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**\*\*\*I**

## **REPORT**

on the proposal for a regulation 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 3052/95/EC  
(COM(2007)0036 – C6-0065/2007 – 2007/0028(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Alexander Stubb

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation 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**

**3052/95/EC**

**(COM(2007)0036 – C6-0065/2007 – 2007/0028(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0036),
  - having regard to Article 251(2) and Articles 37 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0065/2007),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Industry, Research and Energy and the Committee on Legal Affairs (A6-0489/2007),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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Text proposed by the Commission

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Amendments by Parliament

### Amendment 1

#### Recital 1

(1) The internal market comprises an area without internal frontiers in which the free movement of goods is ensured under the Treaty, which prohibits measures having equivalent effect to quantitative restrictions on imports. That prohibition covers any national measure which is capable of hindering, directly or indirectly, actually or potentially, intra-Community trade in

(1) The internal market comprises an area without internal frontiers, ***where competition should be free and undistorted***, in which the free movement of goods is ensured under the Treaty, which prohibits measures having equivalent effect to quantitative restrictions on imports. That prohibition covers any national measure which is capable of hindering, directly or

goods.

indirectly, actually or potentially, intra-Community trade in goods.

#### *Justification*

*A fully functioning internal market requires conditions of free and undistorted competition, for the benefit of EU citizens.*

#### Amendment 2

##### Recital 2

(2) Obstacles to the free movement of goods between Member States may be unlawfully created by the ***national*** authorities, in the absence of harmonisation of legislation, as a consequence of applying, to ***goods*** coming from other Member States where they are lawfully marketed, technical rules laying down requirements to be met by such ***goods***, such as those relating to designation, form, size, weight, composition, presentation, labelling ***and*** packaging. The application of such technical rules to products lawfully marketed in another Member States can be contrary to Articles 28 and 30 of the EC Treaty, even if those ***national*** rules apply without distinction to all products.

(2) Obstacles to the free movement of goods between Member States may be unlawfully created by the ***competent*** authorities, in the absence of harmonisation of legislation, as a consequence of applying, to ***products*** coming from other Member States where they are lawfully marketed, technical rules laying down requirements to be met by such ***products***, such as those relating to designation, form, size, weight, composition, presentation, labelling, packaging ***and so on***. The application of such technical rules to products lawfully marketed in another Member States can be contrary to Articles 28 and 30 of the EC Treaty, even if those ***technical*** rules apply without distinction to all products.

#### *Justification*

*These changes, which should apply throughout the text, seek to take account of the different administrative systems and allocation of functions within each Member State. Hence, the words "national authorities" should be replaced by "competent authorities"(e.g. in recitals 4, 12) and "national technical rules" should be replaced by "technical rules" (e.g. in recital 7), given that technical rules can also be adopted not only at national but also at regional level. The term "products" has been chosen in preference to "goods", because this Regulation refers to products.*

#### Amendment 3

##### Recital 2 a (new)

*(2a) Mutual recognition, which derives from the case-law of the Court of Justice, is one of the means of ensuring the free movement of goods within the EU. Mutual recognition applies to products which are not subject to Community harmonisation legislation, or to aspects of products falling outside the scope of Community harmonisation legislation. It means that a Member State cannot forbid the sale on its territory of products which are lawfully marketed in another Member State, even if those products were manufactured according to technical rules different to those which must be met by domestic products. The only exceptions to this principle are restrictions which are justified on the grounds described in Article 30 of the Treaty or on the basis of overriding reasons of public interest, and are proportionate to the aim pursued.*

#### *Justification*

*This Regulation aims at improving the application of the principle of mutual recognition. Consequently, a recital is needed to explain this principle, which derives from the jurisprudence of the Court of Justice.*

#### Amendment 4 Recital 3

(3) It is necessary to establish procedures to minimise the possibility that such ***national*** technical rules create unlawful obstacles to the free movement of goods between Member States. The absence of such procedures in Member States causes additional obstacles to the free movement of goods, since it discourages enterprises from selling their products, lawfully marketed in another Member State, on the territory of the Member State laying down technical rules. Surveys have shown that many enterprises, and in particular small and medium-sized enterprises (SMEs), either adapt their products in order to

***(3) Many problems still exist as regards the correct application of the principle of mutual recognition by the Member States. Thus, the application of technical rules to products lawfully marketed in another Member State is the most common and costly trade barrier, accounting for almost 50% of the total barriers encountered by undertakings in the internal market. It is therefore*** necessary to establish procedures to minimise the possibility that such technical rules create unlawful obstacles to the free movement of goods between Member States. The absence of such procedures in Member States causes

comply with the technical rules of the Member State of destination, or refrain from marketing them there.

additional obstacles to the free movement of goods, since it discourages enterprises from selling their products, lawfully marketed in another Member State, on the territory of the Member State laying down technical rules. Surveys have shown that many enterprises, and in particular small and medium-sized enterprises (SMEs), either adapt their products in order to comply with the technical rules of the Member State of destination, or refrain from marketing them there.

### *Justification*

*To recall that the Internal Market for goods is not yet fully complete since companies, in particular SMEs, still encounter barriers when trading across borders. Hence, the need for this Regulation, which concerns the most common and costly trade barrier in the Internal Market, i.e. the application of technical rules to products lawfully marketed in another Member State.*

### Amendment 5 Recital 6

(6) The European Council of 15 and 16 June 2006 emphasised the importance of a simple, transparent and easy-to-apply regulatory environment and of strengthening consumer and business confidence in the internal market.

