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**Report on the public consultation on the
on the simplification of 8 old approach metrology Directives**

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1. INTRODUCTION

The 8 metrology directives which would be subject of repeal or, in the case of good reasons, be subject of reregulation concern the following sectors:

- Cold Water Meters for Non-Clean Water (Directive 75/33/EEC)
- Alcohol Meters and Alcohol Tables (Directive 75/765/EEC and 75/766/EEC)
- Medium and Above-Medium Accuracy Weights (Directive 71/317/EEC and 74/148/EEC)
- Tyre Pressure Gauges for Motor Vehicles (Directive 86/217/EEC)
- Standard Mass of Grain (Directive 74/347/EEC)
- Calibration of Ship Tanks (Directive 71/349/EEC)

Starting on 21 May 2008 a public consultation was held until 15 July 2008. The Commission services have published a key issues document for the public consultation. Concerns have been expressed that currently these technical rules are not easily adaptable to technological progress and therefore risk hindering innovation. Next to repeal, it gives as an option to include one or more of these sectors in the Measuring Instruments Directive (Directive 2004/22/EC). The public consultation document highlighted 10 issues, the reactions to which will subsequently be discussed in this document. Stakeholders were also invited to bring up any other issues that they consider relevant.

Information on the public consultation has been disseminated via the Your Voice in Europe site which is public and well known among professional organisations. Also there was an Enterprise e-mail alert that was distributed at the start of the consultation to 28.000 recipients as well as an e-mail alert to all those who had expressed their interest on this issue to the Commission services in the past.

The key issues document and this report on the public consultation and all reactions are available on the Europa website:

http://ec.europa.eu/enterprise/prepack/ms_inst/mi_directives.htm

This report will firstly examine the reactions that have been received. Secondly it will present the conclusions to be drawn with due regard to the Commission's priority for simplification and better regulation.

This document has been prepared by the Commission services for consultation purposes. It does not in any way prejudge, or constitute the announcement of, any position on the part of the Commission concerning the issues covered.

2. CONTRIBUTIONS TO THE PUBLIC CONSULTATION

Contributions were received from 14 stakeholders, none of whom requested to be treated as confidential.

Contributions were received from the following types of respondents:

Public: 1 member of the public reacted, from the UK

Enterprises: 2 enterprises reacted, both niche producers operating on the European Market.

Industry Federations: 2 industry federations reacted, one Europe-wide federation, 1 national from the UK.

Non-governmental organisation: 1 non-governmental organisation from Austria reacted, but it reflected the view of the Austrian authority

International Organisations: 1 international treaty organisation reacted, namely OIML (Organisation Internationale pour la Métrologie Légale) of which all Member States are party.

Authorities: 7 Authorities reacted: 3 national authorities and 4 local authorities from the UK.

In the following chapters, details of answers on the 10 questions posed by the Commission services will be discussed, as well as other issues brought up.

3. AVAILABLE OPTIONS

In the key issues document for the public consultation the Commission services presented three options.

Option 1: “Old approach” Directives exist in addition to national rules (current situation). Without any new EU action, the old Directives would exist until technical progress has completely overtaken the technological specifications. It is expected that the market will continue evolving quickly to include products more technologically advanced and no longer covered by the old directives.

Option 2 is the repeal of the Old Approach directives without any change to Directive 2004/22/EC on measuring instruments. National rules can continue to exist. Under this option the free movement of measuring instruments within the Internal Market would implicitly rely on the Mutual Recognition Principle and horizontal legislation framing its correct functioning. The existing WELMEC type approval agreement gives a framework for mutual recognition of national conformity assessment. Under WTO/TBT obligations, Member States would need to base their laws on international standards. Alternatively, instead of national regulation, Member States could rely on the voluntary application of European standards. For the updating and development of such standards the Commission could, if needed, give a mandate to the European Standardisation Organisations.

Option 3 is to add new annexes for each instrument to Directive 2004/22/EC on measuring instruments and the repeal of the directives. This option does not allow any national rules, although Member States remain free to choose the tasks for which they want to prescribe legal metrological control. For these tasks they may only allow instruments conformity assessed on the essential requirements in the directive to be used on their territory. New Approach harmonisation prescribes essential requirements and allows any technological specification that complies with these requirements. It should be noted that Article 2 of Directive 2004/22/EC on measuring instruments allows Member States to opt out from requiring the use on their territory of instruments complying with the directive, but using the opt-out does not allow any alternative national rules and therefore means having no rules.

