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Report



drawn up on behalf of the Legal Affairs Committee

on the proposals from the Commission of the European Communities to the Council (Doc. 133/72) for

- I. a directive on the approximation of Member States' legislation on radio interference caused by domestic electrical appliances, portable power tools and similar devices
- II. a directive on the approximation of Member States' legislation on radio interference caused by fluorescent lighting tubes

Rapporteur: Mr A. ARMENGAUD

By letter of 26 September 1972 the President of the Council of the European Communities consulted the European Parliament, pursuant to Article 100 of the EEC Treaty, on the proposals from the Commission of the European Communities to the Council for

- I. a directive on the approximation of Member States' legislation on radio interference caused by domestic electrical appliances, portable power tools and similar devices
- II . a directive on the approximation of Member States' legislation on radio interference caused by fluorescent lighting tubes .

On 4 October 1972 the President of the European Parliament referred these proposals to the Legal Affairs Committee as the Committee responsible and to the Economic Affairs Committee for its opinion.

The Legal Affairs Committee appointed Mr ARMENGAUD rapporteur on 26 October 1972.

At its meetings of 25 January and 8 March 1973 the committee adopted the motion for a resolution and the explanatory statement by 11 votes with one abstention.

The following were present: Mr Brouwer, chairman, Mr Bermani, vice-chairman, Mr Armengaud, rapporteur, Mr Ballardini, Mr Brewis, Mr Brocksz, Mr Brugger, Mr D'Angelosante, Mr De Sanctis, Mrs Nielsen, Mr Outers and Mr Vernaschi.

The opinion of the Economic Affairs Committee is attached.

CONTENTS

	<u>Page</u>
A. MOTION FOR A RESOLUTION	5
B. EXPLANATORY STATEMENT	11
I Background	11
II Form and contents of the two proposed directives	12
a) The proposed directive on the approximation of Member States' legislation on radio interference caused by domestic electrical appliances, portable power tools and similar devices	12
b) The proposed directive on the approximation of Member States' legislation on fluorescent lighting tubes	14
III Conclusions	14
Opinion of the Economic Affairs Committee	16

The Legal Affairs Committee 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 proposals from the Commission of the European Communities to the Council for:

- I. a directive on the approximation of Member States' legislation on radio interference caused by domestic electrical appliances, portable power tools and similar devices

- II. a directive on the approximation of Member States' legislation on radio interference caused by fluorescent lighting tubes

The European Parliament,

- having regard to the proposals 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. 133/72).
- having regard to the report of the Legal Affairs Committee and the opinion of the Economic Affairs Committee (Doc. 340/72),

1. Welcomes the start which has been made on the harmonization of Member States' legal and administrative regulations on radio interference, thereby removing the obstacles to intra-Community trade resulting from the different legal provisions in the Member States;

2. Observes that the purpose of these proposals for harmonization is to define maximum permissible limits for interference caused by the apparatus in question on the one hand and methods of measuring this interference on the other;

3. Recalls the proposal from the Commission of the European Communities to the Council² for a directive on the approximation of Member States' legislation on electrical equipment for use within specific voltage limits, within the framework of which it is agreed that provisions on radio interference shall be harmonized in subsequent directives, and on which the European Parliament delivered its opinion on 28 November 1968³,

¹COM (72) 853/fin.

²OJ C 91, 13.9.1968

³OJ C 135, 14.12.1968

4. Notes that this directive was very recently adopted by the Council;
5. Draws attention to the General Programme of 28 May 1969 for the removal of technical obstacles to trade resulting from differences in Member States legislation¹ the third phase of which covers the area affected by the present proposals;
6. Notes with surprise and regret
 - (a) that the Council has taken four years to adopt the directive referred to in paragraph 3,
 - (b) that the proposals in question have been put forward with a delay of 2½ years on the dates stipulated in the General Programme referred to in paragraph 5;
7. Observes that the two draft directives concerned constitute a part of a total of four proposals to be submitted by the Commission in the field of radio interference;
8. Notes with satisfaction that the two remaining proposals are to be submitted in the near future;
9. Agrees to the application of Article 100 of the EEC Treaty as the legal basis for both draft directives;
10. Is pleased that the system of complete harmonization has been followed in these draft directives;
11. Believes that responsibility for seeing that the equipment concerned conforms to the provisions of the directives should in principle lie with the manufacturer or importer;
12. Considers, however:
 - (a) that the statements and certificates referred to in Article 3 should be printed in the language of the country of use and that where quality marks are not sufficiently familiar to the average, not specially well-informed customer, a clear indication of compliance with the standards laid down in the directive should be provided in the language of the said country;
 - (b) that the Member States must provide for random testing of the appliances marketed in order to determine whether they meet the requirements of the directive;