(6) The European Council of 15 and 16 June 2006 emphasised the importance of a simple, transparent and easy-to-apply regulatory environment and of strengthening consumer and business confidence in the internal market. ***The European Council of 21 and 22 June 2007 underlined that the further strengthening of the four freedoms of the internal market (free movement of goods, persons, services and capital) and improving its functioning remain of paramount importance for growth, competitiveness and employment. The European Council called on the Council and the European Parliament to make rapid progress in adopting this Regulation, without prejudice to the harmonisation of national technical rules where appropriate.***



*Justification*

*To take account of the statement at the last European Council regarding this proposal*

Amendment 6

Recital 8

**(8) *It is not appropriate, in the light of the principle of proportionality and subsidiarity, to harmonise all national technical rules for most or all product categories.***

**(8) *This Regulation should not prejudice, where appropriate, the adoption of further harmonisation of technical rules, with a view to improving the functioning of the internal market.***

Amendment 7

Recital 8 a (new)

**(8a) *Trade barriers may also result from other types of measures prohibited by the provisions of Article 28 of the Treaty. Those measures include, for example, technical specifications drawn up for public procurement procedures or obligations to use national languages. However, these measures, which may hinder the free movement of goods, do not constitute a technical rule within the meaning of this Regulation and do not therefore fall within its scope.***

*Justification*

*For the purpose of clarification some types of measures that clearly fall outside the definition of technical rule need to be mentioned.*

Amendment 8

Recital 8 b (new)

**(8b) *Technical rules within the meaning of this Regulation are sometimes applied during and by means of obligatory prior***

*authorisation procedures, established by law of the Member States and under which, before the product or type of product may be put on the market of a Member State or a part thereof, the competent authority of that Member State should give its formal approval following an application submitted by the applicant. The existence of such procedures restricts the free movement of products. Therefore, in order to be justified in accordance with the fundamental principle of the free movement of goods within the internal market, an obligatory prior authorisation procedure should pursue a public interest objective recognised by Community law, and should be proportionate and non-discriminatory; that is to say, it should be appropriate to ensure the attainment of the aim pursued and should not go beyond what is necessary in order to achieve that aim.*

Amendment 9  
Recital 8 c (new)

*(8c) Where an obligatory prior authorisation procedure established by a Member State is compatible with Community law, competent authorities should be permitted, under law of the Member State and where the economic operator fails to apply for such prior authorisation of the Member State, to remove a product immediately from the market or to refuse to allow it to be placed on the market until the prior authorisation procedure has been completed. Compulsory withdrawals of products that exclusively relate to the failure of an economic operator to submit his product to an obligatory prior authorisation procedure established by law of a Member State should not constitute a decision for the purposes of*

*this Regulation.*

Amendment 10  
Recital 8 d (new)

*(8d) When, however, an application for such obligatory prior authorisation of a product is made, any intended decision to reject the application on the basis of a technical rule should be treated in accordance with this Regulation, so that the applicant benefits from the procedural protection which this Regulation provides.*

Amendment 11  
Recital 8 e (new)

*(8e) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons<sup>1</sup> applies to any firearm as defined in section II of the Annex thereto, and to weapons other than firearms as defined in national legislation. Directive 91/477/EEC obliges Member States to adopt all relevant provisions prohibiting the entry into their territory of a firearm, except in the cases defined in Articles 11 and 12 of that Directive and provided the conditions laid down therein are met, and of a weapon other than a firearm provided that the provisions of national law of the Member State in question so permit. That Directive also authorises Member States to adopt in their legislation provisions which are more stringent than those provided for therein, subject to the rights conferred on residents of the Member States by Article 12(2) thereof. Therefore, since such weapons are subject to harmonisation, they do not fall within the scope of this Regulation.*

*Justification*

*To clarify the scope of this Regulation*

Amendment 12  
Recital 9

(9) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety specifies that only safe products may be placed on the market. It entitles the authorities to ban any dangerous product with immediate effect or, for the period needed for the various safety evaluations, checks and controls, to ban temporarily a product that could be dangerous. ***It is necessary, therefore, to exclude from the scope of this Regulation*** measures taken by the national authorities pursuant to national laws implementing Directive 2001/95/EC.

(9) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety specifies that only safe products may be placed on the market, ***and lays down the obligations of producers and distributors with respect to the safety of products***. It entitles the authorities to ban any dangerous product with immediate effect or, for the period needed for the various safety evaluations, checks and controls, to ban temporarily a product that could be dangerous. ***It also entitles the authorities to take the necessary action to apply with due dispatch appropriate measures such as those referred to in Article 8(1) points (b) to (f) thereof, in the case of products posing a serious risk. Therefore, measures taken by the national authorities pursuant to national laws implementing Article 8(1) points (d) to (f) and Article 8(3) of Directive 2001/95/EC should be excluded from the scope of this Regulation.***

*Justification*

*To clarify the relationship of this Regulation with the Directive on General Product Safety, which lays down a specific procedure to ban, temporarily or permanently, the marketing of dangerous consumer goods.*

Amendment 13  
Recital 10

(10) Regulation (EC) No 178/2002 of the

(10) Regulation (EC) No 178/2002 of the

European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety establishes inter alia a rapid alert system for the notification of a direct or indirect risk to human health deriving from food or feed. It obliges the Member States to immediately notify the Commission under the rapid alert system of any measure they adopt which is aimed at restricting the placing on the market or forcing the withdrawal from the market or the recall of food or feed in order to protect human health and requiring rapid action. Measures taken by the ***national*** authorities pursuant to ***Article 50(3)(a)*** of Regulation (EC) No 178/2002 should therefore be excluded from the scope of this Regulation.

European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety establishes inter alia a rapid alert system for the notification of a direct or indirect risk to human health deriving from food or feed. It obliges the Member States to immediately notify the Commission under the rapid alert system of any measure they adopt which is aimed at restricting the placing on the market or forcing the withdrawal from the market or the recall of food or feed in order to protect human health and requiring rapid action. Measures taken by the ***competent*** authorities ***of the Member States*** pursuant to ***Articles 50(3)(a) and 54*** of Regulation (EC) No 178/2002 should therefore be excluded from the scope of this Regulation.

