

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 267 final - COD 472
Brussels, 30.06.1994

Amended proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on articles of precious metal

(presented by the Commission pursuant to Article 189 A (2)
of the EC-Treaty)

Explanatory memorandum

At its sitting on 19 April 1994, the European Parliament delivered its opinion on the proposal for a Directive on articles of precious metal COM(93)322 final - SYN 472.

Parliament adopted a report comprising 45 amendments relating among other things to the scope of the proposal, the marking of articles and certification procedures.

1. The Commission has accepted those amendments aimed at:

- establishing control on products imported from third countries (amendments 4 and 17 (in part)). Once sold, the possibility of finding articles is very small and it is difficult to establish effective control over manufacturers in third countries. Accordingly, the most appropriate solution is to carry out checks at external frontiers to establish that the imported articles are subject to the same requirements laid down for Community products.
- stipulating that the certification body has to be established within the Community (amendment 13). This addition clarifies the concept of notification of certification bodies by the Member States.
- defining more precisely small articles (amendment 15), in order to avoid subsequent problems of interpretation.
- specifying that the legal tender and collectors coins and medals covered are those issued by a statutory authority (amendment 16), which makes it possible to state clearly which articles are not covered by the Directive.
- indicating that account has to be taken of such marking techniques as are generally used for marking fragile and small articles (amendment 25); this clarification will mean that manufacturers do not have to use marking techniques for which they do not have the technical means and can thus avoid unnecessary costs.
- abolishing the requirement to indicate on the article of precious metal the type of coating (amendment 30). Having regard to the type of article in question, this information will only be indicated in a document accompanying the articles; indication on the article itself is likely to be misleading.
- defining a new specific symbol for palladium (amendment 45) in order to avoid confusion with the symbol laid down for silver.

Other amendments (1, 2, 5, 6, 8, 9, 11, 17 (in part), 21, 27, 29 and 38) improving and clarifying the proposal for a directive on articles of precious metal are also accepted by the Commission.

2. The Commission has rejected those amendments aimed at:

- adding on articles the symbol indicating the certification body (7, 12, 14, 19, 20, 22, 23, 24, 34, 35, 42 and 43). This would run counter to the 1993 Council Decision on certification which allocates numbers to certification bodies to prevent symbols from having the effect of renationalizing products and affecting their free movement. The information on the notified body involved in the certification process is useful for the supervisory authorities. In the case of articles of precious metal, it is contained in ad hoc registers kept by the Member States. There is then no point in indicating the body involved on the article itself.
- amending the certification procedures (33, 36, 37, 39, 40 and 41), in particular the "manufacturers declaration.

The certification procedure provided for by the proposal corresponds to the 1993 Council Decision on certification. Any measure making it more complicated is likely to have negative consequences for undertakings, the vast majority of which are SMEs, without improving the quality of articles.

- introducing provisions on second-hand articles and objects covered with precious metals (amendment 3) and specifying the information to be given to consumers by traders (amendments 26, 31 and 32). In accordance with the principle of subsidiarity, such matters should remain a national concern.
- indicating that the Directive applies only to manufacturers established in the Union (amendment 10). A manufacturer not established in the Union must be able to apply the Directive without having to use a representative established in the Union. The Directive provides for adequate means, particularly the use of registers in which all manufacturers have to be entered, for controlling the Community market.
- authorizing Member States not to introduce in their territory all the certification procedures provided for by the proposal and obliging them to notify their choice (amendment 18). This stipulation is unnecessary since Member States are not obliged to establish the infrastructures required to implement the three certification procedures. Therefore, the choice of procedures will depend among other things upon the availability of competent bodies.
- reducing the standards of fineness of precious metals (amendment 28). The proposal has already reduced the standards of fineness used by the Member States. A further reduction would limit consumer choice unnecessarily.
- including among the list of criteria to be met by the bodies to be notified a written declaration certifying the independence of managers and technical staff carrying out tests (amendment 44). Member States must themselves verify and guarantee the competence and independence of the bodies that they notify. It is therefore for Member States to take the necessary steps to ensure that these criteria are met.