¹ OJ C 76, 17.6.1969,

13. Regrets that in setting up the committee for the adaptation of the directives¹ to technical progress, the Council did not adopt at the time the amendments proposed by Parliament² to the proposal for the General Programme referred to under point 5 - amendments affecting the procedure to be followed by such committees;

14. Notes with satisfaction that the standards laid down in the annexes to the directives are in line with the recommendations drawn up by the CISPR³;

15. Expresses its general approval of the Commission's proposals;

16. Invites the Commission to endorse the following amendments pursuant to Article 149, paragraph 2, of the EEC Treaty;

17. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

¹ OJ C 76, 17.6.1969, p. 8

² OJ C 108, 19.10.1968, p. 43

³ Special International Committee on Radio Interference

I

Proposal for a Council directive on the approximation of Member States' legislation on radio interference caused by domestic electrical appliances, portable power tools and similar devices

Preamble and recitals unchanged

add a final recital worded as follows:

Considering that the matter in question is covered in the third phase of the General Programme of 28 May 1969 for the removal of the technical obstacles to trade resulting from discrepancies between Member States provisions as laid down by law, regulation or administrative action²

Article 1 unchanged

Article 2

The apparatus referred to in Article 1 may only be marketed and/or used if it conforms to the provisions of this directive in regard to the maximum admissible limits of radio interference which it may cause.

Article 3

1. unchanged

2. unchanged

2a. The statements and certificates referred to in this Article shall be printed in the language of the country in which the appliances are to be used and where quality marks are not sufficiently familiar to the average, not specially well-informed customer, a clear indication of compliance with the standards laid down in the directive shall be provided in the language of the said country

¹ For full text see COM(72)853/fin. Text available in German, French, Italian and Dutch only.

² OJ C 76, 17 June 1969. Text available in German, French, Italian and Dutch only.

Article 3a

Member States shall ensure that appliances put on the market are subject, in every case, to random testing, following marketing, in order to determine whether they meet the requirements of the directive.

Articles 4 to 10 unchanged

Annex

1. SPHERE OF APPLICATION

- These provisions shall be applicable to all domestic electrical appliances, portable power tools or other electrical devices which cause similar continuous or intermittent radio interference, such as :
office machines, film and slide projectors, electric toys, electric record players, milling machines, electrical medical apparatus with electric motors, etc. with the exception of high-frequency radiation equipment for therapeutic purposes

Remainder of annex unchanged

II

Proposal for a Council directive on the approximation of Member States' legislation on radio interference caused by fluorescent lighting tubes

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Preamble and recitals unchanged

Add a final recital worded as follows :

Considering that the matter in question is covered in the third phase of the General Programme of 28 May 1969 for the removal of the technical obstacles to trade resulting from the discrepancies between Member States' provisions as laid down by law, regulation or administrative action¹

¹ OJ C 76, 17 June 1969

Article 1 unchanged

Article 2

The apparatus referred to in Article 1 may only be marketed and/or used if it conforms to the provisions of this directive in regard to the reduction of the radio interference which it may cause.

Article 3

1. unchanged
2. unchanged

2a. The statements and certificates referred to in this Article shall be printed in the language of the country in which the fluorescent lighting tubes are to be used and where trade names are not sufficiently familiar to the average, not specially well-informed customer, a clear indication of compliance with the standards laid down in the directive shall be provided in the language of the said country.

Article 3a

Member States shall ensure that fluorescent lighting tubes put on the market are subject, in every case, to random testing following marketing, in order to determine whether they meet the requirements of the directive.

Articles 4 to 9 incl. unchanged

Annex unchanged.