#### *Justification*

*To clarify the relationship of this Regulation with Regulation 178/2002, which lays down a specific "rapid alert system" for the notification of a direct or indirect risk to human health deriving from food or feed, in accordance with its Article 50. In addition, Regulation 178/2002 allows Member States to adopt interim protective measures in accordance with its Article 54. These two provisions therefore ensure that dangerous foodstuff or feedstuff are withdrawn from the market.*

#### Amendment 14 Recital 11

***(11) Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules lays down general rules for the performance of official controls to verify compliance with rules aiming, in particular, at preventing, eliminating or reducing to acceptable levels risks to humans and animals, either directly or***

***deleted***

*through the environment, and guaranteeing fair practices in feed and food trade and protecting consumer interests, including feed and food labelling and other forms of consumer information. It lays down a specific procedure to ensure that the economic operator remedies a situation of non-compliance. It is necessary, therefore, to exclude from the scope of this Regulation measures taken by the national authorities pursuant to Article 54 of Regulation (EC) No 882/2004.*

#### *Justification*

*The consequence of the exclusion of Article 54 of Regulation 882/2004 from the scope of the proposal would be that, all national non-harmonised rules on food and feed would be exclusively subject to Article 54. The purpose of the amendment is to delete the reference to Article 54 and to include it in the current Regulation. This would prevent arbitrarily withdrawal of products from the market, contrary to the principle of mutual recognition.*

#### Amendment 15 Recital 13

(13) Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system provide for gradual harmonisation of systems and operations through the progressive adoption of Technical Specifications for Interoperability. Systems and **equipment** that are within the scope of those Directives should therefore be excluded from the scope of this Regulation.

(13) Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system provide for gradual harmonisation of systems and operations through the progressive adoption of Technical Specifications for Interoperability. Systems and **interoperability constituents** that are within the scope of those Directives should therefore be excluded from the scope of this Regulation.

#### *Justification*

*To ensure consistency with Directive 96/48/EC*

Amendment 16  
Recital 13 a (new)

***(13a) Regulation No (EC) .../... of the European Parliament and of the Council of ... [setting out the requirements for accreditation and market surveillance relating to the marketing of products] establishes a system of accreditation which ensures the mutual acceptance of the level of competence of conformity assessment bodies. Therefore, the competent authorities of Member States can no longer refuse test reports and certificates issued by accredited conformity assessment bodies, on the grounds of their lack of competence. Furthermore, Member States may also accept tests and certificates issued by other conformity assessment bodies.***

Amendment 17  
Recital 13 b (new)

***(13b) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services<sup>1</sup> obliges Member States to communicate to the Commission and the other Member States any draft technical regulation concerning industrially manufactured products, agricultural and fish products and a statement of the grounds which make the enactment of such a technical regulation necessary. It is necessary, however, to ensure that, following the adoption of a technical rule, the principle of mutual recognition is correctly applied in individual cases to specific products. This Regulation lays down a procedure for the application of the principle of mutual recognition in individual cases,***

*through the obligation for the competent authority of the Member State of destination to prove on which technical or scientific grounds the specific product in its current form cannot be marketed in the Member State of destination, in accordance with Articles 28 and 30 of the Treaty.*

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<sup>1</sup> OJ L 204, 21.7.1998, p. 37. Directive as last amended by Council Directive 2006/96/EC (OJ L 363, 20.12.2006, p. 81).

### *Justification*

*To clarify the differences between Directive 98/34/EC and this Regulation. Under Directive 98/34/EC, Member States are requested to notify any draft technical rules to the Commission before they are adopted and applied. This Regulation establishes a procedure whereby the competent authorities may apply their technical rules to products lawfully marketed in another Member State provided that the conditions laid down in Article 4 are met.*

### Amendment 18 Recital 14

(14) It is for the ***national*** authority to ***show*** in each case ***that the application of national technical rules to specific products lawfully marketed in another Member State falls within the permitted exceptions.***

***(14) The procedure laid down in this Regulation does not entail a comparison between the technical rules of the Member State where the product or type of product in question was lawfully marketed and of the Member State of destination. Mutual recognition is confined to an analysis, by the competent authority of the Member State of destination, of the necessity and proportionality of the application of its own technical rule in a specific case. It is therefore for the competent authority to prove in each case to the economic operator concerned, on the basis of the relevant technical or scientific elements available, that there are overriding reasons of public interest for imposing its technical rules on the product or type of product in question and that less restrictive measures cannot be used. The written notice should allow the economic***



***operator to comment in good faith on all relevant aspects of the intended decision restricting access to the market. Nothing prevents the competent authority from taking action after the imparted deadline in the absence of a reply from the economic operator.***

*Justification*

*To clarify the procedure laid down in Article 4, whereby the competent authorities would apply their technical rules to products lawfully marketed in another Member State*

Amendment 19

Recital 14 a (new)

***(14a) The concept of overriding reasons of public interest to which reference is made in certain provisions of this Regulation is an evolving concept developed by the Court of Justice in its case law in relation to Articles 28 and 30 of the Treaty. This concept covers inter alia the effectiveness of fiscal supervision, the fairness of commercial transactions, the protection of consumers, the protection of the environment, the maintenance of press diversity and the risk of seriously undermining the financial balance of the social security system. Such overriding reasons may justify the application of technical rules by the competent authorities. However, no such application should constitute a means of arbitrary discrimination or a disguised restriction of trade between Member States. Furthermore, the principles of necessity and proportionality should always be respected, having regard to whether the least restrictive measure has in fact been selected by the competent authorities.***

*Justification*

*To provide greater legal clarity by recalling the jurisprudence of the Court.*

Amendment 20

Recital 14 b (new)

***(14b) While applying the procedure laid down in this Regulation, the competent authority of the Member State of destination should not withdraw or restrict the placing on its market of a product or type of product lawfully marketed in another Member State. However, it is appropriate that the competent authorities adopt provisional measures where a rapid intervention is required to avoid the safety and health of users being harmed. Such provisional measures may also be adopted by the competent authorities to avoid the marketing on its territory of a product which is subject to an absolute ban as regards its manufacturing and marketing, on grounds of public morality or public security. Therefore, Member States should be allowed, at any stage of the procedure laid down in this Regulation, to temporarily suspend the marketing on their territory of a product or type of product under those circumstances.***