4. TECHNOLOGICAL PROGRESS

The Commission sought stakeholders’ views on the sensitivity of each sector to technological progress and the option most preferred from the angle of adapting to technological progress.

The Scottish Whisky Association represents 98% of produce of whisky and it expressed as its view that any future policy should not stifle innovation where the industry can see benefits in utilising alternative instruments for measurement.

OIML indicates that technological progress has been quite fast notably affecting water meters, alcohol meters, where electronic instruments are now commonly used, tyre pressure gauges and standard mass of grain. It proposes reregulation (option 3) for all sectors

The producers in the alcohol meter industry would like to include in the regulation (option 3) the instruments that they are producing which are outside the scope of the old directives: electronic alcohol meters and oscillation-type density meters according to EN ISO 15212, but do not indicate barriers to trade.

The view from Austria is that there has been less technological progress in these sectors than in the sectors already covered by the Measuring Instruments Directive. Czech Republic considers that alcohol and mass of grain metering is medium sensitive to technological progress, whilst the other sectors have on low sensitivity. Both Austria and CZ Republic favour reregulation (option 3). Romania considers that technological progress requires change in water meters, tyre pressure gauges, mass of grain and calibration of ship tanks, but considers national regulation best suited (option 2).

The UK local authority (Norfolk) indicates that costs of higher quality weights have become lower and this could be considered a form of technological progress. It favours re-regulation (option 3)

A UK citizen favours essential requirements that are more open to technological progress than detailed technical specifications.

There are mixed views on the relevance of technological progress on these sectors. The wide view could be that nearly all are concerned, while a more limited view would be that only alcohol and mass of grain are concerned. Most favour reregulation under option 3.

5. IMPACT ASSESSMENT

The question asked was what are the current economic impacts of the sectors and how would they change in respect of the options?

A producer of alcohol meters states that around 30,000 oscillation density type meters are currently in use.

OIML suggests expanding the scope of MID to include network clean water meters and meters for irrigation both of which it deems important for the environment. It considers alcohol tables important because alcohol content is the basis for excise taxes. Tyre pressure gauges are manufactured abroad and Eastern Europe and wrong tyre pressure is deemed to be the cause of 6% of deaths in road accidents costing an estimated €310 million in 2005. Too low pressure of tyres could waste an €200-300 annually on petrol consumption per car and add an extra 1.3 tons of greenhouse gasses. Ship tanks may also prevent greenhouse gasses (but it does not say in which way).

A UK authority (Norfolk) indicates that calibrating all weights at an acceptable accuracy level (class E1) would cost £100,000. It also finds that most tyre pressure gauges are imported and are not correctly calibrated, which has a detrimental impact on road safety and fuel economy, having a major impact on global warming. Czech Republic has low national production in all sectors excepting mass of grain and considers effects on exports and employment to be 'negligible'.

It would seem that if there are impacts none of these would seem to be particularly subject to change depending on the option chosen.

6. ECONOMIES OF SCALE

The question posed was: are there currently economies of scale and what are the expected effects of the various options on economies of scale?

A producer of alcohol meters indicates that option 3 allows the production and distribution of standardised instruments in all Member States and therefore leads to reduction of costs for both producers and consumers.

Austria has expressed the view that in the case of measuring instruments requiring calibration, it is easier to market them having a common framework and harmonised requirements, an argument in favour of reregulation (option 3). Czech Republic defines economies of scale as meaning that a firm can benefit from selling the same product in different markets without requiring additional operations such as complying with different regulations and repeating conformity assessment. It concludes that such economies of scale are equally small under both options 2 and 3. Romania indicates that if national regulations are based on the same international standards (option 2), manufacturers need not pay for repeated conformity assessment.

A UK authority (Trading Standards East Midlands) recognizes that many manufacturers and suppliers of weighing equipment and weights are pan-European businesses and its view is that re-regulation (option 3) offers an opportunity for consistency and efficiency.

Whilst most relate option 3 to increased economies of scale, there could be equally large scale effects under option 2, if national rules are based on international standards.

7. SMALL AND MEDIUM SIZED ENTERPRISES

The Commission asked about the current situation of small and medium sized enterprises and what is to be expected under the various options, also as regards the possibility to develop market niches and administrative burdens?

A producer of alcohol meters indicates that measuring instruments are traditionally produced by small to medium-sized companies which would largely benefit from option 3.

