertheless be established that they do conform with the safety objectives by means of a "conformity report", as provided in Article 8 (2).

2.3.3. A measure restricting the placing of equipment on the market or its free movement may be taken by Member States only under the Community safeguard clause procedure : this procedure must be respected if national measures restricting the marketing and free movement of goods are to be valid (Article 9).

3. REMARKS ADDRESSED TO MANUFACTURERS

3.1. Article 2 read together with Articles 5, 6 and 7
Only products which comply with the eleven "safety objectives" (Article 2 and Annex I) may be placed on the market. These are the only binding legal rules. The technical standards referred to in Articles 5, 6 and 7, which give rise only to a presumption of conformity in the case of equipment manufactured in compliance with them, cannot be rendered mandatory.

.../...

The same applies to national laws or regulations requiring compliance with specific technical specifications. Under the arrangements introduced by the Directive, such specifications now have only the status of a mere presumption. They are therefore no longer mandatory.

It follows that manufacturers can no longer be obliged to comply with binding national specifications which are no longer valid as against equipment satisfying the "safety objectives". Where the technical standards referred to in Articles 5 or 6 do not yet exist, manufacturers are, of course, entitled to comply with such specifications in order to enjoy a presumption of compliance with the "safety objectives".

The invalidity of such specifications is confirmed by the case law of the Court of Justice, according to which national authorities and courts must not apply national provisions which conflict with Community provisions (3).

3.2. Article 7

In the absence of the technical standards referred to in Articles 5 and 6, compliance with the national standards referred to in Article 7 is sufficient to remove any barrier to the placing on the market and free movement of goods, on condition that such standards comply with the safety objectives.

As Articles 2 and 8 indicate, compliance with safety requirements corresponding to the "safety objectives" referred to in Article 2 and Annex I is all that can be required in the territory of each Member State.

Consequently, neither the Member States nor the manufacturers can rely on national technical standards which do not comply with the Community safety objectives.

This criterion means, therefore, that national standards must be carefully sifted, there being no room for those which depart from the objectives.

.../...

(3) The judgments in Case 106/77 Simmenthal (1978) ECR 645 and in Case 148/78 Ratti (1979) ECR 1646.

The phrase at the end of Article 7 ("if it ensures a safety level equivalent to that required in their own territory.") does not authorize Member States to require compliance with safety levels other than those resulting from the "safety objectives".

Nevertheless, compliance with these safety objectives - which are henceforth identical for the whole Community - may imply in some cases compliance with different requirements from one Member State to another to take account of different objective situations : for example, requirements resulting from the supply grids which vary from one region of the Community to another (e.g. 110, 125, 220, 240).

In this case, measures restricting freedom of movement can be taken (within the framework, of course, of the safeguard procedure provided for in Article 9).

3.3. Article 8

The primary function of Article 8 is to protect industrial property and to ensure the most appropriate conditions for progress and dynamism in the electrical engineering industry.

It makes it possible to market technologically advanced electrical equipment which does not have the backing of any technical standards, these being more often than not drawn up after a technical innovation has been developed.

Article 8 confers on manufacturers and importers rights in respect of the placing on the market and free movement of equipment, provided that compliance with the safety objectives is attested to by the report on conformity provided for in paragraph 2. It will therefore be in their interest to request in advance that such a report be drawn up by a body notified in accordance with the procedure laid down in Article 11. Such a precaution will reinforce their position in the event of a challenge by the (administrative or judicial) Authorities of a Member State.

3.4. Article 10

The placing on electrical equipment of a mark denoting conformity or the production of a certificate of conformity by the bodies of the Member States authorized for that purpose must be accepted by all the Member States as a presumption of conformity with the technical standards referred to in Articles 5, 6 or 7 and hence with the safety objectives laid down in the Directive .

These marks or certificates of conformity therefore allow equipment to be placed on the market and to move freely subject to the safeguard procedure referred to in Article 9 (cf. point 6.5 above). The same applies to the manufacturer's declaration of conformity, which is intended, in particular, for electrical equipment for industrial use.

Marks or certificates of conformity may be obtained from the bodies authorized for that purpose by the Member States in accordance with Articles 10 and 11⁴.

Where equipment is manufactured in accordance with a national standard referred to in Article 7, the mark or certificate of conformity may be obtained in a Member State other than that of manufacture, on condition that the equipment in question was manufactured in accordance with the standard applied in that other Member State.

