

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 605 final

Brussels, 25th October 1979

PROPOSAL FOR A COUNCIL DECISION
LAYING DOWN PROVISIONS ON THE INTRODUCTION
AND IMPLEMENTATION OF TECHNICAL REGULATIONS AND STANDARDS

(presented by the Commission to the Council)

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Proposal for a Council Decision

laying down provisions on the introduction
and implementation of technical regulations and standards

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 5 and 113 thereof,

Having regard to the proposal from the Commission,

Whereas by Decision No 79/.... of on the signature of the multilateral agreements resulting from the 1973-79 trade negotiations the Council approved, on behalf of the European Economic Community, inter alia the Agreement on technical barriers to trade;

Whereas, in view of the international rights and obligations which the Community contracted in accepting that agreement,

technical regulations and standards and the related verification methods are to be applied to all products, irrespective of their origin according to the terms of the Agreement, by all the contracting parties so as to ensure reciprocity and mutual advantages;

Whereas a procedure should be established for examining whether such reciprocity exists and for authorizing derogation from certain obligations resulting from directives that have already been adopted in respect of products originating from the Parties in question; whereas this examination could be conducted by a committee composed of representatives of the Member States under the chairmanship of a representative of the Commission, and whereas the authorization decisions could be taken by the Commission after consulting that committee;

Whereas the existing procedures relating to information of the Member States and the Commission concerning harmonisation to be introduced by the Member States should be improved and adopted;

Whereas consideration should be given to whether and to what extent compliance with Community or national technical regulations or standards may be determined on the basis of test results, certificates or marks issued by competent authorities of third countries or of Member States and third countries; whereas if, in cases where directives have not yet been adopted, a Member State proposes to recognize checks that have been carried out in a non-member country, it should so inform and consult the Commission and the other Member States;

Whereas these measures are appropriate to ensure that the obligations resulting from the abovementioned provisions are fulfilled; whereas they facilitate the achievement of the Community's tasks, . .

HAS ADOPTED THE FOLLOWING DECISION:

TITLE I: Principles

Article 1

1. The certification and verification procedures laid down in directives intended to remove technical barriers to intra-Community trade shall apply to all products on the Community market irrespective of their origin, save as otherwise provided in Title IV.
2. The Member States shall take all appropriate action within their power to ensure that certification and verification procedures that have not been harmonized at Community level, in force in the Member States and laid down by official authorities or non-governmental bodies, shall apply to all products on the markets in question irrespective of their origin, save as otherwise provided in Title IV.

TITLE II - Standstill and obligation to inform the Commission

Article 2

1. The procedure laid down in the following paragraphs shall apply where a Member State proposes to take action on the adoption or amendment of laws, regulations or administrative provisions laying down technical regulations with which products must comply.

2. Member States shall transmit to the Commission any draft law, regulation or administrative provision laying down technical regulations for products, which they propose to adopt. If the Commission has already submitted a proposal for a directive relating to those products to the Council, the Member State concerned shall send a copy of the notification to the Council.

3. In the case of products in respect of which the Commission has already submitted a proposal for a directive to the Council, the Member State shall not adopt the proposed measure until five months have elapsed from the date on which it informed the Commission thereof and on condition that the Council has not adopted the directive during that period.

4. In the case of products in respect of which the Commission has not yet submitted a proposal for a directive to the Council, the Member State shall not adopt the proposed measure until five months have elapsed from the date on which it informed the Commission thereof and on condition that the Commission has neither submitted a proposal for a directive to the Council, nor itself adopted a directive on the same subject as the proposed measure during that period.

Nevertheless, if within a period of two months from the date on which it receives the abovementioned information the Commission does not notify the government in question of its intention to submit a proposal for a directive or to adopt a directive, that government may forthwith adopt the proposed measure. If during the period of five months the Commission submits a proposal for a directive relating to the products concerned, the Member State shall defer adoption of the proposed measure for a further period of five months from the date on which the proposal is submitted. If during the abovementioned

period of two months the Commission notifies the Member State of its intention to itself adopt a directive relating to the products concerned, that period shall be extended to twelve months from the date of notification.

TITLE III - Recognition of checks carried out in another Member State or in a third country

Article 3

1. The following provisions shall apply where certain aspects of particular products have not yet been harmonized at Community level:

(a) If a Member State proposes to accept that compliance with its national technical regulations standards shall be determined on the basis of test results, certificates or marks issued by the competent authorities of a third country, it shall so inform the Commission and the other Member States, and shall supply them, in particular, with all the factual data justifying such acceptance. The other Member States and the Commission shall be entitled to a period of two months within which to submit any observation they consider appropriate to the Member State concerned. During that period the Member State shall suspend negotiations with the country concerned. The Member States may also submit a request to the Commission that the matter be discussed by the Committee set up under Article 10.

