

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

2007/0028(COD) - 09/07/2008 - Final act

PURPOSE: to lay down the procedures for national authorities which would hinder the free movement of a product lawfully marketed in another Member State, and to establish Product Contact Points in Member States.

LEGISLATIVE ACT: Regulation (EC) No 764/2008 of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC

CONTENT: the aim of this Regulation is to strengthen the functioning of the internal market by improving the free movement of goods. Obstacles to the free movement of goods between Member States may be unlawfully created by the Member States' applying to products lawfully marketed in other Member States, technical rules laying down requirements to be met by those products. These might include rules relating to designation, form, size, weight, composition, presentation, labelling and packaging. The application of such rules to products lawfully marketed in another Member State can be contrary to the Treaty, even if they apply without distinction to all products.

This Regulation lays down the rules and procedures to be followed by the competent authorities of a Member State when taking a decision which would hinder the free movement of a product lawfully marketed in another Member State and subject to Article 28 of the Treaty. It also provides for the establishment of Product Contact Points in the Member States to contribute to the achievement of the aim of the Regulation.

Scope: the Regulation applies to administrative decisions addressed to economic operators, on the basis of a technical rule, 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 that product or type of product;
- b) the modification or additional testing of that 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.

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.

Assessment of the need to apply a technical rule: where a competent authority intends to adopt a decision, it shall send the economic operator written notice of that intention, specifying the technical rule on which the decision is to be based and setting out technical or scientific evidence to the effect that:

- a) the intended decision is justified on one of the grounds of public interest set out in Article 30 of the Treaty or by reference to other overriding reasons of public interest; and
- b) the intended decision is appropriate for the purpose of achieving the objective pursued and does not go beyond what is necessary in order to attain that objective. The economic operator concerned shall be allowed at least 20 working days in which to submit comments.

Product Contact Points: Member States shall designate Product Contact Points, which shall, at the request of, inter alia, an economic operator or a competent authority of another Member State, provide the following information:

- a) the technical rules applicable to a specific type of product in the territory in which 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 concerning the principle of mutual recognition and the application of the Regulation in the territory of that Member State;
- b) the contact details of the competent authorities within that Member State by means of which they may be contacted directly, including the particulars of the authorities responsible for supervising the implementation of the technical rules in question in the territory of that Member State;
- c) the remedies generally available in the territory of that Member State in the event of a dispute between the competent authorities and an economic operator.

Product Contact Points must not charge any fee for the provision of this information. They shall respond within 15 working days of receiving any request for information.

Telematic network: the Commission may establish a telematic network for the implementation of the provisions of the Regulation concerning the exchange of information between Product Contact Points and /or the competent authorities of the Member States.

Reporting obligations: each Member State shall send the Commission on a yearly basis a report on the application of this Regulation. In the light of this information, the Commission shall analyse the decisions taken and assess the grounds on which they were based. By 13 May 2012, and every five years thereafter, the Commission shall review the application of this Regulation and shall submit a report thereon to the European Parliament and to the Council. The Commission may, where appropriate, accompany the report with proposals with a view to improving the free movement of goods.

APPLICATION: from 13/05/2009.

ENTRY INTO FORCE: 02/09/2008.