*Justification*

*To clarify the procedure laid down in this Regulation. Thus, Member States may adopt provisional measures to suspend temporarily the marketing of a product, while the procedure is being applied, provided that the conditions listed in Article 4a are met. After the application of the procedure, the competent authority may decide to ban permanently the marketing of the product in question.*

Amendment 21

Recital 15

(15) Any ***national*** decision to which this Regulation applies should specify the ***methods of appeal*** available so that

(15) Any decision to which this Regulation applies should specify the ***judicial remedies*** available so that economic

economic operators can bring a case before the competent national court or tribunal.

operators can bring a case before the competent national court or tribunal, ***which could allow the economic operator to claim damages.***

*Justification*

*To provide greater legal clarity as regards the remedies which should be specified in the decision. The decision may be adopted not only at national level, depending on the administrative systems and allocation of functions within the Member States.*

Amendment 22

Recital 15 a (new)

***(15a) It is appropriate that the economic operator also be informed of the availability of non-judicial problem-solving mechanisms in the Member State of destination, such as the SOLVIT-system, in order to avoid legal uncertainty and costs incurred during lengthy legal proceedings.***

*Justification*

*Surveys show that only 4% of companies encountering a trade barrier file a complaint. Therefore, the recourse to non-judicial problem solving mechanisms should be encouraged in order to find a swift solution and avoid the costs incurred by companies during legal proceedings. In this respect, the Solvit system could play an important role.*

Amendment 23

Recital 15 b (new)

***(15b) Once a competent authority has taken a decision to exclude a product on the basis of a technical rule in accordance with the procedural requirements of this Regulation, any further action it takes in relation to that product or type of product which is based on that decision should not be subject to the requirements of this Regulation.***

### *Justification*

*In such cases the economic operator concerned has already had the benefit of the procedural protections which this Regulation provides. For example, if a competent authority, having complied with the applicable provisions of this Regulation and ordered a product to be withdrawn from the market by an economic operator, later finds that the economic operator has placed the same product on the market again, it does not need to justify either its original decision, or the action it subsequently takes on the basis of the original decision, again.*

### Amendment 24 Recital 19

(19) In order to facilitate the free movement of goods, it should be possible for Product Contact Points to provide **high-quality** information about **national** technical rules and **their implementation**. **Since the creation of Product Contact Points should not interfere with the allocation of functions among competent authorities within each national regulatory system, it should be possible for the number of Product Contact Points per Member State to vary according to regional or local competencies.**

(19) In order to facilitate the free movement of goods **and to strengthen administrative cooperation**, it should be possible for Product Contact Points to provide **information on the application of the principle of mutual recognition in the Member State of destination, in accordance with the provisions of this Regulation. Furthermore, Product Contact Points should provide** information about **the** technical rules and **the contact details of the** competent authorities **in their territory. Product Contact Points should be encouraged to make the information available through a website and in other Community languages. Product Contact Points may also provide practical assistance to the economic operator during the procedure for the application of technical rules laid down in this Regulation.**

### *Justification*

*The Recital deals only with the tasks assigned to the Product Contact Points, in accordance with Article 8. The establishment of Product Contact Points is dealt by Recital 20.*

### Amendment 25 Recital 20

(20) Member States should be able to entrust the role of Product Contact Points, not only to existing services within *the*

**(20) Since the creation of Product Contact Points should not interfere with the allocation of functions among competent**

public *administration*, but also to chambers of commerce, professional organisations or private bodies, in order not to increase the administrative costs for enterprises and competent authorities alike.

***authorities within each national regulatory system, it should be possible for Member States to set up Product Contact Points according to regional or local competences.*** Member States should be able to entrust the role of Product Contact Points ***to existing contact points established in accordance with other Community instruments, in particular to points of single contact established in accordance with Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market<sup>1</sup>, in order to avoid an unnecessary proliferation of contact points and to simplify administrative procedures.*** Member States should also be able to entrust the role of Product Contact Points not only to existing services within public *administrations*, but also to ***national SOLVIT centres***, chambers of commerce, professional organisations or private bodies, in order not to increase the administrative costs for enterprises and competent authorities alike.

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<sup>1</sup> OJ L 376, 27.12.2006, p. 36.

Amendment 26  
Recital 21

***(21) Member States should ensure that the Product Contact Points can obtain and provide, on request, detailed information about any decision to which this Regulation applies, unless the disclosure of such information would undermine the protection of commercial interests of an economic operator, including intellectual property.***

***deleted***

*Justification*

*To ensure consistency with the tasks allocated to the Product Contact Points in accordance with Article 8*

Amendment 27  
Recital 22

(22) Member States and the Commission should work closely together to facilitate the training of staff employed in Product Contact Points ***and to encourage Product Contact Points to make information on the application of national technical rules available in other Community languages.***

(22) Member States and the Commission should work closely together to facilitate the training of staff employed in Product Contact Points.

*Justification*

*In order to act as a genuine "helpdesk", staff employed in the Product Contact Points should be given suitable training. The need to provide information in other Community languages is already dealt with in Recital 19.*

Amendment 28  
Recital 24

(24) Reliable and efficient monitoring and evaluation mechanisms should be established in order to provide information on the ***implementation*** of this Regulation.