Austria has expressed the view that it is better for small and medium sized firms to produce and market instruments for the entire European market to harmonised specifications, an argument in favour of reregulation (option 3). Czech Republic indicates that currently production is by small manufacturers to national specifications and that option 2 will not lead to any change, whilst harmonisation (option 3) will not have significant economic impacts.

Whilst harmonisation may be favourable to small and medium sized enterprises, there is also doubt as to whether the impact will be significant.

8. EFFECTS ON CONSUMERS AND EMPLOYEES

The question to stakeholders was what are the effects of the various options on needs of consumers and employees?

A UK citizen suggests that displays on tyre pressure gauges should be simplified so that non-trained users can more easily use them. Harmonisation would allow use by tourists without problems. Nor should supplementary indications be allowed (currently the domain of Directive 80/181/EEC on units of measurement). Also there should be proper information for tourists in the UK.

Scotch whisky producers indicate that alcohol meters and tables are extensively used in the production process, notably glass alcohol meters currently covered by the directive. The more complex meters are used for Regulation 2870/2000 on spirit drinks.

A producer of alcohol meters indicates that harmonisation (option 3) would reduce costs and improve quality of the measured products. Employees will benefit from better working conditions due to automation, elimination of routine burden and less exposure to air contaminated with alcohol vapour by applying oscillation type density meters (option 3).

OIML indicates that current protection is poor (option 1) and that repeal of the directives (option 2) could end protection of consumers and citizens, while option 3 would harmonise protection at a high level.

Austria favours that consumers rely on common requirements (option 3) over country specific requirements that would result under option 2. Czech Republic fears an unacceptably low level of consumer protection in case of lack of national specifications (option 2) which is not the case under option 3.

If there could be reason to justify common consumer and employee protection, it is however very much a question how effective reregulation (option 3) could be given the existing EU regulation (such as Regulation 2870/2000 on spirit drinks) and that the Measuring Instruments Directive recognises subsidiarity and allows Member States to opt-out.

9. ENVIRONMENTAL EFFECTS

The question to stakeholders was what are the environmental effects of the uses and how could they be influenced by the various options?

Scotch whisky producers indicate that the alcohol meters currently covered by the directive are inexpensive and do not require batteries or power and can be disposed of as ordinary controlled waste.

A producer of alcohol meters says that his technology (oscillation density meters) requires much less samples volumes than the OIML recommendation and current directive and that therefore transportation, storage and disposal requirements for samples are substantially reduced.

OIML suggests expanding the scope of MID to include network clean water meters and meters for irrigation both of which it deems important for the environment. Wrong tyre pressure is deemed to be the cause of 6% of deaths in road accidents costing an estimated € 310 million in 2005. Too low pressure of tyres could waste an €200-300 annually on petrol consumption per car and add an extra 1.3 tons of greenhouse gasses. Ship tanks may also prevent greenhouse gasses (but it does not say in which way).

The Czech Republic does not distinguish environmental effects under any option.

It would seem that if environmental protection would justify regulatory intervention, there is no option which stands out as being the most favourable.

10. GOVERNMENT NEEDS

The question was: what are the needs of government and what are the effects of the options, notably also as regards market surveillance?

Romania has the view that legislation where needed can be done at the national level rather than at the Community level and it will not require investment in new conformity assessment procedures involving notified bodies (option 2).

Czech Republic points to the current differences between national legislations and considers that option 2 worsens the legislative background and gives a higher burden for market surveillance than option 3.

According to Austria it is easier to have the same requirements all over the EU. Harmonisation eliminates administrative tests on the equivalence of the level of protection and other procedures necessary within option 2. Option 3 in its view simplifies access to certified measuring instruments, which would enter the market initially calibrated, as well as subsequent recalibration and market surveillance or the modification of measuring devices in use.

Authorities in the UK have varying views and would generally want to repeal current directives except for weights and tyre pressure gauges, but also for water meters.

OIML indicates that repeal of the directives (option 2) may set trade barriers despite provisions of the EU or of TBT, whilst option 3 would harmonise protection at a high level.

It would seem that the motivations for Option 3 would seem not to take into account that the Measuring Instruments Directive allows an opt-out in line with subsidiarity. If mutual recognition is based on the assumption that national rules would reflect international standards, it is unclear why this should lead to a burden of “additional administrative tests on the equivalence of the level of protection”.