EXPLANATORY STATEMENTI. BACKGROUND

1. The purpose of the proposed directives is to adapt the provisions laid down by law, regulation or administrative action in the Member States on radio interference caused by domestic electrical appliances, portable power tools and similar devices on the one hand, and by fluorescent lighting tubes on the other. The process of harmonization includes the establishment of maximum permissible limits on and methods of measuring interference caused by the above-mentioned equipment.

The directives remove the obstacles to intra-Community trade resulting from disparities in national laws.

2. At the time of drafting the proposed directive on electrical equipment used within certain voltage limits¹, it had been agreed as stated in Annex II to the proposal, that the present problem would be settled in subsequent directives. On 28 November 1968, the European Parliament delivered an opinion on the proposed directive² on the basis of a report drawn up by Mr Jarrot on behalf of the Committee on Social Affairs and Public Health. This directive was only recently adopted by the Council and had not been published at the time of writing. At all events, your committee regrets that the Council has taken four years to reach a decision in the matter.

Furthermore, the field covered in the two proposals is included in the third stage of the General Programme of 28 May 1969 for the elimination of technical obstacles to trade resulting from disparities in the provisions laid down by law, regulation or administrative action in the Member States³. Proposals on the matters to be dealt with during this stage of the programme should have been submitted by the Commission by 1 July 1970 and directives adopted by the Council by 1 January 1971. The programme is therefore running two and a half years behind schedule.

3. Since it was technically impossible to draft a document sufficiently general in scope to cover all equipment causing radio interference, the Commission decided to draw up special directives each covering a given category. There are four proposed directives in all, of which these are the first two.

¹OJ No. C 91, 19.9.1968

²OJ No. C 135, 14.12.1968

³OJ No. C 76, 7.6.1969

According to information obtained from the Commission, the other two proposals on radio interference will be submitted to the Council in the near future; the first deals with radio or television receivers and the second with laboratory measuring instruments.

II. FORM AND CONTENTS OF THE TWO PROPOSED DIRECTIVES

(a) The proposed directive on the approximation of Member States' legislation on radio interference caused by domestic electrical appliances, portable power tools and similar devices

4. The directive is based on Article 100 of the EEC Treaty. Since the disparities in national laws act as a damper on trade and directly affect the establishment and operation of the common market, this Article provides the only acceptable legal basis.

5. In order to provide a clearer overall picture, the text of the directive should outline the background to the problem. Your committee therefore proposes that the preamble should refer to the General Programme of 28 May 1969 mentioned above.

6. Article 1(1) states the object and scope of the directive.

The second paragraph refers to the first paragraph of the Annex which spells out the scope of the directive in greater detail. To preclude any misunderstanding, it would be advisable to state clearly in the first subparagraph of this paragraph that it applies to all equipment in the category in question.

7. Article 2 makes it clear that the Commission considers it advisable to opt for the system of complete harmonization which means that only those products that meet the requirements of the directive may be brought on the Community market. The other alternative is what is known as optional harmonization in which Community and national legislation both remain applicable.

The European Parliament has on several occasions come out in favour of the system of 'complete' harmonization so that in this respect, your committee finds the directive entirely satisfactory.

8. According to the last paragraph of the explanatory statement on Article 2, approximation cannot be confined to national legislation on the marketing of appliances but should be extended to cover the legal provisions with which users must comply. These will therefore be harmonized by the Community directive for they likewise influence the free movement of the equipment in question.

Consequently, your committee considers that for the sake of completeness, reference should be made to the use as well as to the marketing of appliances.

It is therefore proposed that Article 2 be amplified accordingly.

9. Article 3 deals with responsibility for the compliance of the equipment in question with the requirements of the directive. According to the first paragraph, responsibility lies in principle with the manufacturer or importer who is required to certify compliance in a written statement accompanying the product.

Under paragraph 2 of the Article, this formality may be dispensed with if the equipment carries a mark or certificate issued by the authorities in a Member State and notified to the other Member States and the Commission. Your Committee can agree with this except on the two following points:

- (a) the statement by the manufacturer or importer should be provided in at least the language of the country of use. Where equipment brought on the market carries a quality mark, whether national or not, which is not widely enough known to afford the average, not specially well-informed purchaser the assurance that it meets the required standards an accompanying notice in all of the Community languages, certifying compliance with the said standards, should be provided or a clear indication to the same effect printed alongside the quality mark, in the language of the country of use.
- (b) Since an appreciable share of responsibility falls on individuals, it would be advisable to include in the directive a provision requiring Member States to ensure that equipment marketed is subject to random checks for compliance with the rules of interference. The Economic Affairs Committee made a similar recommendation.

