II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 15 January 1980

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

(80/45/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Whereas, by the Decision of 10 December 1979 concerning the conclusion of the multilateral Agreements resulting from the 1973 to 1979 trade negotiations, the Council approved, on behalf of the European Economic Community, the Agreement on technical barriers to trade, hereinafter referred to as 'the Agreement' ;

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, account being taken of an application of the Agreement by all the Contracting Parties which ensures reciprocity and mutual advantages ;

Whereas a procedure should be laid down for examining whether such reciprocity exists and enabling appropriate measures to be taken ;

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

Whereas, finally, the measures laid down in this Decision are suitable for ensuring that the obligations resulting from the abovementioned provisions are fulfilled ; whereas they facilitate the achievement of the Community's tasks,

HAS ADOPTED THIS DECISION :

TITLE I

Principles

Article 1

1. The technical regulations, standards and certification and verification procedures laid down in the Directives for the removal of technical barriers to intra-Community trade shall apply, under any special conditions which may be laid down in those Directives, to all products on the Community market irrespective of their origin, save as otherwise provided in Title III.

2. The Member States shall take all appropriate action within their power to ensure that the technical regulations, standards and certification and verification procedures which are not harmonized at Community level, but are applied in these Member States and drawn up by official authorities or non-governmental bodies, are applied under any special conditions which may be laid down in the national texts to all products on the markets in question, irrespective of their origin, save as otherwise provided in Title III.

TITLE II

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

Article 2

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

(a) if a Member State proposes to agree that compliance with its national technical regulations and standards shall be determined on the basis of tests, certificates or marks issued by the competent authorities of a third country under its procedures, it shall so inform the Commission and the other Member States, stating its reasons ;

(b) as regards the reciprocal recognition of checks by Member States, the Commission shall request information from 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 already adopted in order to enable compliance with those Directives to be determined on the basis of test results, certificates or marks of conformity 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 (a).

TITLE III

Action in the event of non-reciprocity

Article 3

1. Member States shall inform the Commission and the other Member States whenever they consider that an advantage directly or indirectly resulting from the Agreement has been nullified or impaired or that the attainment of one of the objectives of the Agreement has been impaired by one or more of the other Parties thereto, that their 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. Information received by the Commission shall also be transmitted to the Member States.

Article 4

The Commission shall, within 10 working days of the date on which the information is transmitted to the Member States, convene the Committee provided for in Article 8 in order to examine the matter.

Article 5

1. If Community Directives relating to the matter in question have already been adopted, the Commission shall, after consulting in accordance with Article 4 the Committee provided for in Article 8, decide what appropriate measures should be taken in accordance with the provisions of the Agreement.

2. The Commission shall immediately notify the Council and the Member States of its decision, which shall enter into force following a period of 10 working days unless a Member State brings the matter before the Council during that period. At the request of a Member State made within the said period of 10 working days, the Council, acting by a qualified majority, may confirm, amend or repeal the Commission's decision. The Commission's decision shall be applicable after a period of 60 days from the date on which the matter is referred to the Council if the latter has not acted 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 provided for in Article 8 concerning the effective implementation of those measures and 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.

4. A Member State may take provisional measures until such time as the Commission takes a decision in accordance with paragraph 1. The measures taken by the Commission shall apply on the expiry of a period of 10 working days if no Member State has referred the matter to the Council. If a Member State refers the matter to the Council within this period of 10 working days, the national provisional measures shall continue to apply and the decision of the Commission shall be suspended until the Council, acting by a qualified majority, takes its decision. The national provisional measure (s) shall remain in force until the Council takes its decision.

Article 6

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 3 (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.

3. Consultations may be held in the Committee provided for in Article 8 at the request of a Member State or the Commission.

Article 7

After consulting the Committee provided for in Article 8, the Commission may take decisions or make appropriate proposals for the modification of measures taken in accordance with Article 5 or 6, taking account of the recommendations of the Committee on Technical Barriers to Trade provided for in Article 13 of the Agreement.

TITLE IV

Final provisions

Article 8

1. A Committee on the Implementation at Community Level of the Agreement on Technical Barriers to Trade 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 on his own initiative or at the request of the representative of a Member State.

4. In the cases where the Committee is requested to give an opinion, it shall do so by a qualified majority.

Article 9

This Decision is addressed to the Member States.

Done at Brussels, 15 January 1980.

For the Council

The President

G. ZAMBERLETTI