**Amended proposal for a
European Parliament and Council Directive
on articles of precious metal**

Following the opinion expressed by the European Parliament¹, in the first reading, with a view to the joint decision-making procedure, on the proposal for a European Parliament and Council Directive on articles of precious metal², the Commission has decided to amend its proposal as follows:

Original proposal	Amended proposal
THE COUNCIL OF THE EUROPEAN COMMUNITIES	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION
CITATIONS.	CITATIONS
In cooperation with the European Parliament	deleted
	Acting in accordance with the procedure laid down in Article 189b of the Treaty

Fourth recital

Whereas certain aspects of the sector must therefore be harmonized in order to remove those barriers and ensure the free movement of articles of precious metal within the Community;

Whereas certain aspects of the sector must therefore be harmonized in order to remove those barriers and ensure the free movement of articles of precious metal and fair trading within the Community;

Sixth recital

Whereas an appropriate level of consumer protection and fair trading need to be ensured in the field of articles of precious metal;

Whereas an appropriate level of consumer protection, fair trading and transparency needs to be ensured in the field of articles of precious metal;

¹ Opinion delivered on 19 April 1994 (OJ EC No C)
² OJ EC No C 318, 25 November 1993, p. 5

Recital 6b (new)

Whereas, to ensure that the objectives of this Directive are fairly applied, it is necessary to establish controls at the borders of the European Union for articles of precious metals imported from third countries;

Tenth recital

Whereas, for the purposes of this Directive, a harmonized standard is a technical specification (European standard or harmonization document) adopted by one or both of these bodies on a mandate from the Commission in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations,⁵ as last amended by Directive 88/182/EEC,⁶ and by virtue of the abovementioned guidelines; whereas, as regards any amendments to harmonized standards, the Commission shall be assisted by the Standing Committee set up by Directive 83/189/EEC;

Whereas, for the purposes of this Directive, a harmonized standard is a technical specification (European standard or harmonization document) adopted by one or both of these bodies on a mandate from the Commission in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations,⁵ as last amended by European Parliament and Council Directive 94/10/EC,⁽⁶⁾ and by virtue of the abovementioned guidelines; whereas, as regards any amendments to harmonized standards, the Commission shall be assisted by the Standing Committee set up by Directive 83/189/EEC;

(6) OJ No L 100, 19.4.1994, p. 30.

Eleventh recital (amendment)

Whereas manufacturers shall have the option of applying one of the conformity attestation procedures foreseen by this Directive and may call upon one of the certification bodies amongst those published by the Commission; whereas Member States must accept products that have satisfied one of the certification procedures foreseen by this Directive; whereas these means should be based on the provisions of Council Decision 90/683/EEC,⁷ and ensure a level of quality sufficient to meet the needs of those responsible for placing articles on the Community market; whereas, therefore, these means must always involve checks by a notified body; whereas the notification of the certification body is an option open to Member States, their duty being to ensure that the notified body meets the assessment criteria laid down in this Directive;

(7) OJ No L 380, 31.12.1990, p. 13.

HAS ADOPTED THIS DIRECTIVE

Whereas the person responsible for placing articles on the market shall have the option of applying one of the conformity attestation procedures foreseen by this Directive and may call upon one of the certification bodies amongst those published by the Commission; whereas Member States must accept products that have satisfied one of the certification procedures foreseen by this Directive; whereas these means should be based on the provisions of Council Decision 93/465/EEC;⁽⁷⁾ Whereas these means shall be equivalent in terms of the objectives pursued and ensure a level of quality sufficient to meet the needs of those responsible for placing articles on the Community market; whereas, therefore, these means must always involve checks by a notified body; whereas the notification of the certification body is an option open to Member States, their duty being to ensure that the notified body meets the assessment criteria laid down in this Directive;

(7) OJ No L 220, 30.8.1993, p. 23.

