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(Acts whose publication is obligatory)

DECISION No 3052/95/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 1995

establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 189b of the Treaty <sup>(3)</sup>,

Whereas the Commission has, in accordance with Article 100b of the Treaty, drawn up the inventory of national laws, regulations and administrative provisions which fall under Article 100a of the Treaty and which have not been harmonized pursuant to that Article;

Whereas that inventory has revealed that most of the obstacles to trade in products reported by Member States are dealt with either by measures taken under Article 100a or through proceedings initiated under Article 169 of the Treaty for failure to fulfil obligations under Article 30;

Whereas the transparency of national measures banning products may make it easier to deal quickly and at the appropriate level with problems which may jeopardize the free movement of goods, *inter alia* by approximating such measures in good time or adjusting them pursuant to Article 30 of the Treaty;

Whereas, in order to facilitate such transparency, a simple and pragmatic procedure should be established for the exchange of information between Member States and with the Commission so that any problems that may arise in connection with the operation of the internal market can be settled satisfactorily for both businesses and consumers;

Whereas the main purpose of this procedure is to enhance knowledge concerning the implementation of the free movement of goods in non-harmonized sectors and to identify the problems encountered with a view to finding appropriate solutions to them;

Whereas such a procedure should cover only those cases in which a Member State takes steps to prevent, on grounds of non-conformity with its own national rules, the free movement or placing on the market of goods lawfully produced or marketed in another Member State;

Whereas only measures which act as a barrier to a particular model or type of goods should be covered and measures relating to second-hand goods which, with time or use, have become unsuitable for being placed or kept on the market should therefore be excluded from the scope of this Decision;

Whereas measures relating exclusively to the protection of public morality or public order should also be excluded;

Whereas other Member States and the Commission should have the opportunity to react to the measures notified within the framework of this Decision;

Whereas, moreover, the procedure should not duplicate notification or information procedures provided for by other Community measures; whereas these different procedures should be properly coordinated;

Whereas businesses, consumers and other interested parties should know whom to contact within the

<sup>(1)</sup> OJ No C 18, 21. 1. 1994, p. 13, and OJ No C 200, 22. 7. 1994, p. 19.

<sup>(2)</sup> OJ No C 195, 18. 7. 1994, p. 6.

<sup>(3)</sup> Opinion of the European Parliament of 20 April 1994 (OJ No C 128, 9. 5. 1994, p. 142), common position of the Council of 29 June 1995 (OJ No C 216, 21. 8. 1995, p. 41), and Decision of the European Parliament of 26 October 1995 (OJ No C 308, 20. 11. 1995) and Council Decision of 23 November 1995.

Commission and the administrations of the individual Member States when a problem arises with regard to the free movement of goods;

Whereas the procedures established to implement this Decision should not involve the creation of unnecessary new bureaucracy while ensuring that an effective balance is struck between safeguarding the legitimate interests of the Member States and maintaining the free movement of goods within the Community;

Whereas, in the interests of transparency, there should be full and up-to-date information available to all interested parties on the implementation of this Decision;

Whereas the removal of obstacles to the free movement of goods is of fundamental importance to the Community and whereas it is necessary for the Community to establish measures in this area to achieve that objective; whereas this measure clearly complies with the principle of proportionality, as a complement to the principle of subsidiarity, since it is confined to ensuring awareness of cases where the application of non-harmonized national rules is liable to affect the satisfactory operation of the internal market,

HAVE ADOPTED THIS DECISION:

#### *Article 1*

Where a Member State takes steps to prevent the free movement or placing on the market of a particular model or type of product lawfully produced or marketed in another Member State, it shall notify the Commission accordingly where the direct or indirect effect of the measure is:

- a general ban on the goods,
- a refusal to allow the goods to be placed on the market,
- the modification of the model or type of product concerned before it can be placed or kept on the market, or
- withdrawal of the goods from the market.

#### *Article 2*

For the purpose of this Decision:

- 'modification of the model or type of product' means any modification of one or more of the product's characteristics as listed in the 'technical specification'

definition given in Article 1 of Directive 83/189/EEC <sup>(1)</sup>,

- 'judicial decision' means any decision taken by a judicial body whose role it is to give a ruling,
- 'measure' means any measure other than a judicial decision.

#### *Article 3*

1. The notification requirement laid down in Article 1 shall apply to measures taken by the competent authorities of the Member States so authorized, with the exception of judicial decisions.

Where a particular model or type of product is the subject of several measures, adopted under identical substantive conditions and procedures, only the first of those measures shall be subject to the notification requirement.

2. Article 1 shall not apply to:

- measures taken solely in pursuance of Community harmonization measures,
- measures notified to the Commission under specific provisions,
- draft measures notified to the Commission under specific Community provisions,
- measures preparing or leading up to the main measure referred to in Article 1, such as preventive measures or investigations,
- measures relating solely to the protection of public morality or public order,
- measures relating to second-hand goods which, with time or use, have become unsuitable for being placed or kept on the market.

