

II

(Preparatory Acts)

COMMISSION

Proposal for a European Parliament and Council Decision establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community

(94/C 18/23)

COM(93) 670 final — COD 489

(Submitted by the Commission on 15 December 1993)

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,

Having regard to the opinion of the Economic and Social Committee,

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

Whereas that inventory has revealed that most of the barriers to trade in goods reported by Member States are being dealt with either by measures taken under Article 100a or through proceedings initiated under Article 169 of the EC 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 EC 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 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 and/or placing on the market of goods liable to be entered for free circulation and/or marketed in another Member State;

Whereas, moreover, the procedure should not duplicate notification or information procedures provided for by Community measures;

Whereas this action falls within one of the Community's exclusive fields of competence, namely the removal of barriers to the free movement of goods; whereas it clearly complies with the principle of proportionality, which goes hand-in-hand with the principle of subsidiarity, since it is confined to ensuring the 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 and/or placing on the market of a particular model or type of product that is lawfully produced and/or marketed in another Member State, it shall inform the Commission and the other Member States of its decision where the measure results in:

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

Article 2

'Modification of the model or type of product' as referred to in the third indent of Article 1 means any modification of one or more of the product's characteristics as listed in the definition of 'technical specification' given in Article 1 of Directive 83/189/EEC.

Article 3

1. The notification requirement laid down in Article 1 shall relate to decisions taken by any individual or public or private body so authorized, with the exception of judicial decisions.

2. Article 1 shall not apply to:

- decisions taken solely in pursuance of Community harmonization measures,
- decisions or draft measures notified to the Commission under specific Community provisions,
- measures preparing or leading up to the main decision referred to in Article 1, such as preventive measures or investigations.

3. The initiation of proceedings for judicial review of such a main decision shall under no circumstances suspend the application of Article 1.

Article 4

The information referred to in Article 1 shall comprise:

- a copy of the decision taken by the competent national authority, as published and/or notified to the person concerned, and
- an information sheet containing the particulars specified in the Annex to this decision.

This information shall be communicated within 30 days of the date the decision referred to in Article 1 is taken by the Member State concerned.

Article 5

Where the decision referred to in the first indent of the first paragraph of Article 4 comprises one or more Annexes, only a list briefly indicating its/their contents

shall be transmitted along with the copy of the decision proper.

The notifying Member State may be requested by the Commission and/or any other Member State to provide, within one month of any such request, the full text of the Annexes mentioned in the list or any other useful information on the decision.

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 for information relating to the safety properties of a given product which must be made public if circumstances so require, 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 Article 1. The Commission shall pass on these particulars to the other Member States forthwith.

Article 8

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

Article 9

Within two months of the date of notification of this Decision, each Member State shall communicate to the Commission the measures taken for the purpose of implementing it.

Article 10

This decision is addressed to the Member States.

ANNEX

PROCEDURE FOR THE EXCHANGE OF INFORMATION

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

Decision 93/.../EC

1. Notifying Member State

— name and address of the person to be contacted for further information
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2. Date of notification

3. Model or type of product

— name and make of the product and references to the type or model
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— brief description of the product(s)
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4. Measures taken

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5. Main grounds

— grounds of general interest justifying the measures taken,
— specify the references to the national rules with which the product in question is deemed not to conform,
— indicate in what respects the national rules and/or conditions according to which the product in question is produced and/or marketed do not ensure equivalent protection of the general interest concerned.
