

European Communities

EUROPEAN PARLIAMENT

Working Documents

1978-1979

14 April 1978

DOCUMENT 29/78/ANNEX

OPINION

of the Legal Affairs Committee

on the proposal from the Commission of the European Communities to the Council (Doc. 384/77) for a directive on the approximation of the laws of the Member States relating to hot-water meters

Draftsman: Mr J. BROEKSZ

PE 51.662/Ann./fin.

At its meeting of 23/24 January 1978 in Brussels the Legal Affairs Committee considered the proposal (Doc. 384/77) for which the Committee on Economic and Monetary Affairs is responsible. At the end of its discussion it decided to appoint a draftsman at a later meeting.

At its meeting of 27/28 February 1978 Mr Broeksz was appointed draftsman.

At its meeting of 12 April 1978 the committee considered this draft opinion and adopted it unanimously.

Present: Sir Derek Walker-Smith, chairman; Mr Calewaert and Mr Geurtsen, vice-chairmen; Mr Broeksz, draftsman of the opinion; Mr Alber, Mr Bouquerel, Mr De Keersmaeker, Mr Fletcher-Cooke, Mr Rivierez, Mr Shaw, Mr Sieglerschmidt and Mrs Squarcialupi.

Background

1. The proposal is one of a series made following the adoption of the Council Directive¹ of 26 July 1971 on measuring instruments and methods of metrological inspection. Several of these proposals have been scrutinized by the Legal Affairs Committee. One in particular, that on cold-water meters (Doc. 100/73), clearly has close links to the present text².

Aim of the proposal

2. The aim of such proposals is to eliminate technical barriers to trade. It is thought that differences between the technical specifications laid down in Member States' legislations cause difficulties for those engaged in cross-frontier trade. (These differences can be permanent or temporary - where legislation already exists - or potential - where one or more Member States do not yet have any rules but subsequently introduce them).

The proposal aims to eliminate such difficulties by harmonising existing rules on technical specifications and thus to permit the common market to function.

Is harmonisation justified?

3. As always the question arises as to whether this harmonisation is beneficial or whether it is a case of 'harmonisation for harmonisation's sake'.

¹ Council directive No. 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, as amended by the Act of Accession. OJ L 202, 6 September 1971, p.1

² For the Legal Affairs Committee's (favourable) opinion see Doc. 235/73

The different systems of harmonisation

4. In this respect it should be pointed out that there are two methods of harmonisation.

The first - 'total harmonisation' - is probably the better known. The rules laid down have universal application throughout the Community. In the concrete case of harmonisation of technical specifications for hot-water meters this would mean that every hot-water meter on the Community market would have to conform to Community standards. To impose such standards suddenly might well cause major problems, particularly for smaller firms, and unwelcome changes for the consumer.

The other - 'optional harmonisation' - is more flexible. The principle is that a Member State may not forbid the distribution on its territory of goods from another Member State which conform to the Community specifications. This means in effect that firms whose market is confined to the territory of one Member State can continue to conform to national specifications. This system is generally used as a transitional measure pending total harmonisation when this is feasible and necessary.

5. The system chosen for this proposal is 'optional harmonisation'. No unnecessary changes will be imposed at national level. At the same time it will widen opportunities for those Community manufacturers who wish to export to another Member State. Your draftsman agrees in the circumstances with this choice. In view of the system chosen he is in favour of harmonisation under Article 100(EEC).

Safeguards

6. There is only one criticism which the Legal Affairs Committee wishes to make. Article 2 provides that:

'Hot-water meters to which the EEC marks and signs may be affixed are described in the Annex to this Directive.

They shall be subject to EEC pattern approval and shall be submitted for EEC initial verification.'

But there is no mention of an appeal procedure. A procedure of appeal against the refusal (or withdrawal) of pattern approval is provided for by the Council Directive of 26 July 1971¹. The Legal Affairs Committee is of the view that this directive should expressly provide for a similar right of appeal should a Member State act in contravention of Article 2.

Conclusions

7. In conclusion, the Legal Affairs Committee
- (a) approves the use of a directive under Article 100
 - (b) is in favour of the use of the 'optional' system of harmonisation, but
 - (c) proposes the inclusion of an appeal procedure in the directive.

¹ Council directive No. 71/316/EEC on the approximation of the laws of the Member States relating to common provisions for both measuring instruments and methods of metrological control, as amended by the Act of Accession. OJ L 202, 6 September 1971, p.1

European Communities

EUROPEAN PARLIAMENT

*27. 11. 77
(in accordance with
the Treaty)*

Working Documents

1978 - 1979

6 April 1978

DOCUMENT 29/78

Report

drawn up on behalf of the Committee on Economic and Monetary Affairs

on the proposal from the Commission of the European Communities to the Council (Doc. 384/77) for a directive on the ~~approximation~~ approximation of the laws of the Member States relating to hot-water meters

Rapporteur: Mr K. NYBORG

PE 51.662/fin.

By letter of 9 November 1977 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of the Member States relating to hot-water meters.

The President of the European Parliament referred this proposal to the Committee on Economic and Monetary Affairs as the committee responsible and to the Legal Affairs Committee for its opinion.

On 1 April 1977 the Committee on Economic and Monetary Affairs appointed Mr Nyborg rapporteur for proposals concerning the elimination of technical barriers to trade.

It considered this proposal at its meeting of 25 January 1978 and unanimously adopted the motion for a resolution and the explanatory statement.