HAVE ADOPTED THIS DIRECTIVE

Article 1(2)(b)

(b) An article of precious metal is any item of jewellery, goldsmiths' ware or watchmakers' ware and any other object made entirely or in part from a precious metal;

(b) An article of precious metal is any item of jewellery, goldsmiths' or silversmiths' ware or watchmakers' ware and any other object made entirely or in part from a precious metal;

Article 1(2)(c)

(c) An article comprising various precious metals is any item of jewellery, goldsmiths' ware or watchmakers' ware and any other object made entirely or in part from various precious metals;

(c) An article comprising various precious metals is any item of jewellery, goldsmiths' or silversmiths' ware or watchmakers' ware and any other object made entirely or in part from various precious metals;

Article 1(2)(j)

- (j) The importer is the person who places the qualifying article from a third country on the Community market Deleted

Article 1(2)(p)

- (p) A notified body: a body responsible for carrying out the conformity assessment procedures
- (p) A notified body: a body established within the Community responsible for carrying out the conformity assessment procedures.

Article 1(2)(pb) (new - amended)

- (pb) A small article is an article weighing less than 1 gramme in the case of gold and platinum and 3 grammes in the case of silver and palladium.

Article 1(3)(d)

- (d) Legal tender made of precious metal and collectors' coins and medals;
- (d) Legal tender made of precious metal and collectors' coins and medals issued by or on the authority of a State;

Article 2(2) (new)

1. Member States shall adopt all provisions to ensure that, with regard to indication of the standard of fineness, only articles complying with this Directive may be placed on the market.
2. Member States shall adopt all provisions to ensure that articles of precious metal originating from third countries are checked at the external frontiers to ensure that they conform to the provisions of this Directive.

Article 11, first paragraph

Articles deemed to satisfy the essential requirements referred to in Article 3 must, prior to being placed on the market, be struck with one or more fineness marks by the manufacturer or where appropriate by his authorized representative, the person responsible for placing on the market or the notified body which carried out the verification referred to Annex V

Articles deemed to satisfy the essential requirements referred to in Article 3 must, prior to being placed on the market, be struck with one or more fineness marks in accordance with the conformity procedure applied

Article 13(1), first indent

- small articles or those which are too fragile upon which it is technically difficult to strike marks;

- small articles or those which are too fragile upon which it is technically difficult to strike marks, taking into account such marking techniques that are generally used;

Article 13(2)

2. The obligation to strike the fineness mark shall not apply in respect of those parts of articles consisting of various precious metals upon which it is technically difficult to strike such a mark.

2. The obligation to strike the fineness mark shall not apply in respect of those parts of articles consisting of various precious metals upon which it is technically difficult to strike such a mark, taking into account such marking techniques that are generally used.

Article 17(1)

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 1995 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Member States shall apply these provisions from 1 January 1996.

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When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Member States shall apply these provisions from 1 January 1997.

Annex II(3)

3. Marking and certificates

- 3.1 Articles of a single precious metal must bear a fineness mark.
- 3.2 Articles comprising various precious metals must bear the relevant fineness mark on each part.
- 3.3 Mixed articles must bear the corresponding fineness mark on the part made of precious metal or of various precious metals.

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- 3.1 Articles of a single precious metal must bear a fineness mark.
- 3.2 Articles comprising various precious metals must, except in cases covered by Article 13(2), bear the relevant fineness mark on each part.
- 3.3 Mixed articles must, except in cases covered by Article 13(2), bear the corresponding fineness mark on the part made of precious metal or of various precious metals.

Annex II(4)

4. Articles of precious metal, where coated with other metals, must bear the fineness mark of the base precious metal alloy. They must also bear an indication of the type of coating or be accompanied by a document giving that information where it cannot be indicated on the article.

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Annex IV(4), first paragraph

4. A notified body chosen by the manufacturer shall carry out or have carried out product checks at random intervals.

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Annex VII(1)

1. The surrounds specific to each precious metal and which must surround the standard of fineness of the precious metals and their alloys set out in Annex I are given below:

Gold	Unchanged
Silver	Unchanged
Platinum	Unchanged

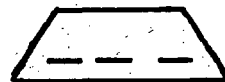
1. The surrounds specific to each precious metal and which must surround the standard of fineness of the precious metals and their alloys set out in Annex I are given below:

Gold	Unchanged
Silver	Unchanged
Platinum	Unchanged

Palladium



Palladium



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