(24) Reliable, ***regular*** and efficient monitoring and evaluation mechanisms should be established in order to provide information on the ***application*** of this Regulation ***and to ensure that the principle of mutual recognition is duly applied by the competent authorities of the Member States.***

*Justification*

*Decision 3052/95/EC, which will be repealed by this Regulation, established that Member States needed to inform the Commission and the other Member States when they refused mutual recognition. However, this was not done in practice. In order to ensure that the principle of mutual recognition is correctly applied by the Member States, this Regulation should establish effective and regular monitoring mechanisms*

Amendment 29  
Recital 24 a (new)

***(24a) This Regulation applies to products***

*or aspects of products which are not subject to Community harmonisation legislation intended to eliminate obstacles to trade between Member States which result from the existence of divergent national technical rules. The provisions of such Community measures often have an exhaustive character, in which case Member States may not prohibit, restrict or impede the placing on the market in their territory of products complying with the harmonisation measure. Some Community harmonisation legislation, however, permits Member States to lay down additional technical conditions at national level on the placing on the market and use of a product. Such additional conditions may be subject to Articles 28 and 30 of the Treaty and to the provisions of this Regulation. It is therefore appropriate with a view to the efficient application of this Regulation that the Commission establish an indicative list of products which would fall within its scope.*

#### *Justification*

*One of the reasons why the free movement of goods is far from being achieved in the non-harmonised area, is the lack of legal certainty about the scope of the principle of mutual recognition. It is often unclear to which categories of products mutual recognition applies. This means that, for every special aspect of a product, companies and administrations need to examine first whether it is regulated at Community level, before concluding whether mutual recognition applies. The Commission could therefore establish a list of products in order to provide legal certainty about the scope of this Regulation, provided that such a list is purely indicative.*

#### *Amendment 30 Recital 25 a (new)*

*(25a) It is appropriate to introduce a transitional period for the provisions of this Regulation regarding the establishment and tasks of Product Contact Points, in order to enable the competent authorities to adapt to the*

***requirements of this Regulation.***

*Justification*

*Member States will require time to set up the Product Contact Points. Since Member States are encouraged to entrust this role to existing structures, and in particular, contact points established in accordance with other Community instruments, a transitional period of three months should be sufficient.*

Amendment 31  
Article 1, title (new)

***Subject-matter***

*Justification*

*It is appropriate, for the sake of legal clarity, to indicate titles for each of the provisions of this Regulation.*

Amendment 32  
Article 1, paragraph -1 (new)

***-1. The aim of this Regulation 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.***

*Justification*

*The regulation may not only focus on the strengthening of the functioning of the internal market, but in the same time, on an internal market of goods ensuring a high level of consumer protection and product safety.*

Amendment 33  
Article 1, paragraph 1

This Regulation lays down the rules and procedures to be followed by the ***national*** authorities when taking or intending to take a decision, as referred to in Article 2(1), ***affecting*** the free movement of a product lawfully marketed in another Member

***1.*** This Regulation lays down the rules and procedures to be followed by the ***competent*** authorities ***of the Member States*** when taking or intending to take a decision, as referred to in Article 2(1), ***hindering*** the free movement of a product lawfully marketed in another Member State



State.

*and subject to Article 28 of the Treaty.*

*Justification*

*To state more clearly the purpose of this Regulation. The application of technical rules to products lawfully marketed in another Member State is an obstacle that hinders intra-Community trade, as stated in the well-established case-law of the Court of Justice.*

Amendment 34  
Article 1, paragraph 2

It also provides for the establishment, ***in each Member State***, of Product Contact Points for the provision of information ***inter alia on the national technical rules applicable.***

2. It also provides for the establishment of Product Contact Points ***in the Member States*** for the provision of information ***and practical assistance to economic operators and for strengthening administrative cooperation between competent authorities of the Member States.***

*Justification*

*To ensure coherence with the tasks assigned to Product Contact Points in accordance with Article 8 of the Regulation.*

Amendment 35  
Article 2, title (new)

***Scope***

*Justification*

*It is appropriate, for the sake of legal clarity, to indicate titles for each of the provisions of this Regulation.*

Amendment 36  
Article 2, paragraph 1, subparagraph 1, introductory part

1. This Regulation applies to decisions taken in respect of any ***industrially manufactured*** product ***or*** agricultural ***product, including*** fish products, lawfully marketed in another Member State, ***on the basis of a technical rule***, where the direct or indirect effect of that decision is any of

1. This Regulation applies to ***administrative*** decisions taken ***or intended to be taken, on the basis of a technical rule as defined in paragraph 2***, in respect of any product, ***including*** agricultural ***and*** fish products, lawfully marketed in another Member State, where the direct or indirect

the following:

effect of that decision is any of the following:

*Justification*

*The amendment does not extend the scope of this Regulation but provides greater legal clarity. In fact, this Regulation should apply to all products in the non-harmonised area which are lawfully marketed in a Member State. Products made for own-use by the manufacturer are not placed on the market and therefore, they are automatically excluded from the scope.*

Amendment 37

Article 2, paragraph 1, subparagraph 1, point (a)

***a) to ban that product or type of product;                      deleted***

*Justification*

*Point (a) is not necessary since the banning of products is implicitly included in point (b) (to refuse to allow the product to be placed on the market) and point (d) (to withdraw the product from the market).*

Amendment 38

Article 2, paragraph 1, subparagraph 2

For the purposes of point (c) of the first subparagraph, modification of the product or type of product means any modification of one or more of the characteristics of a particular product or a particular type of product as listed in ***a technical specification within the meaning of Article 1(3) of Directive 98/34/EC of the European Parliament and of the Council.***

For the purposes of point (c) of the first subparagraph, modification of the product or type of product means any modification of one or more of the characteristics of a particular product or a particular type of product as listed in ***paragraph 2(a).***

*Justification*

*To avoid legal uncertainty, the reference to a technical rule should be made in accordance with this Regulation instead of with Directive 98/34/EC.*

Amendment 39

Article 2, paragraph 1 a (new)

***1a. This Regulation shall not apply to decisions of a judicial nature taken by***

***national courts or tribunals.***

*(See amendment to Article 3 paragraph 1)*

*Justification*

*The text of Article 3 paragraph 1 is placed instead under Article 2, which deals with the scope of the Regulation.*

Amendment 40  
Article 2, paragraph 2

2. For the purposes of this Regulation, a technical rule means a law, regulation or administrative provision of a Member State, which is not the subject of harmonisation at Community level, ***compliance with which is compulsory for*** the marketing or use of a product or type of product in the territory of ***a*** Member State, and which lays down either of the following:

***a)*** the characteristics required of that product or type of product, such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product or product type as regards the name under which it is sold, terminology, symbols, ***testing and test methods***, packaging, marking or labelling ***and conformity assessment procedures***;

***b)*** 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, such as conditions of use, recycling, reuse or disposal, where such conditions can significantly influence the composition or nature of the product or type of product, or