Present: Mr Glinne, chairman; Mr Notenboom, Sir Brandon Rhys-Williams and Mr Leonardi, vice-chairmen; Mr Nyborg, rapporteur; Lord Ardwick, Lord Bruce of Donington, Mr Carpentier, Mr Haase, Mr Ripamonti, Mr Starke, Mr Verhaegen and Mr Stetter.

The opinion of the Legal Affairs Committee will be published separately.

CONTENTS

| | <u>Page</u> |
|----------------------------------|-------------|
| A. MOTION FOR A RESOLUTION | 5 |
| B. EXPLANATORY STATEMENT | 6 |

The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of the Member States relating to hot-water meters

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
 - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 384/77),
 - having regard to its resolution of 12 December 1974 on the elimination of technical barriers to trade (Doc. 323/74),
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Legal Affairs Committee (Doc. 29 /78),
1. Considers the harmonization of provisions relating to water meters a typical example of the slow and piecemeal procedure which is being followed for the elimination of technical barriers to trade;
 2. Emphasises once again therefore the need to introduce a streamlined procedure for the elimination of technical barriers to trade and recalls its earlier proposal for a procedure² whereby the Commission would systematically propose outline directives in accordance with Article 100 of the EEC Treaty for individual sectors defined in action programmes and lay down on its own responsibility provisions for their implementation pursuant to Article 155 of the EEC Treaty;
 3. Requests the Commission to submit at the earliest possible opportunity, together with the proposal for a first outline directive and in accordance with Parliament's proposals for procedural simplification, a proposal for a Council decision laying down the principles of the procedure;
 4. Approves the proposal, with the abovementioned reservation on procedure.

¹OJ No. C 283, 24.11.1977, p.6

²OJ No. C 5, 8.1.1975, p. 41

EXPLANATORY STATEMENT

1. In view of the price of hot water and the need to protect the consumer, accurate measurement must be ensured of the volumes of hot water delivered. This wish to protect the consumer justifies legislation laying down specifications for meters. National legislation in this area is obviously an obstacle to intra-Community trade and harmonization of such legislation is therefore required at Community level. Seen in this perspective, the Committee on Economic and Monetary Affairs welcomes this proposal for a directive.

2. Optional harmonization is the method chosen in the proposal. The Commission usually chooses the optional method because it allows national provisions to be retained and thus makes it easier to achieve a consensus in the Council. However, optional harmonization does not remove all barriers to trade. The simultaneous existence of national and Community provisions leaves the way open to distortions of competition. Parliament has always favoured total harmonization, particularly if the legislation concerned affects safety or health. The present proposal does not affect the health and safety of the consumer and in this respect does not require total harmonization. The Committee on Economic and Monetary Affairs is consequently able to approve the method of harmonization adopted. It would be useful for the Committee on Economic and Monetary Affairs to hold a detailed discussion of harmonization methods in the near future.

3. This proposal again illustrates the shortcomings of the present slow procedure used for the elimination of technical barriers to trade. The general directive on measuring instruments and methods of metrological control laid down the procedure for obtaining EEC pattern approval and the first EEC approval mark as well as the procedure for adjustment to technical progress. The Council's powers were not, however, confined to the stipulation of general principles for individual measuring instruments; it is also able to lay down all the necessary provisions for their implementation. Each category of measuring instrument is made the subject of a separate directive which involves the long decision-making procedure established under Article 100 of the Treaty. This explains why the harmonization of legislation on measuring instruments is taking so long to carry out.

4. A separate directive lays down provisions for meters for liquids other than water. Furthermore, a distinction is made in the water meter category between hot-water meters and cold-water meters (each the subject of a

separate directive)¹. Once the present directive is adopted, the Commission plans to submit a proposal dealing with thermal energy meters. The hot-water meter is itself one of the most important types of thermal energy meter.

5. This slow, cumbersome and piecemeal method of harmonization is clearly in need of some simplification. Some time ago Parliament therefore drew up a proposal² for amending the procedure, which can be summarized as follows:

- action programmes are drawn up for the elimination of technical barriers to trade; these action programmes define basic principles and should be legally binding;
- the Commission then systematically proposes outline directives to the Parliament and Council pursuant to Article 100 of the EEC Treaty for the individual sectors defined in these action programmes;
- the Commission then lays down implementing provisions on its own responsibility pursuant to Article 155 of the Treaty.

As Commissioner then responsible for the internal market, Mr GUNDELACH in principle approved this procedural simplification. On a confidential basis, he made available to your rapporteur and the chairman of the Committee on Economic and Monetary Affairs a preliminary draft of an outline directive on the building sector which set out the principles of a simplified procedure in its explanatory memorandum. This preliminary draft appeared to incorporate the changes in procedure proposed by Parliament. This matter of procedural reform was raised again at the meeting of the Committee on Economic and Monetary Affairs of 23 June 1977. In answer to a letter from your rapporteur after this meeting, the Commissioner now responsible for the internal market, Mr DAVIGNON, intimated that, in view of your rapporteur's favourable reaction to the preliminary draft, he would arrange for his office to finalize this proposal for an outline directive as soon as possible and submit it to the Council which would then consult Parliament in the normal way.

The Committee on Economic and Monetary Affairs welcomes this information and urges the Commission to press ahead with its work as quickly as possible. It expects the Commission not only to present the proposal containing the simplified procedure but also a proposal for a Council decision laying down the principles of this new procedure.

¹ The latter has already been adopted by the Council

² OJ No. C 5, 8.1.1975