(b) As regards the reciprocal recognition of checks by Member States, the Commission shall consult the Member States on the possibility of enabling compliance with national technical regulations and standards to be determined on the basis of test results, certificates or marks issued by the competent authorities of other Member States.

2. The following provisions shall apply where directives have already been adopted or proposed:

(a) The Commission shall examine the extent to which it is able to propose amendments to directives that have already been adopted to enable compliance with those directives to be determined on the basis of test results, certificates or marks issued by the competent authorities of third countries.

- (b) When preparing new proposals for directives, the Commission shall consider the extent to which such proposals could enable compliance with those directives to be determined on the basis of the test results, certificates or marks referred to in subparagraph (a).

TITLE IV - Action in the event of non-reciprocity

Article 4

1. Member States shall notify the Commission and the other Member States whenever they consider that an advantage directly or indirectly resulting from the Agreement is nullified or impaired, or that the attainment of one of the objectives of the Agreement is impaired one or more of the other parties thereto, that its trading interests are significantly affected and that reciprocity between the concessions made by the Community under the Agreement and those actually applied by the other party or parties has consequently been nullified or impaired.

2. If the Commission receives similar information through another channel it shall transmit a copy thereof to the Member States.

Article 5

The Commission shall, within ten working days from the date on which the information is transmitted to the Member States, convene the Committee set up under Article 10 in order to examine the matter.

Article 6

1. If Community directives relating to the matter in question have already been adopted, the Commission shall, after consulting the Committee in accordance with Article 5, decide whether action should be taken and what form such action should take.

It may thus, inter alia, authorize the Member States to derogate, for a specific period and in relation to a particular party to the Agreement, from certain precisely-defined obligations resulting from the directive or directives in question.

2. The Commission shall immediately notify the Council and the Member States of its decision, which shall enter into force following a period of ten working days unless a Member State brings the matter before the Council during that period. The Council may, at the request of a Member State, made within the said period of ten working days, acting by a qualified majority, confirm, amend or repeal the Commission's decision. The Commission's decision shall enter into force after a period of 60 days from the date on which the matter is referred to the Council if the latter does not act within that period.

3. During the period of validity of the measures taken pursuant to paragraphs 1 and 2, the Commission shall regularly consult the Committee set up under Article 10 concerning the implementation of those measures and of their effects. If, on the basis of those consultations, the Commission considers that its decision should be amended or repealed, it shall take a decision to that effect in accordance with the procedure laid down in paragraphs 1 and 2.

Article 7

1. If Community directives relating to the matter in question have not yet been adopted, the Member State or States which transmitted the information referred to in Article 4(1) may take appropriate measures. Member States shall so inform the Commission and the other Member States.

2. If a number of Member States take measures, they shall endeavour to coordinate them. Consultations to that effect shall take place within the Committee set up under Article 10.

3. During the period of validity of the measures referred to in paragraph 1, the Commission shall regularly consult the Committee set up under Article 10 concerning the implementation of those measures and of their effects. The Commission may, on the basis of those consultations, adopt a decision requiring the Member State or States concerned to amend or repeal the decision by which the appropriate measures were introduced. The Commission's decision shall be taken in accordance with the procedure laid down in Article 6(2).

Article 8

Measures taken under Articles 6 or 7 shall be adjusted in accordance with the procedure laid down in Article 6(1) and (2) in order to render them compatible with any decision taken by the Committee on Technical Barriers to Trade set up under Article 13 of the Agreement.

TITLE V - Final provisions

Article 9

The Commission may, on its own initiative or at the request of a Member State, refer any general or specific problem relating to the implementation of this Decision to the Committee set up under Article 10. It may take any action it considers appropriate after having obtained the opinion of the Committee.

Article 10

1. A Committee on the implementation at Community level of the Agreement on Technical Barriers to Trade (referred to as "the Committee" in this Decision), composed of representatives of the Member States under the chairmanship of a representative of the Commission, is hereby set up.
2. The Committee shall adopt its own rules of procedure.
3. Matters shall be referred to the Committee by the Chairman, either at his own instigation or at the request of the representative of a Member State.

Article 11

This Decision is addressed to the Member States.