

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 250 final-COD 489  
Brussels, 15.06.1994

Amended 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**

(presented by the Commission pursuant to Article 189 A (2)  
of the EC-Treaty)

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

**EXPLANATORY MEMORANDUM**

**I. General**

1. On 15 December 1993 the Commission adopted a 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.<sup>1</sup> The proposal was sent by letter to Parliament and the Council on the same date.

2. The Council started discussing the proposal on 9 February 1994.

The Economic and Social Committee unanimously adopted its opinion on the proposal at its 315th plenary session, held in Brussels on 27 April 1994<sup>2</sup>. Since it was convinced that a procedure of the kind proposed would ensure that the single market functioned in a consistent and transparent manner, it fully endorsed the proposal.

Parliament adopted a legislative resolution embodying its opinion on the proposal at its sitting on 20 April 1994<sup>3</sup>. It approved the proposal subject to twelve amendments designed, according to the draftsman of the report of the Committee on Economic and Monetary Affairs and Industrial Policy, to strengthen further the text of the proposal. These amendments are discussed below.

3. The amended proposal has been drafted with due regard to the outcome of the consultation of Parliament and the Economic and Social Committee.

**II. Comments on the amendments proposed by Parliament**

Parliament has proposed twelve amendments to the initial proposal. As explained below, the Commission has fully agreed to nine of them, partly accepted one and rejected the remaining two.

1. Amendment 1 inserts a new recital 5a which stresses one of the aims of the transparency to be achieved through the information procedure: other Member States and/or the Commission should have the opportunity to react to

<sup>1</sup>

OJ No C 18, 21.1.1994, p. 13.

<sup>2</sup>

Minutes of the session of 27 April 1994.

<sup>3</sup>

PE 180.707 - minutes of the sitting of 20 April 1994.

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

The Commission accepts this amendment.

2. Amendment 2 expands the sixth recital, stressing the need to coordinate the similar notification or information procedures provided for by other Community measures.

It should be read in conjunction with amendment 10, designed to insert a new Article 7a, the first sentence of which reflects this concern.

The Commission agrees to this amendment although the management of existing procedures already leads to such coordination.

3. The aim of amendment 3 is to insert a new recital 6a according to which businesses, consumers and other interested parties should know whom to contact within the Commission and the administrations of the individual Member States when a problem arises with regard to the free movement of goods.

This amendment should be read in conjunction with amendments 9 and 10, the aim of which is to introduce into the operative part of the Decision an obligation on Member States and the Commission to establish contact points for businesses, consumers and other interested parties.

The Commission accepts this proposal since it would enable interested parties to ascertain their rights and enforce them vis-à-vis the administrations concerned by the proper operation of the mutual recognition principle (and therefore the proper operation of the procedure).

4. Amendment 4 inserts a new recital 6b which stresses that the proposed Decision should not lead to unnecessary red tape but should ensure that an effective balance is struck between safeguarding the legitimate interests of the Member States and maintaining unhindered the free movement of goods within the Community.

The Commission accepts this proposal, stressing the fact that the procedure consists simply in transmitting a copy of the national measures concerned and an information sheet containing only the particulars that are essential for processing the notification.

5. The aim of amendment 5 is to insert a new recital 6c mentioning the need, in the interests of transparency, for full and up-to-date information to be available to all interested parties on the implementation of the procedure.

This amendment should be read in conjunction with amendment 11, which calls for information on the procedure to be made available throughout the Community, among other things via the annual report on the internal market.

The Commission agrees to this proposal in so far as the annual report should be seen as a means of regularly assessing how far the Community has achieved its aims in this field.

6. Amendment 6 would insert a second paragraph in Article 1 providing in substance that, if the Commission or a Member State indicated that a notified national measure would create unjustified barriers to the free movement of goods, the Commission could then propose appropriate measures after consulting the relevant committee and Parliament.

The Commission cannot accept this amendment, which is incompatible with the Treaty. In its role as guardian of the Treaty, it has to ensure that the provisions of the Treaty are properly applied. In the event of an unjustified barrier to the free movement of goods, the Treaty provides, among other things, that the Commission must enforce Articles 30 *et seq.* and cannot subordinate its action to the preparation of a proposal submitted for prior consultation to another Community institution. Where, using its right of initiative, the Commission proposes a piece of legislation, the Treaty requires it to follow consultation procedures that are specific to each of the legal bases concerned.

Consultation of the relevant committees is, by definition, already covered by the Community rules concerned, so that there is no need for any reference to this in the operative part of the Decision.

7. Amendment 7 concerns the second and third indents of Article 3(2).

As far as the second indent is concerned, the aim of the amendment is to insert a reference to Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations<sup>4</sup>, to Directive 92/59/EEC on general product safety<sup>5</sup> and to the various internal market directives containing safeguard clauses.