3. The initiation of proceedings for judicial review of such a main measure shall under no circumstances result in suspension of the application of Article 1.

<sup>(1)</sup> 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 (OJ No L 109, 26. 4. 1983, p. 8). Directive as last amended by Directive 94/10/EC (OJ No L 100, 19. 4. 1994, p. 30).

*Article 4*

1. The notification referred to in Article 1 shall be made in sufficient detail and in clear and comprehensible form. It shall consist in the dispatch of:

- an information sheet containing the particulars listed in the Annex, and
- a copy of the measure taken by the authorities referred to in Article 3 (1), as published or notified to the person concerned.

Information not covered by the headings on the sheet may be omitted from the copy.

2. The information referred to in paragraph 1 shall be communicated within 45 days of the date on which the measure referred to in Article 1 is taken.

3. The Commission shall send a copy of the information referred to in paragraph 1 to the other Member States.

*Article 5*

1. Where the measure which must be notified under this Decision comprises one or more Annexes, only a list briefly indicating its/their contents shall be transmitted together with the copy of the measure.

2. The Member State which has taken the measure may be requested by the Commission or any other Member State to provide, within one month of the date of any such request, the full text of the Annexes mentioned in the list referred to in paragraph 1 or any other relevant information on the measure.

3. Where national law provides that the investigation must remain confidential, the communication of information not covered by the headings on the sheet referred to in Article 4 (1) shall, where appropriate, be subject to authorization by the competent judicial authority.

*Article 6*

The Member States and the Commission shall take the steps necessary to ensure that their officials and agents are required not to disclose information obtained for the purposes of this Decision which, by its nature, is covered by professional secrecy except information concerning the safety aspects of a given product the disclosure of which is necessitated by the circumstances in order to protect the health and safety of persons.

*Article 7*

Each Member State shall inform the Commission of the competent national authority or authorities which it has appointed to transmit or receive the information referred to in this Decision. The Commission shall pass on this information to the other Member States forthwith.

Member States shall seek to ensure that a contact point, which may be the competent national authority or authorities referred to in the first paragraph, or network of contact points is established in order to act as an initial point of reference for all inquiries about the grounds on which other national rules are not recognized, and about the general functioning of this Decision.

*Article 8*

1. The Commission shall reinforce its coordination concerning all matters arising out of the implementation of this Decision, including the coordination of the notification or information procedures concerned, complaints concerning individual obstacles to the free movement of goods, and general problems of mutual recognition.

2. The Commission shall seek to ensure that businesses, consumers and other interested parties know whom to contact when problems arise.

*Article 9*

While respecting confidentiality where necessary, and without prejudice to unresolved cases, the Commission shall provide Community-wide information on national measures notified pursuant to this Decision which have implications for the principle of free movement of goods in the non-harmonized sectors. It shall also provide information on follow-up action decided on.

National measures notified shall be listed in an Annex to the annual report on the internal market.

*Article 10*

For the purposes of implementing this Decision, the Commission shall be assisted by the Standing Committee set up by Directive 83/189/EEC. It shall keep that Community regularly informed of the functioning of the procedure provided for by this Decision and of measures notified by Member States.

Where appropriate, the Commission shall also inform the sectoral committees set up by specific Community provisions.

*Article 11*

Within two years of the date of implementation of this Decision, the Commission shall report to the European Parliament and the Council on its operation and shall propose any amendment it deems appropriate. For the preparation of that report, Member States shall communicate to the Commission any relevant information on the way in which they implement this Decision.

The Commission's report shall also examine the issue as to whether notification pursuant to this Decision is being adequately coordinated with notification pursuant to other Community instruments.

*Article 12*

This Decision whereas shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Within six months of the date of publication, each Member State shall communicate to the Commission the measures it has taken for the purpose of implementing the Decision.

The Decision shall apply as from 1 January 1997.

*Article 13*

This Decision is addressed to the Member States.

Done at Brussels, 13 December 1995.

*For the European  
Parliament  
The President  
K. HÄNSCH*

*For the Council  
The President  
J. L. DÍCENIA BALLESTER*

## ANNEX

## PROCEDURE FOR THE EXCHANGE OF INFORMATION

on national measures derogating from the principle of the free movement of goods within the  
Community

(Decision No 3052/95/EC)

1. *Notifying Member State*

State the name and address of the person to be contacted for further information.

2. *Date of notification*

3. *Model or type of product*

Give a detailed description of the type or model of product.

4. *Measures taken*

5. *Main grounds*

- State the ground(s) of general interest justifying the measures taken.
  - Give details of the national rules with which the product in question is deemed not to conform.
  - Indicate in what respects the national rules, or other conditions, according to which the product in question is produced or marketed in another Member State do not ensure equivalent protection of the general interest concerned.
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