2. For the purposes of this Regulation, 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*** which:

***(a) prohibits*** the marketing or use of a product or type of product in the territory of ***that*** Member State; ***or***

***(b) compliance with which is compulsory when a product or type of product is marketed or used in the territory of that Member State,***

and which lays down either of the following:

***(i)*** the characteristics required of that product or type of product, such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product or product type as regards the name under which it is sold, terminology, symbols, packaging, marking or labelling;

***(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, such as conditions of use, recycling, reuse or disposal, where such conditions can significantly influence the composition or nature of the product or type of product, or

its marketing.

its marketing;

***(iii) testing and test methods or any test reports or certificates.***

*Justification*

.Amendment 41  
Article 3, title (new)

***Relationship with other provisions of  
Community law***

*Justification*

*It is appropriate, for the sake of legal clarity, to indicate titles for each of the provisions of this Regulation.*

Amendment 42  
Article 3, paragraph 1

***1. This Regulation shall not apply to*** ***deleted***  
***decisions of a judicial nature delivered by***  
***national courts or tribunals.***

*Justification*

*Since Article 3 deals with the relationship of this Regulation with other Community instruments, Article 3 paragraph 1 is better placed under Article 2, dealing with the scope.*

Amendment 43  
Article 3, paragraph 1 a (new)

***1a. This Regulation shall not apply to  
systems and interoperability constituents  
falling within the scope of Directives  
96/48/EC and 2001/16/EC.***

*(See amendment to Article 3 paragraph 3)*

*Justification*

*The text of Article 3 paragraph 3 is placed as a new paragraph 1, for the sake of greater legal*

clarity.

Amendment 44  
Article 3, paragraph 2

2. This Regulation shall not apply in the case of measures taken by the ***national*** authorities of the Member States pursuant to:

a) ***Article 8(d), (e) or (f)*** of Directive 2001/95/EC;

b) ***Article 50(3)(a)*** of Regulation (EC) No 178/2002;

c) ***Article 54 of Regulation (EC) No 882/2004;***

d) Article 14 of Directive 2004/49/EC.

2. This Regulation shall not apply in the case of measures taken by the authorities of the Member States pursuant to:

(a) ***Articles 8(1) points (d) to (f) and 8(3)*** of Directive 2001/95/EC;

(b) ***Articles 50(3)(a) and 54*** of Regulation (EC) No 178/2002;

(d) Article 14 of Directive 2004/49/EC.

*Justification*

*The reference to the Directive on General Product Safety relates only to dangerous consumer goods. The exclusion of Article 54 of Regulation 882/2004 goes against the purpose of Article 3. Article 54 establishes that when the competent authority identifies non-compliance with food or feed law, whether at Community level or at national level, it shall take action including for example, the restriction or prohibition of the placing on the market of feed or food. Therefore, the consequence of its exclusion from the scope of this Regulation would be that, when the competent authority identifies non-compliance of food/feed with their national law, it would be able to take any of those actions, which is against the principle of mutual recognition.*

Amendment 45  
Article 3, paragraph 3

***3. This Regulation shall not apply to systems and equipment falling within the scope of Directive 96/48/EC and Directive 2001/16/EC.***

***deleted***

*(Text moved to paragraph 1a)*

*Justification*

*To provide greater legal clarity.*

Amendment 46  
Chapter II, title

***Application*** of a technical rule

***Procedure for the application*** of a  
technical rule ***of the Member State of  
destination***

*Justification*

*Chapter II describes the procedure by which the Member State of destination may decide to refuse mutual recognition and to apply instead its own technical rules to products lawfully marketed in another Member State.*

Amendment 47  
Article 3 a (new)

***Article 3 a***

***Information on the product***

***Where the competent authority of the Member State of destination submits a product or type of product to an evaluation as to whether or not to adopt a decision as referred to in Article 2(1), it may request from the economic operator, with due regard to the principle of proportionality, in particular, any of the following:***

***(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.***

*Justification*

*The economic operator may need to provide information about the lawful marketing of the product. Not all products are regulated by technical rules in all Member States and yet, the products are lawfully marketed. The intended decision by the competent authorities needs to be based on the characteristics of the product, thus information about the product is relevant.*

Amendment 48  
Article 3 b (new)

***Article 3b***

***Mutual recognition of the level of  
competence of accredited conformity  
assessment bodies***

***For reasons related to its competence,  
Member States shall not refuse certificates  
and reports delivered by a conformity  
assessment body, the competence of which  
has been duly attested by an accreditation  
certificate for the appropriate field of  
conformity assessment activity granted in  
accordance with Regulation (EC) No .../...  
[setting out the requirements for  
accreditation and market surveillance  
relating to the marketing of products].***

***Justification***

*Certificates and test reports can no longer be refused on the sole ground of lack of competence of a conformity assessment body, which has been accredited in accordance with the proposed Regulation setting out requirements for accreditation and market surveillance activities. If a conformity assessment body is no longer competent, it will be up to the national accreditation body to adopt the necessary measures. However, competent authorities may still refuse certificates on other grounds (test reports are incomplete, additional tests are needed etc), if the competent authorities justify it in accordance with the procedure established in Article 4 of this Regulation.*

**Amendment 49  
Article 4, title (new)**

***Assessment of the need to apply a  
technical rule of the Member State of  
destination***

***Justification***

*It is appropriate, for the sake of legal clarity, to indicate titles for each of the provisions of this Regulation.*

**Amendment 50  
Article 4, paragraph 1**

1. Where ***a national*** authority intends to adopt a decision as referred to in Article 2(1), it shall send the economic operator

1. Where ***the competent*** authority ***of the Member State of destination*** intends to adopt a decision as referred to in Article

identified in accordance with Article 5 written notice of its intention, specifying the technical rule on which the decision is to be based and setting out **sufficient** technical or scientific evidence that the intended decision is justified on one of the grounds of public interest listed in Article 30 of the Treaty or by reference to another overriding *requirement in the* public interest, and **that it** is appropriate for securing the attainment of the objective pursued and does not go beyond what is necessary in order to attain that objective.

