



**COUNCIL OF
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NOTE

From: General Secretariat of the Council

To: Delegations

Subject: Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to making available on the market of pressure equipment

- Opinion of the Consultative Working Party

Delegations will find attached the Opinion of the Consultative Working Party on the above mentioned Commission proposal.



GROUPE CONSULTATIF
DES SERVICES JURIDIQUES

Brussels, 16. 12. 2013

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

**Proposal for a directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to making available on the market of pressure equipment
COM(2013) 471 final of 28.6.2013 - 2013/0221 (COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 1 October 2013 for the purpose of examining the aforementioned proposal submitted by the Commission.

At that meeting¹, an examination of the proposal for a directive of the European Parliament and of the Council recasting Directive 97/23/EC of the European Parliament and of the Council of 29 May 1997 on the approximation of the laws of the Member States concerning pressure equipment resulted in the Consultative Working Party's establishing, by common accord, as follows.

- 1) As far as the explanatory memorandum is concerned, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.
- 2) In the draft recast text, the following proposed changes should have been identified with the grey-shaded type generally used for marking substantive changes:
 - in recital 31, the replacement of the words "*may require*" with the words "*it should be possible for*";
 - in point 4.2(c) of Annex I, the adding of the words "*a specific assessment of the*" and "*material*";
 - in Annex III(1), the adding of point 4.1.
- 3) In Article 1(2)(f), the reference made to "*Article 9*" should be adapted so as to read as a reference made to "*Article 13*".

¹ The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

4) in Article 14(7), the two occurrences of the expression "*paragraphs 1 and 2*" should be adapted so as to read "*paragraphs 1 to 6*".

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

However, as far as the text proposed for Article 40 of the draft recast act is concerned, it was discussed whether or not that text should have been entirely identified with the grey-shaded type generally used for marking substantive changes.

On the one hand, the Legal Services of the European Parliament and of the Commission considered that the presentation used in that text for identifying the replacement of a wording currently contained in Article 7(1) of Directive 97/23/EC with a new wording, taken from standard wordings agreed between the three institutions, sufficiently describes the substantive amendment proposed for that existing provision.

On the other hand, the Legal Service of the Council considered that the change in procedure cannot be separated from the substantive issues to which that procedure relates and that therefore the entire text of the said provision should have been identified by using that grey-shaded type.

Nevertheless, the three legal services shared the view that the draft text submitted by the Commission for that new provision should be understood as meaning that the Commission had intended to propose only that the reference to the advisory procedure currently contained in Article 7(1) of Directive 97/23/EC be replaced with a delegation to the Commission of the power to adopt acts in accordance with Article 290 TFEU.

Moreover, it was also the common understanding of the three legal services that, as part of the recast exercise, the legislator should evaluate, in accordance with the Treaties, whether the proposed alignment of the existing comitology provision with the new system of delegated acts can be considered acceptable or whether a different solution should be envisaged, such as conferring implementing powers on the Commission or on the Council in accordance with Article 291 TFEU and Regulation (EU) n. 182/2011, or none of those, so leaving the relevant measures for the legislative procedure.


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