Since marks or certificates of the authorized bodies are equivalent, the acquisition of only one of them is sufficient for the goods to be marketed throughout the Community.

4. REMARKS ADDRESSED TO THE BODIES NOTIFIED BY THE MEMBER STATES

4.1. Certification bodies

- 4.1.1. Articles 2 and 8 indicate that compliance with safety requirements justified by the safety objectives referred to in Article 2 and Annex I is all that can be required in the territory of each Member State (cf. point 3.2. above).

The satisfactory operation of the directive, presupposes that the certification bodies only issue marks or certificates of conformity for equipment manufactured in accordance with technical standards which comply with the eleven "safety objectives" referred to in Article 2 and Annex I.

4 ^{.../...}
A list of authorized bodies and of models of marks of conformity was published in OJ C184 of 23 July 1979

4.12. In view of the non-binding status of technical standards, the bodies are obliged to draw up, at the request of the manufacturer or importer, reports on the conformity of products which, though not conforming with the standards, comply with the "safety objectives" referred to in Article 2 and Annex I (Article 8 (2)).

4.2. Standards Bodies

4.2.1. The bodies notified by the Member States in accordance with Articles 5 and 11 are responsible for drawing up harmonized standards within the meaning of Article 5.

The majority vote procedure adopted unanimously by those bodies meeting within CENELEC (European Electrotechnical Standardization Committee) appears to be entirely in accordance with Article 5, according to which standards must be drawn up by "common agreement".

4.2.2. The existence of national laws or regulations cannot prevent the drawing up of harmonized standards in accordance with Article 5.

Nor can such provisions be imposed in addition to, or instead of, the technical specifications contained in the harmonized standards, as they have ceased to be binding (cf. point 3.1. above).

There is therefore no longer any point in mentioning such provisions under "A-deviations" in "harmonization documents" or "European standards".

Over one hundred harmonized standards have so far been drawn up.

4.2.3. Harmonized standards within the meaning of Article 5 play an essential role in the operation of the directive.

They are intended to replace permanently the other categories of technical standards provided for in the directive and in all cases not falling under Article 8, provide all those involved in the production, marketing and use of electrical equipment and the official supervision, with a common basis which is clearly recognizable throughout the Community.

.../...

The Commission calls upon CENELEC to expedite its work so that harmonized standards may quickly be available for all products covered by the directive. It stresses, moreover, the importance, for the satisfactory operation of the directive, of the updating of harmonized standards in the light of technological progress and developments in good engineering practice in safety matters.

5. REMARKS ADDRESSED TO IMPORTERS, DEALERS AND USERS

5.1. Satisfactory operation of the Low Voltage Directive necessitates cooperation on the part of all concerned ; only products meeting the Directive's "safety objectives" may be sold. It is thus in the interests of every importer and dealer to satisfy himself that his products meet the safety objectives.

Although not compulsory, the marks, certificates and declarations of conformity referred to in Article 10 and the reports referred to in Article 8 (2) provide an important guarantee in this respect, since they permit marketing and free movement subject to Article 9. A single mark or certificate of conformity is enough to allow an appliance to be marketed throughout the Community (cf. para. 3.4. above). Thus, there is no need to obtain the mark of conformity of the Member State in which the product is to be marketed; that of another Member State suffices.

Electricity supply companies are also bound to recognize the equivalence of marks or certificates of conformity and this must be made clear in their terms and conditions for connection (see para 6.4. below).

It will be in the interest of manufacturers or importers of equipment not conforming to any of the technical standards referred to in Articles 5, 6 or 7 to request in good time the report referred to in Article 8 (2) drawn up by a body notified in accordance with the procedure laid down in Article 11. Such a precaution will reinforce their position in the event of a challenge by the administrative or judicial authorities of a Member State. .../...

- 5.2 If a Member State invokes article 9 to prohibit or to otherwise restrict the marketing of a product which is presumed to conform to the safety objectives, the burden of proving non-conformity rests, in any event, with that Member State in accordance with the condition set out in 6.5.2. below.