The economic operator concerned shall, following receipt of such notice, be allowed at least twenty working days in which to submit comments

2(1), it shall send the economic operator identified in accordance with Article 5 written notice of its 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 listed in Article 30 of the Treaty or by reference to another overriding *reason of* public interest, and

**(b) the intended decision** is appropriate for securing the attainment of the objective pursued and does not go beyond what is necessary in order to attain that objective.

***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 such 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. If no reply is received from the economic operator within that time, the competent authority may take action.***

#### *Justification*

*When assessing the need to take a decision, the Member State of destination needs to base the analysis on the characteristics of the product and not on the existence or the content of the technical rules in the Member State where the product was lawfully marketed.*

#### Amendment 51

##### Article 4, paragraph 2, subparagraph 1

2. Any decision as referred to in Article

2. Any decision as referred to in Article



2(1) shall be notified to the economic operator **concerned** and shall state the reasons on which it is based, including the reasons for rejecting **any** arguments put forward by the operator.

2(1) shall be **taken and** notified to the economic operator **and the Commission**, **within 20 working days following the expiry of the deadline for receipt of comments from the economic operator, as referred to in paragraph 1 of this Article. It shall take due account of those comments** and shall state the reasons on which it is based, including the reasons for rejecting **the** arguments, **if any**, put forward by the operator, **and the technical or scientific evidence as referred to in paragraph 1 of this Article.**

Amendment 52  
Article 4, paragraph 2, subparagraph 2

It shall also specify the remedies available under the provisions in force in the Member State concerned and the time limits applying to such remedies.

It shall also specify the remedies available under the provisions in force in the Member State concerned and the time limits applying to such remedies. **Any decision may be challenged before national courts or tribunals or other instances of appeal.**

*Justification*

*For the sake of greater legal clarity, the text of Article 6 is placed under Article 4*

Amendment 53  
Article 4, paragraph 3

3. Where, after giving written **notification** in accordance with paragraph 1 *of this Article*, the **national** authority decides not to adopt a decision as referred to in Article 2(1), it shall inform the economic operator concerned accordingly.

3. Where, after giving written **notice** in accordance with paragraph 1, the **competent** authority **of the Member State of destination** decides not to adopt a decision as referred to in Article 2(1), it shall **immediately** inform the economic operator concerned accordingly.

*Justification*

*If the competent authority decides to apply the principle of mutual recognition, the economic operator should be informed immediately.*

Amendment 54  
Article 4, paragraph 3 a (new)

***3a. When, following the procedure laid down in this Article, the competent authority of the Member State of destination fails to notify to the economic operator a decision as referred to in Article 2(1) within the time period specified in paragraph 2 of this Article, the product shall be deemed to be lawfully marketed in the Member State of destination.***

*Justification*

*To provide greater legal certainty to the economic operator.*

Amendment 55  
Article 4 a (new)

***Article 4a***

***Interim measures***

***1. During the application of the procedure laid down in this Chapter, the competent authority of the Member State of destination shall not temporarily suspend the marketing of the product or type of product in question, except where any of the following conditions are met:***

***(a) the product or type of product in question, under normal or reasonably foreseeable conditions of use, poses a serious risk to the safety and health of users; or***

***(b) the product or type of product in question is subject to a total ban, exclusively on grounds of public morality or public security, in the Member State of destination as regards its manufacturing and marketing;***

***2. The competent authority of the Member State of destination shall immediately***

*inform the economic operator and the Commission of the adoption of interim measures as referred to in paragraph 1. For the measures referred to in paragraph 1 point (a), the notification shall be accompanied by the technical or scientific justification for those measures.*

*3. Interim measures adopted in accordance with this Article may be challenged before national courts or tribunals or other instances of appeal.*

Amendment 56  
Article 5

*Article 5*

*Information to the economic operator*

*The written notice referred to in Article 4(1) shall be sent to the producer within the meaning of Article 2(e) of Directive 2001/95/EC, when his identity and contact details appear on the packaging or labelling of the product, or in the accompanying documents.*

*The written notice shall be sent to the distributor within the meaning of Article 2(f) of Directive 2001/95/EC, when his identity and contact details appear on the packaging or labelling of the product, or in the accompanying documents.*

*When the identity and contact details of the producer and distributor appear neither on the packaging or labelling of the product nor in the accompanying documents, the written notice shall be sent to any other producer or distributor within the meaning of the provisions referred to in the first and second paragraphs.*

*The request for information, the written notice and the decision referred to in Articles 4 and 4a shall be sent to the economic operator, being the following:*

*(a) the manufacturer of the product, when he is established in the Community, and any other person presenting himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark, or the person who reconditions the product; or*

*(b) where the competent authority cannot identify the identity and contact details of any of the economic operators referred to in point (a) – the manufacturer’s representative, when the manufacturer is not established in the Community or, if there is no representative established in the Community, the importer of the product; or*

*(c) where the competent authority cannot identify the identity and contact details of any of the economic operators referred to in points (a) and (b) – other professionals*

***in the supply chain, insofar as their activities may affect any property of the product which is regulated by the technical rule which is being applied to it; or***

***(d) where the competent authority cannot identify the identity and contact details of any of the economic operators referred to in points (a), (b) and (c) – any professional in the supply chain whose activity does not affect any property of the product which is regulated by the technical rule which is being applied to it.***

#### *Justification*

*This amendment aims to provide greater legal certainty as to who is to be notified under Articles 4 and 4a. The definition of "economic operator", based on the definitions of "producer" and "distributor" in Directive 2001/95/EC has been written out in full rather than being incorporated by reference as in the Commission's proposal. This is partly because it is better for readers of this relatively short Regulation not to have to turn to other pieces of legislation in order to find out what its key provisions mean, and partly because the definitions of "producer" and "distributor" in Directive 2001/95 do not quite work in the context of this Regulation. Directive 2001/95 is concerned with product safety. But the technical rules with which this Regulation is concerned do not relate only to safety matters: they include, for example, hallmarking of precious metals. It is therefore appropriate to adapt the references to professionals in the supply chain whose activity does or does not affect the safety of the product to refer to professionals in the supply chain whose activity does or does not affect any property of the product which is regulated by the technical rule which is being applied to it.*