11. OPTIONS, ALTERNATIVES AND THEIR IMPACTS

Stakeholders were requested to provide comments on whether all issues and alternatives concerning the Directives concerned by the simplification have been highlighted and to indicate the overall costs and benefits that they expect to have as a result of any of alternative option?

OIML points out that the Measuring Instruments directive (Dir 2004/22/EC) by means of its articles 10 and 16 complies with Article 2.4 of the Technical Barriers to Trade Agreement (World Trade Organisation) as it allows reference to be made to “normative documents” of OIML, which is an International standard-setting organisation in the sense of the TBT agreement.

Respondents presented no alternatives to the three options in the key issues document.

12. VIEWS EXPRESSED PER SECTOR

12.1. Cold Water Meters for Non-Clean Water (Directive 75/33/EEC)

The EU water manufacturing industry does not require harmonised legislation for non-clean water meters and indicates that voluntary standardisation can cover any needs.

OIML indicates that network clean-water meters should be included as well as meters for irrigation, both having an environmental relevance.

12.2. Alcohol Meters (Directive 75/765/EEC)

Two manufacturers of alcohol meters would wish to include their respective technologically advanced instruments in the scope of the directive but they do not indicate any trade barriers.

Scotch whisky producers indicate that harmonisation should incorporate and not inhibit technological innovation but they do not indicate any trade barriers.

OIML points to the importance of correctly measuring alcoholic percentage for product labelling and taxation.

12.3. Alcohol Tables (Directive 75/766/EEC)

OIML points out that the alcohol tables are already available in international standards. The current EU directive on alcohol tables does not require conformity assessment as a prerequisite for free circulation of products, so it should be maintained although not via the Measuring Instruments directive.

The Czech Republic wants to extend the scope of the tables to below zero °C.

12.4. Medium and Above-Medium Accuracy Weights (Directive 71/317/EEC and 74/148/EEC)

The UK local authority (Norfolk) indicates that costs of higher quality weights have become lower and this could be considered a form of technological progress. It favours re-regulation (option 3). It also indicates that calibrating all weights at an acceptable accuracy level (class E1) would cost £100,000.

Another UK authority (Trading Standards East Midlands) recognizes that many manufacturers and suppliers of weighing equipment and weights are pan-European businesses and its view is that re-regulation (option 3) offers an opportunity for consistency and efficiency.

The Czech Republic wants to limit the scope to the lowest accuracy weights: F2 and lower classes, i.e. the weights that are actually used in consumer transactions on local markets and shops.

12.5. Tyre Pressure Gauges for Motor Vehicles (Directive 86/217/EEC)

OIML indicates road safety and energy efficiency as additional reasons to harmonise tyre pressure gauges. Tyre pressure gauges are manufactured abroad and Eastern Europe and wrong tyre pressure is deemed to be the cause of 6% of deaths in road accidents costing an estimated €310 million in 2005. Too low pressure tyres could waste an €200-300 annually on petrol consumption per car and add an extra 1.3 tons of greenhouse gasses.

A UK authority (Norfolk) has experience that indicates that most tyre pressure gauges are imported and are not correctly calibrated, which has a detrimental impact on road safety and fuel economy, having a major impact on global warming.

A UK citizen suggests that displays on tyre pressure gauges should be simplified so that non-trained users can more easily use them. Harmonisation would allow use by tourists without problems. Nor should supplementary indications be allowed (currently the domain of Directive 80/181/EEC on units of measurement). Also there should be proper information for tourists in the UK.

12.6. Standard Mass of Grain (Directive 74/347/EEC)

The Czech Republic, referring to Regulation 824/2000 on intervention for cereals, wants to include the 1L and 1/4L measures in the scope.

12.7. Calibration of Ship Tanks (Directive 71/349/EEC)

OIML indicates that calibrating ship tanks may also prevent greenhouse gasses (but it does not indicate in which way).

The Czech Republic indicates that the directive would need to include definitions of inland water vessels and coasters.

13. CONCLUSION

From the public consultation it has not emerged that there are barriers to trade that would require harmonisation under Article 95 of the Treaty. Nor was any other consideration of an overriding policy need requiring harmonisation indicated.

14. FURTHER WORK

The Commission services have proceeded to prepare an impact assessment concerning the three options for the simplification of 8 old approach Directives.

The Commission services publish this report in line with the Commission policy on better regulation in order to summarise the results of the recent consultation process and their findings. The publication of this report is without prejudice to any subsequent proposal to be adopted by the College.