Apart from this procedure, a powerful remedy also exists under Community law to protect the rights arising from the Directive, in the form of preliminary rulings by the Court of Justice of the European Communities under Article 177 of the Treaty. This remedy presupposes the bringing of an action against the national restriction before a court of the Member State concerned. Alternatively, a complaint may be lodged with the Commission, which in appropriate cases could initiate infringement proceedings against the Member State concerned under Article 169 of the Treaty.

6. REMARKS ADDRESSED TO MEMBER STATES

6.1. Article 5

Under the second paragraph of Article 5, standards drawn up by common agreement between the bodies that have been notified are regarded as harmonized once they have been published under national procedures.

Although the Directive does not lay down a time limit for publication, a time limit is necessary for the attainment of the Directive's objectives and its satisfactory operation, for the Member States are obliged to facilitate the attainment of those objectives by Article 5 of the Treaty and are therefore bound to discharge their obligations as regards publication without delay.

Standards drawn up by common agreement between the notified bodies are published by the Commission for information purposes in the Official Journal as soon as they are notified to it by CENELEC⁵.

.../...

⁵ Three lists of such standards have so far been published in Official Journal Nos C 184, 23.7.1979, C 107, 30.4.1980 and C 199, 5.8.1980.

On past experience, the Commission considers that it would be reasonable to allow Member States six months from publication in the Official Journal in which to publish such standards nationally.

The Commission will not hesitate to initiate Article 169 proceedings against Member States who fail to publish such standards within this time limit or who refuse to allow the marketing or free movement of equipment conforming to such standards on the ground that the standards have not yet been published nationally.

6.2.1. "A-deviations"

National regulations deviating from the harmonized standards, known as "A-deviations", are now subject to Article 7. Thus they are no longer mandatory and merely entitle products meeting them to be presumed to be in conformity. They may only be used in this way until their suppression when the harmonized or international standards are published. It would be a breach of the Directive for Member States to retain them in their national law as mandatory provisions and such action would render Member States liable to Article 169 proceedings. This view is supported by past decisions of the Court of Justice (cf. para. 3.1. above).

6.3. Article 7

Member States may not lay down mandatory technical requirements regarding the quality or performance of electrical equipment. The object of the Directive is to allow electrical equipment meeting the safety objectives laid down in it to move freely.

This object would be jeopardized if the Member States could impose other requirements for the marketing of such products, regarding such aspects as quality, performance, etc.

.../...

6.4. Article 4

Under Article 4, electricity supply companies are also bound to recognize mutually marks and certificates of conformity. Thus, they may not refuse to connect or supply consumers on the ground that their electrical appliances do not bear a particular mark of conformity (e.g. the national one). They must likewise accept marks issued by the competent bodies of all Member States and declarations of conformity and reports attesting to conformity within the meaning of Articles 10 and 8 (2). The terms of their contracts to supply electricity users must make this clear. Observance of this requirement, which it is the Member States' responsibility to ensure, may at the same time remove the incentive for insurance companies to require policy-holders to use equipment bearing a particular mark of conformity.

6.5. Article 9

- 6.5.1. If a Member State wishes to restrict the free movement or marketing of electrical equipment bearing or covered by a mark, certificate or declaration of conformity or a report attesting to its conformity as specified in Articles 8 (2) and 10, it must follow the Community safeguard procedure provided for in Article 9. Failure to do so will invalidate any restriction on marketing or free movement.

Such restrictive measures may be imposed only by administrative authorities able to act on the Member States' behalf and competent to participate in this procedure. The Court has specifically excluded the judicial authorities from taking such action, except in cases of failure to submit a report attesting to conformity under Article 8. Only in that case may a judicial authority impose a restrictive measure.

.../...

6.5.2. Article 9 requires the Member State invoking the safeguard procedure to inform all the other Member States and the Commission of its action immediately indicating the grounds for its decision and those on which non-conformity is based. The Commission then follows the procedure through as set out in the Article.

The burden of proving non-conformity rests with the Member State alleging it. Thus, when a Member State informs the Commission of such action, it must state in detail the reasons why the equipment is considered not to meet the safety objectives referred to in Article 2. It is not enough, for example, to state that the equipment does not meet a particular national standard of the Member State applying the safeguard clause.

6.5.3. If the Member State's action appears to be groundless or inadequately founded and hence manifestly unjustified, the Commission may initiate Article 169 proceedings, which would be given appropriate publicity. The Commission also intends to publish in the Official Journal the recommendations and opinions it formulates under the Article 9 procedure.