For this reason your committee proposes that a new Article 3 (a) be incorporated in the directive.

It goes without saying that when appliances that are already in service are checked, due account must be taken of the nature of the equipment, judgment and tact are called for in making such checks.

By the same token the meaning of the phrase 'the use of marks or certificates issued' in Article 3(2) must be made quite clear. What is referred to here - if French law is taken as the criterion - are the 'quality marks' or 'quality labels' issued by the bodies authorized to do so. We are not then speaking of trade marks or trade names but of certificates whose issuance and designation or symbol are subject to provisions laid down by law or regulation or to professional requirements laid down by the responsible public authority.

10. Article 4 contains the traditional provision requiring free movement in accordance with the directive. This article may be regarded as the key provision in the directive and your committee has no particular comment to

offer.

11. Articles 6 and 7 call for special comment.

12. Article 7 deals with any subsequent amendments designed to adapt the directive to technical progress. A committee of representatives from the Member States, chaired by a Commission representative, has been set up to deliver opinions.

The amendment procedure described in Article 8 has been incorporated as a standard provision in the Council's resolution on the adjustment to technical progress of directives eliminating technical obstacles to trade.

This resolution was adopted on 28 May 1969 as part of the General Programme for the elimination of technical obstacles to trade¹.

On 3 October 1968² the European Parliament delivered an opinion on the Commission's proposal on this resolution, on the basis of a report drafted by your rapporteur for the Legal Affairs Committee³.

In its proposals to amend the procedure to be followed by this committee the European Parliament laid emphasis on the Commission's role. Your committee strongly deplores the fact that the proposals put forward by Parliament were not adopted by the Council since their purpose was to prevent interference with the independence of the Commission. Since the procedure has been spelt out in full detail, however, your committee does not consider it advisable at this stage to repeat its proposed amendments.

13. Articles 9 and 10 call for no special comment.

14. The technical annex specifying the scope of the directive also lays down manufacturing and marketing standards for the equipment in question. These standards were drawn up by technical experts from the Member States and are much the same as those contained in international recommendations (CISPR)⁴.

Apart from the fact that in highly industrialized countries, the specifications of the equipment in question are equivalent if not identical as a consequence of similar levels of technical progress, European manufacturers clearly cannot confine themselves to the internal market of the Nine and must therefore comply with any, more stringent international standards applied by third countries if they wish to have access to their markets.

¹ OJ No. C 76, 17.6.1969, p.8

² OJ No. C 108, 19.10.1968, p.43

³ Doc. 114 of 25.9.1968

⁴ Special International Committee on Radio Interference

However, as some members of the committee have pointed out European arrangements must not be so strict or detailed that because of unduly demanding technical requirements they act as a barrier to imports from non-member States where requirements are less stringent than those shown in the annex to the directive now under consideration, even if their practical consequences for the user or all those concerned were the same as those resulting from the enforcement of European standards.

In other words, if the latter were too demanding they would defeat their own purpose. There are two pitfalls to be avoided: on the one hand, making Community legislation too lax, thereby jeopardizing the intrinsic quality of European products, on the grounds of ensuring free trade and all that this notion involves, i.e. the enforcement of minimum standards below those commensurate with the state of technology or, alternatively, stringent European arrangements which might put a stop to all foreign competition.

The directive as drafted and revised by the Legal Affairs Committee keeps European standards suitably strict but is protectionist to the extent that consumer or user interests and European technical standards must be safeguarded through the enforcement of minimum norms of a high enough technical level to uphold the reputation of Europe's manufacturers.

(b) The proposed directive on the approximation of Member States' legislation on fluorescent lighting tubes

15. The comments made in Sections 4, 5 and 7 - 14 of the explanatory statement also apply 'mutatis mutandis' to the proposed directive on fluorescent lighting tubes.

