

COMMISSION OF THE EUROPEAN COMMUNITIES

REVISED VERSION

COM(83) 250 final/2

Brussels, 25 May 1983

Proposal for a

COUNCIL DIRECTIVE

adopting the measures provided for in Article 3(3) of Directive 76/889/EEC on the approximation of the laws of the Member States relating to radio interference caused by electrical household appliances, portable tools and similar equipment and of Directive 76/890/EEC on the approximation of the laws of the Member States relating to the suppression of radio interference with regard to fluorescent lighting luminaires fitted with starters

(submitted to the Council by the Commission)

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EXPLANATORY MEMORANDUM

I. General

Council Directives 76/889/EEC and 76/890/EEC on the approximation of the laws of the Member States relating to radio interference caused by electrical household appliances, portable tools and similar equipment and to the suppression of radio interference with regard to fluorescent lighting luminaires fitted with starters were adopted on 4 November 1976.

Article 3, which is common to the two Directives, lays down the methods for certifying the conformity of the equipment covered thereby with the requirements of these Directives. Pursuant to paragraph 3, Member States may require that, for a period of five and a half years from the time the Directives are notified, such compliance be attested on the basis of prior type testing. Since the Directives were notified on 9 November 1976, this period expired on 9 May 1982. Only two Member States (Denmark and the Federal Republic of Germany) have exercised this right. The same paragraph provides that, on expiry of the period in question, all appropriate measures shall be taken in accordance with the procedure laid down in Article 8 of Directive 76/889/CEE, i.e. in accordance with the procedure for adaptation to technical progress.

Consequently, this proposal has been drawn up in accordance with the requirements and procedures laid down in the Directives.

In the light of the results of consultations held in 1981 with the Member States and with industry, the Commission prepared a draft which provides for the mere deletion of Article 3(3) but retains the provisions of Article 3(1) and (2) relating to self-certification and the optional use of marks or certificates issued by the bodies notified.

This proposal was based on the following considerations:

1. The "appropriate measures" in the second subparagraph of Article 3(3) can only refer to the very derogation mentioned in this paragraph.

On the other hand, they cannot relate to the general arrangement for the verification on conformity introduced under the Directive, i.e., self-certification as provided for in paragraph 1 and optional certification as provided for in paragraph 2. Consequently, this arrangement cannot be modified on the basis of paragraph 3, subparagraph 2.

If the Community legislators had wished to leave open the possibility that the general arrangement might also be affected after the period of five and a half years in accordance with the adaptation-to-technical-progress procedure, they would have included a separate provision embracing the three paragraphs of Article 3.

It therefore follows that paragraphs 1 and 2 could only be amended on the basis of Article 100 of the Treaty.

2. This being the case, the "appropriate measures" provided for in paragraph 3 could relate only to a mere extension of the derogation, or to a new derogation in another form, or to a ruling that the derogation had lapsed.
3. In view of the decisions of the Court of Justice concerning the free movement of goods taken after the adoption of the Directives in question, the extension of the derogation or the introduction of a new derogation in another form no longer appears acceptable.
4. Consequently, the only solution available to the Commission was to rule that the derogation had lapsed.

II. Opinion of the Committee

On 4 May 1982, this draft was submitted for an opinion to the Committee set up under Article 7 of Directive 76/889/EEC, in accordance with the procedure laid down in Article 8(2) thereof. Since the Committee failed to reach a qualified majority and was therefore unable to deliver an opinion, the Commission is transmitting the attached proposal for a Directive to the Council in accordance with the provisions of Article 8(3)(b) of the above-mentioned Directive.

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adopting the measures provided for in Article 3(3) of Directive 76/889/EEC on the approximation of the laws of the Member States relating to radio interference caused by electrical household appliances, portable tools and similar equipment and of Directive 76/890/EEC on the approximation of the laws of the Member States relating to the suppression of radio interference with regard to fluorescent lighting luminaires fitted with starters

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Directive 76/889/EEC of 4 November 1976 on the approximation of the laws of the Member States relating to radio interference caused by electrical household appliances, portable tools and similar equipment¹, as last amended by the Act of Accession of Greece, and in particular Article 3(3) thereof;

Having regard to Council Directive 76/890/EEC of 4 November 1976 on the approximation of the laws of the Member States relating to the suppression of radio interference with regard to fluorescent luminaires fitted with starters², and in particular Article 3(3) thereof;

Having regard to the proposal from the Commission;

Whereas, under the first subparagraph of Article 3(3) of the two above-mentioned Directives, Member States may, for a period of five and a half years from the date of notification of the Directives, require that conformity of appliances to the requirements of those Directives be attested by marks or certificates issued on behalf of the competent authorities on the basis of prior type testing;

Whereas, under the second subparagraph of that provision, in the light of experience gained and the results obtained within the Community, all appropriate measures shall be taken in accordance with the procedure laid down in Article 8 of Directive 76/889/EEC, within the said period of five and a half years;

Whereas the experience gained and the results obtained within the Community show that Article 3(1) and (2) of the two Directives in question provides for an adequate system of control to ensure compliance with Article 2 of those Directives and that no additional control measures need be provided for;

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¹ OJ No L 336, 4.12.1976, p. 1.

² OJ No L 336, 4.12.1976, p. 22.

Whereas on 4 May 1982 the Commission transmitted to the Committee set up pursuant to Article 7 of Directive 76/889/EEC a proposal setting out the measures to be adopted ; and whereas, in the absence of an opinion from this Committee and in accordance with Article 8(3)(c) of that Directive, the Commission transmitted to the Council a proposal concerning the measures to be adopted,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Member States which availed themselves of the option provided for in Article 3(3) of Council Directive 76/889/EEC and in Article 3(3) of Council Directive 76/890/EEC shall repeal the measures taken by virtue of that option within two months following notification of this Directive. They shall forthwith inform the Commission to this effect.

Article 2

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President