

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

2007/0028(COD) - 27/11/2007

The Committee on the Internal Market and Consumer Protection adopted the report by Mr. 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 adopted by the Committee are as follows:

Subject-matter: MEPs consider that the proposal should state its principal aim more clearly, which is to strengthen the functioning of the Internal Market, with free and undistorted competition, by improving the free movement of products whilst ensuring a high level of consumer protection and product safety.

Scope: To avoid legal uncertainty, MEPs consider that the reference to a technical rule should be made in accordance with this Regulation instead of with Directive 98/34/EC. Moreover, the Regulation shall not apply to decisions of a judicial nature taken by national courts or tribunals.

A further amendment specifies that a technical rule means a law, regulation or administrative provision of a Member State, which is not the subject of harmonisation at Community level and:

- a) prohibits the marketing or use of a product or type of product in the territory of that Member State ; or
- b) with which compliance is compulsory when a product or type of product is marketed or used in the territory of that Member State;
- c) and which lays down either of the following: i) the characteristics required of that product or type of product; ii) any other requirement which is imposed on the product or type of product for the purposes of protecting consumers or the environment, and which affects the life cycle of the product after it has been placed on the market; iii) testing and test methods or any test reports or certificates.

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: 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: MEPs consider that, when assessing the need to take a decision, the Member State of destination needs to base the analysis on the characteristics of the product or the type of product in question. Such notice shall specify the time limit within which to submit comments. If no reply is received from the economic operator within that time, the competent authority may take action.

In order to give stronger certainty to the economic operator in the planning of its activities, the rapporteur has introduced a deadline of 20 days counting from the expiry of the deadline for receipt of comments

from the economic operator. Any decision may be challenged before national courts or tribunals or other instances of appeal. If no final decision is issued by the Member State, the product is deemed to be legally on the market of that Member State.

Interim measures: by default the product being observed within the procedures of this regulation remains on the market of the Member State of destination throughout the procedures until the final decision is issued by the Member State. This new article states that the Member State can temporarily withdraw from the market a dangerous product or a product subject to a total ban on grounds of public morality or security. The withdrawal is, however, to be considered as an interim measure.

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 ten working days of receipt of any request for information or assistance. Where the request is unfounded, the Product Contact Point shall inform the economic operator accordingly without delay. Where a Product Contact Point assists the economic operator, it may liaise with a Product Contact Point of the Member State of destination. The assistance to the economic operator shall not include the provision of legal advice in individual cases. Finally, Product Contact Points shall not charge any fee for information or assistance.

Reporting obligations: MEPs introduced a yearly reporting obligation for Member States. The Commission shall also analyse these reports and act upon infringements. The Commission is also invited to publish an indicative list of products falling under the scope of this regulation. Within three years following the date of entry into force, and every five years thereafter, the Commission shall carry out a review and submit a report on the application of this Regulation to the European Parliament and the Council. The Commission shall, if appropriate, accompany the report with relevant proposals with a view to improving the free movement of goods.

MEPs consider that the Member States need to be given a period of six months to set up the Product Contact Points upon entry into force of the regulation. However, the regulation itself should enter into force within 20 days of its publication.