

Application of certain national technical rules to products lawfully marketed in another Member State

2007/0028(COD) - 21/02/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution based on the report by Alexander **STUBB** (EPP-ED, FI), amending, under first reading of the co-decision procedure, the proposal for a regulation laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC.

The main amendments are as follows:

Subject-matter: MEPs consider that the regulation should state its principal aim more clearly. The text now states that the aim of this Regulation is to strengthen the functioning of the internal market by improving the free movement of products.

Scope: this Regulation applies to administrative decisions addressed to the economic operator and taken or intended to be taken, on the basis of a technical rule as defined in this regulation, in respect of any product, including agricultural and fish products, lawfully marketed in another Member State, where the direct or indirect effect of that decision is any of the following: a) the prohibition of the placing on the market of the product or type of product; b) the modification or additional testing of the product or type of product before it can be placed or kept on the market; c) the withdrawal of that product or type of product from the market.

The definition of technical rule has been amended by Parliament, and includes a rule which prohibits the marketing of a product or type of product in the territory of that Member State. Parliament specified that the Regulation will not apply to decisions of a judicial nature taken by national courts or tribunals; and to decisions of a judicial nature taken by law enforcement authorities in the course of the investigation or prosecution of a criminal offence as regards the terminology, symbols or any material reference to unconstitutional or criminal organisations or offences of a racist or xenophobic nature.

Parliament also clarified the relationship between the regulation and other provisions of Community law and stated that the former shall not apply to systems and interoperability constituents falling within the scope of Directives 96/48/EC and 2001/16/EC.

Procedure for the application of a technical rule of the Member State of destination: where the competent authority of the Member State of destination submits a product or type of product to an evaluation, it may request from the economic operator with due regard to the principle of proportionality: a) relevant information on the characteristics of the product or type of product in question; or b) relevant and readily available information on the lawful marketing of the product in another Member State. MEPs also introduced an article on mutual recognition of the level of competence of accredited conformity assessment bodies.

Assessment of the need to apply a technical rule of the Member State of destination: Parliament specified that any intended decision shall be based on the characteristics of the product or type of product in question. The economic operator concerned shall, following receipt of a notice, be allowed at least twenty working days in which to submit comments. Such notice shall specify the time limit within which to submit comments. Any decision shall be taken and notified to the economic operator concerned and the

Commission within twenty working days following the expiry of the deadline for receipt of comments from the economic operator. When duly justified by the complexity of the issue, the competent authority may extend once the time period referred to above by a maximum of twenty working days. This extension shall be duly reasoned and shall be notified to the economic operator before the initial period has expired.

Any decision may be challenged before national courts or tribunals or other instances of appeal. When, following the procedure laid down, the competent authority fails to notify to the economic operator a decision within the time period specified, the product shall be deemed to be lawfully marketed in that Member State in so far as the application of its technical rule is concerned.

Temporary suspension of the marketing of a product: Parliament introduced a new Article on this and stated that during the application of the procedure, the competent authority shall not temporarily suspend the marketing of the product or type of product in question, except where certain conditions are met, for example, that the product poses a serious risk to the safety and health of the users. A suspension of the marketing of a product adopted in accordance with this Article may be challenged before the national courts or tribunals or other instances of appeal.

Information to the economic operator: Parliament inserted this Article specifying to whom the request for information, the written notice and the decision should be sent. The economic operator is in the first instance the manufacturer of the product, when he is established in the Community, or the person who has placed the product on the market or is requesting to the competent authority that the product be placed on the market. The Article specifies the persons to contact when the manufacturer cannot be identified.

Product Contact Points: MEPs introduced amendments specifying that Contact Points must provide information to both the economic operators and the competent authorities of the Member States. They shall respond within fifteen working days of receipt of any request for information or assistance. The information provided will include the technical rules applicable to a specific type of product in the territory where those Product Contact Points are established and information as to whether that type of product is subject to a requirement for prior authorisation under the laws of their Member State, together with information about the principle of mutual recognition and the application of the Regulation in the territory of that Member State. Product Contact Points shall not charge any fee for information or assistance.

Reporting obligations and review: MEPs introduced a yearly reporting obligation for Member States. In light of the information provided by Member States, the Commission shall analyse the decisions taken and make an assessment of their justification. The Commission shall, within three years following entry into force of the Regulation, and every five years thereafter, carry out a review and submit a report on the application of the Regulation to the European Parliament and the Council. It shall, if relevant, accompany the report with appropriate proposals with a view to improving the free movement of goods. It shall also publish and regularly update a non-exhaustive list of products which are not subject to harmonisation at Community level. It shall make this list accessible through a website.