The Commission cannot accept this amendment, for two reasons: first, because it would introduce a reference to information or notification procedures laid down by harmonization measures (such as the safeguard clauses contained in the internal market directives), whereas the proposed procedure concerns only the non-harmonized sector; second, because the procedure should act as a "safety net" and catch all measures which are taken in the non-harmonized sector and are not covered by a procedure such as that laid down in Directive 83/189/EEC (or Decision 89/45/EEC<sup>6</sup> and Decision 93/580/EEC<sup>7</sup> which applies until 29 June 1994, when Directive 92/59/EEC on general product safety enters into

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4 OJ No L 109, 26.4.1983, p. 8, as last amended by Directive 94/10/EC (OJ No L 100, 19.4.1994, p. 30).

5 OJ No L 228, 11.8.1992, p. 24.

6 OJ No L 17, 21.1.1989, p. 51, as amended by Decision 90/352/EEC (OJ No L 173, 6.7.1990, p. 49). The dangers in question here must be serious and immediate.

7 OJ No L 278, 11.11.1993, p. 64 concerning the institution of a Community system for the exchange of information in respect of certain products which may jeopardize consumers' health or safety.

force). There is therefore no need to mention any particular procedure in the operative part of the Decision.

As regards the third indent of Article 3(2) of the proposal, the amendment would delete the reference to preventive measures.

On grounds of proportionality, the Commission cannot accept this amendment. The reference to preventive measures should be retained in order to avoid overloading the information procedure with measures taken pending the main decision, which is usually taken shortly afterwards, validating or invalidating the measures taken and/or planned. The period of one month in which Member States have to communicate their national measures is granted for practical reasons and makes allowance for the fact that, in most cases, preventive measures are superseded or replaced by the main decision.

8. The aim of amendment 8 is to specify, in the first sentence of Article 4, that information transmitted under the procedure must be provided in sufficient detail and in a clear and comprehensible form.

Although the type of information required is set out clearly in Article 4 and in the Annex to which it refers, the Commission accepts the form of this amendment.

9. Amendment 9 adds a second paragraph to Article 7 requiring Member States to seek to ensure that a contact point or network of contact points is established in order to act as an initial point of reference for all enquiries concerning non-recognition of national rules and about the general functioning of the Decision.

The Commission accepts this proposal for the same reasons as those given in connection with amendment 3.

10. Amendment 10 adds a new Article 7a requiring the Commission to reinforce its coordination of all matters arising out of the implementation of the Decision, complaints concerning individual obstacles to the free movement of goods, and general problems of mutual recognition. This new Article also provides that the Commission must seek to ensure that businesses, consumers and other interested parties know whom to contact when problems arise.

The Commission accepts this proposal for the reasons already given in connection with amendments 2 and 3.

11. The aim of amendment 11 is to insert a new Article 7b providing, in substance, for the dissemination of information on the application of the Decision, among other things via the annual report on the internal market and a Community database within the INFO 92 framework.

The Commission accepts this amendment except for the reference, in the operative part of the Decision, to databases (such as INFO 92) which change and develop rapidly. Exclusion of this reference from the operative part of the

Decision is without prejudice to information on the procedure, which could, in practice, be disseminated in an appropriate manner via databases.

12. Amendment 12 adds a second paragraph to Article 8 stipulating that the report which the Commission must draw up pursuant to that Article must also examine whether notification under the Decision is being adequately coordinated with notification under other Community instruments.

The Commission accepts this amendment in so far as the annual report should be viewed as a means of regularly assessing how far the Community has achieved its aims with regard to the internal market, in particular by looking into how existing information or notification procedures dovetail with one another.

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

Initial proposal

Amended proposal

New recital after existing 5th recital

Whereas other Member States and/or the Commission should have the opportunity to react to these measures

Modification of existing 6th recital

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

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

New recital after existing 6th recital

Whereas businesses, consumers and other interested parties should know whom to contact within the Commission and the administrations of the individual Member States when a problem arises with regard to the free circulation of goods;

New recital after existing 6th recital

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 unhindered free movement of goods within the Community;

New recital after existing 6th recital

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:

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.

The information referred to in Article 1 shall be provided in sufficient detail and in clear and comprehensible form. It 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 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.

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.

Member States shall seek to ensure that a contact point or network of contact points is established in order to act as an initial point of reference for all inquiries about why other national rules are not being recognized, and about the general functioning of this decision.

## Article 7a (NEW)

The Commission shall reinforce its coordination of all matters arising out of the implementation of this Decision, complaints concerning individual obstacles to the free movement of goods, and general problems of mutual recognition. It shall also seek to ensure that businesses, consumers and other interested parties know whom to contact when problems arise.

## Article 7b (NEW)

While respecting confidentiality where necessary, and without prejudice to unresolved cases, the Commission will provide Community-wide information on national measures notified under this Decision with implications for the principle of free movement of goods in non-harmonized sectors, as well as on any follow-up action that has been taken. Such measures will be listed in an Annex to the Annual Report on the Internal Market.

## Article 8

With 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.

With 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.

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

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