III. CONCLUSIONS

16. The Legal Affairs Committee can agree on the whole with the purpose of the proposed directives.

It nevertheless requests the Commission and the Council to incorporate the amendments proposed above.

Opinion of the Economic Affairs Committee

Rapporteur: Mr Van der Gun

On 27 October 1972, the Economic Affairs Committee appointed Mr Van der Gun rapporteur for the opinion.

The draft opinion was discussed at its meeting of 2 February 1973 and approved unanimously.

The following were present: Mr Lange, Chairman; Mr Bos, Vice-Chairman; Mr Van der Gun, Rapporteur for the opinion; Mr Artzinger, Mr Bermani, Mr Brecon, Mr Burgbacher, Mr Löhrr, Mr Martens, Mr Riedel, Mr Romualdi, Mr Rosati (deputizing for Mr Mitterdorfer), Mr Starke (deputizing for Mr Colin).

The two draft directives under consideration here relate to interference suppression for household electrical appliances, tools and fluorescent lighting; they are to be followed by two proposals on radio interference caused by other electrical devices.

These four proposals in turn form part of a whole series of directives to be issued on the basis of a General Programme laid down in 1969. This Programme indicates deadlines for the removal of technical barriers to trade resulting from differences between Member States' legal provisions.

Implementation of this General Programme has proved a much more difficult task than had originally been supposed. A considerable backlog has built up both in the Council and in the Commission. This is due to the fact that the primary purpose of the General Programme, namely the facilitation of intra-community trade, has now been supplemented by other aims, i.e. improvement of traffic safety, facilitation of series production and protection of the consumer and environment. As a result the 'need for harmonization' has increased, the General Programme has been extended and the backlog has grown correspondingly.

The proposals call for the following observations:

1. Harmonization of national provisions is in fact necessary to encourage intra-community trade, facilitate series production and prevent noise interference.
2. Reference to the Legal Affairs Committee as the committee responsible, was presumably decided for the purely formal reason that the directives are based on Article 100 of the EEC Treaty ('approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market').
3. Strangely enough, the explanatory statement accompanying the draft directives only refers in passing (at the top of page 2) to the General Programme for the abolition of technical barriers to trade on which the directives are based; the General Programme is not even mentioned in the text of the draft directives as such. This presentation may wrongly give the impression that the European Commission's proposals are isolated measures and do not form part of a comprehensive harmonization programme.¹

¹At the Economic Affairs Committee's meeting of 1/2 February 1973, the representative of the European Commission announced that the draft directives would be amplified in this respect.

4. On page 5 of the explanatory statement, attention is drawn to the fact that the German authorities wish to leave it to the discretion of Member States to stipulate whether the appliances covered by the directive should bear an inspection marking to show that they comply with the provisions of the directives.

The European Commission puts forward two arguments against this German proposal:

- (a) Under the system proposed by the European Commission (i.e. only appliances which comply with the provisions of the directives may be brought onto the market), users would not have to bear the costs of interference suppression as they would be met by the manufacturer;
- (b) The system of compulsory inspection markings would be too expensive as it would involve preventive inspection.

Comments on (a) above

Both the system of compulsory inspection markings (German system) and the proposed Community system offer the user in principle an assurance that the appliance is suppressed. This interference suppression is guaranteed by technical measures, the cost of which will be borne in one way or another by the consumer. The first argument therefore seems untenable.

Comments on (b) above

The difference in cost referred to by the European Commission can only be a consequence of a different method of inspection. If this is the European Commission's view, it reflects a highly formalistic reasoning. Protection of the consumer is surely the main aim and in this case inspection to ensure compliance with the interference suppression provisions must always be thorough, regardless of whether the 'German' or the 'Commission's method is used. Moreover the whole subject of inspection to determine whether the provisions of the directive have been applied is neglected in this proposal from the Commission, as indeed in all other similar proposals. Inspection arrangements are left to the discretion of each Member State.

The Economic Affairs Committee feels that thorough testing of the prototype coupled with effective random checks on the equipment placed on the market would be sufficient. However, the random checks should be carried out in such a way that intra-Community trade is not hampered.

5. It is clearly not the task of the Economic Affairs Committee to consider the technical merits of the Commission's proposals.

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Subject to the above conditions, the Economic Affairs Committee approves the draft directives.

