

76/223/EEC: Commission Recommendation of 5 February 1976 to the Member States concerning units of measurement referred to in patent conventions

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COMMISSION RECOMMENDATION of 5 February 1976 to the Member States concerning units of measurement referred to in patent conventions (76/223/EEC)

I

1. On 18 October 1971 the Council adopted Directive 71/354/EEC on the approximation of the laws of the Member States relating to units of measurement (1). This Directive was supplemented by the documents concerning the accession to the European Communities of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland (2) to take account of the units of the "imperial system" officially used in the United Kingdom and Ireland.

The aim of the Directive is to clarify and simplify the whole question of units of measurement by prescribing the use of the units of the international system (SI units) as defined by the general conference of weights and measures (CGPM) set up by the Metre Convention signed in Paris on 20 May 1875, to which all the Member States are party.

The Council's decision to prescribe the use of the SI system was extremely important even before the enlargement of the Community. Although the original Member States were all "metric" States they did not all use the same system of units since there are several "metric systems" for example, the c.g.s. system (centimetre, gramme, second), the M.T.S. system (metre, tonne, second), the M.Kf.s. system (metre, kilogramme-force, second), the M.K.S. system (metre, kilogramme, second) and lastly the M.K.S.A. or Giorgi system (metre, kilogramme, second, ampere) which finally led to the units of the present international system, recognized throughout the world and the only system prescribed by the Directive. Moreover, it was because the general conference of weights and measures confirmed and recognized the consistency of the international system (SI), that the Council of the European Communities, on a proposal from the Commission, decided to adopt this system of units and make it mandatory and official.

Units derived from this system are obtained by combining base units without using numerical factors, which differs greatly from the practice in other systems of units.

The Directive, as amended by the documents concerning accession, lays down the procedure and the particular stages for the gradual elimination of non-SI units, in particular the units of the British imperial system, and is intended to result in the sole use of units belonging to the international system in all Member States of the Communities.

The scope of the Directive is clearly shown in Article 2, since the obligation to use SI units relates to:

"measuring instruments used, measurements made and indications of quantity expressed in units, whether for economic, public health, public safety or administrative purposes."

Article 3 provides that the only fields not covered are air and sea transport and rail traffic. (1)OJ No L 243, 29.10.1971, p. 29. (2)OJ No L 73, 25.3.1972, p. 119.

2. On 5 October 1973 in Munich the nine Member States of the Community, together with a number of non-member States, signed the Convention on the grant of European patents which, amongst other documents annexed thereto, includes its own implementing regulations.

The aim of the Convention is to improve the protection of patents, in particular by means of a common procedure for granting patents.

Part III of the Convention and more particularly Chapter I thereof governs the filling and requirements of the European patent application (Articles 75 to 86), while Part III of the implementing regulations (taken from the Patent Cooperation Treaty signed in 1970) supplements these provisions in much more detail (Rules 24 to 36). Considering the scope of the Directive on units of measurement as described above, European patent application documents, as well as the patents themselves, are covered by the Directive, which means that Member States are required to use SI units in documents relating to patents. However, Rule 35 (12) of the implementing regulations to the Convention could lead to a different interpretation.

It is worded as follows:

"12. Units of weights and measures shall be expressed in terms of the metric system. If a different system is used they shall also be expressed in terms of the metric system. Temperatures shall be expressed in degrees Celsius. If a different system is used they shall also be expressed in degrees Celsius. Densities shall be expressed in metric units. For the other physical values, the units recognized in international practice shall be used, for mathematical formulae the symbols in general use, and for chemical formulae the symbols, atomic weights and molecular formulae in general use shall be employed. In general, use should be made of technical terms, signs and symbols generally accepted in the field in question."

This text is not clear, and in particular the following points may be mentioned: (a) The text quoted mentions only the "metric system". As already indicated above, there are numerous "metric systems". If any of them may be used, this rule is outmoded by comparison with the international decisions of the general conference of weights and measures and the Community Directive, which authorize the use of SI units only, and it gives rise to confusion. If, on the other hand, those drafting this text intended authorization of the units of the SI system only the wording is unsatisfactory and the reference to the "metric system" insufficient.

(b) The first sentence of the text requires that the metric system be used, either, on its own or together with any other units used. On the other hand, after mentioning temperatures and densities, the text states further on : "For the other physical values, the units recognized in international practice shall be used ...".

These two passages are not inconsistent if "the units recognized in international practice", and the "metric system" are considered in this text to be two equivalent expressions meaning "SI units". However, the second passage could be regarded as referring to the units in use in certain non-SI countries. Although the somewhat vague wording "units recognized in international practice" might seem to justify this interpretation, the latter would be contrary to the first sentence of the text and inconsistent with the Directive on units of measurement.

(c) The French text states that temperatures shall be expressed "in degrees centigrade", whereas the German and English texts use the expression "Celsius", which is the only term recognized internationally, including in the French-speaking countries. Attention must be drawn to the incorrect nature of the term used in French as well as to the pointless restriction to degrees Celsius (since the use of Kelvins, also permitted under the SI system, is much to be preferred when dealing with low temperatures). Any variation between the texts in different languages should be avoided, since, in pursuance of Article 177 (1) of the Convention, the English, French and German texts are equally authentic.

(d) The sentence "densities shall be expressed in metric units" is also incorrect from the scientific point of view. "Densities" are simple ratios of mass within dimension and consequently need not be expressed out in any system of units.

In short, the wording of this paragraph of the Patent Convention will certainly lead to difficulties in its interpretation and application, since the scientific terms used are unsatisfactory.

Consequently, whatever the importance attributed to this problem when the Patent Convention was drafted, it is essential to securing uniform application of Rule 35 (12) that it should first form the subject of common interpretation and that subsequently its wording be improved.

II

Having regard to the foregoing considerations and pursuant to the provisions of the Treaty establishing the European Economic Community, and in particular Article 155 thereof, the Commission recommends to the Member States: 1. that they issue a joint statement of interpretation declaring that they will apply Rule 35 (12) of the implementing regulations of the Convention on the grant of European patents, signed in Munich on 5 October 1973, in accordance with the results of the work of the general conference of weights and measures which defined the international system and the units of measurement included therein;

2. that they endeavour to secure adoption of this position by the other Contracting Parties to the Convention on the grant of European patents.

Done at Brussels, 5 February 1976.

For the Commission

Finn GUNDELACH

Member of the Commission