#### **Amendment 57 Article 6**

##### **Article 6**

***deleted***

***Any decision as referred to in Article 2(1) may be challenged before the national courts.***

#### *Justification*

*The text of Article 6 is placed under Article 4 paragraph 2 for the sake of greater legal clarity.*

Amendment 58  
Article 7, title (new)

***Establishment of Product Contact Points***

*Justification*

*It is appropriate, for the sake of legal clarity, to indicate titles for each of the provisions of this Regulation.*

Amendment 59  
Article 7, paragraph 1

1. ***Each*** Member ***State*** shall designate ***one or more*** Product Contact Points in ***its*** territory and shall communicate their contact details to the other Member States and to the Commission.

1. Member ***States*** shall designate Product Contact Points in ***their*** territory and shall communicate their contact details to the other Member States and to the Commission.

*Justification*

*To respect the division of responsibilities and powers among Member States. Thus, the number of Product Contact Points may vary according to regional or local competences.*

Amendment 60  
Article 7, paragraph 2

2. The Commission shall ***publish*** and regularly update the list of Product Contact Points.

2. The Commission shall ***elaborate*** and regularly update the list of Product Contact Points ***and publish it in the Official Journal of the European Union.***

***The Commission shall also make this information available through a website.***

*Justification*

*The list of Product Contact Points would be made official by its publication in the Official Journal of the EU. For practical reasons, this list should also be available on the website established in accordance with this Regulation.*

Amendment 61  
Article 8, title (new)

## Tasks

### Justification

*It is appropriate, for the sake of legal clarity, to indicate titles for each of the provisions of this Regulation.*

### Amendment 62 Article 8, paragraph 1

1. Product Contact Points shall provide, **upon** request, the following information:

a) the technical rules applicable to a specific type of product in the **national** territory;

b) the contact details of the **national** authorities enabling them to be contacted directly, including the particulars of the authorities responsible for supervising the implementation of the particular technical rules in the national territory;

c) the remedies generally available in the national territory in the event of a dispute between the competent authorities and a producer or a distributor;

***d) the contact details of any associations or organisations other than the national authorities, from which producers or distributors may obtain practical assistance in the national territory.***

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

(a) the technical rules applicable to a specific type of product in the territory ***of those Product Contact Points, 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 this Regulation in the territory of that Member State;***

(b) the contact details of the ***competent authorities within their Member State*** enabling them to be contacted directly, including the particulars of the authorities responsible for supervising the implementation of the particular technical rules in the national territory;

(c) the remedies generally available in the national territory in the event of a dispute between the competent authorities and a producer or a distributor.

Amendment 63  
Article 8, paragraph 2

2. Product Contact Points shall respond within **twenty** working days of receipt of any request **to transmit the information** referred to in **paragraph 1**.

**3a.** Product Contact Points shall respond within **ten** working days of receipt of any request **for information or assistance** referred to in **paragraphs 1 and 3**. **In cases where the request is unfounded, the Product Contact Point shall inform the economic operator accordingly without delay.**

*Justification*

*The Product Contact Point may assist the economic operator during the procedure described in Chapter II under which the economic operator needs to provide information (Article 3a) or submit comments (Article 4) within 20 working days. Therefore, the Product Contact Point should respond in less than 20 working days. Furthermore, the Product Contact Point may check the details of the request from the economic operator to decide whether it relates to the application of this Regulation. Finally, it is more logical to place this provision after paragraph 3, since the amendment makes reference to that paragraph.*

Amendment 64  
Article 8, paragraph 3

3. **The** Product Contact Point in the Member State in which the **producer and distributor** concerned **have** lawfully marketed the product in question **shall be informed of written notices and decisions under Article 4, unless the disclosure of such information would undermine the protection of commercial interests of that economic operator, including intellectual property rights. That Product Contact Point shall have the right to submit its observations to the national authority concerned.**

3. **A** Product Contact Point in the Member State in which the **economic operator** concerned **has** lawfully marketed the product in question **may assist the economic operator by providing any necessary information or observations to the economic operator or to the competent authority as referred to in Article 4.**

***The assistance to the economic operator shall not include the provision of legal advice in individual cases.***

*Justification*

*It is important for companies, in particular SMEs, to obtain practical assistance with administrative procedures for trading across borders. The economic operator may therefore*

*request practical assistance from the Product Contact Point where the economic operator has already lawfully marketed the product.*

Amendment 65  
Article 8, paragraph 3 b (new)

***3b. Where a Product Contact Point assists the economic operator, it may liaise with a Product Contact Point of the Member State of destination.***

*Justification*

*Administrative cooperation will be enhanced by liaison between the Product Contact Points concerned.*

Amendment 66  
Article 8, paragraph 3 c (new)

***3c. Product Contact Points shall not charge any fee for information or assistance as referred to in this Article.***

*Justification*

*Contrary to the Points of single contact established in Directive 2006/123/EC on services in the Internal market, where providers may complete all administrative procedures and formalities to provide cross-border services, Product Contact Points established in this Regulation are designed to act as "helpdesks" for businesses when trading across borders, and for competent authorities when seeking to cooperate with other Member States. Therefore, Product Contact Points should be free of charge. However, this does not prevent Member States from entrusting the role of Product Contact Points to the Points of single contact laid down in the Services Directive or to other existing contact point.*

Amendment 67  
Article 9

***Article 9***  
***Telematic network***

The Commission may establish a telematic network for the implementation of the exchange of information between Product Contact Points under this Regulation, in accordance with the procedure provided for

The Commission may establish a telematic network for the implementation of the exchange of information between Product Contact Points ***and/or the competent authorities of the Member States*** under



in Article 11(2).

this Regulation, in accordance with the procedure provided for in Article 11(2).

*Justification*

*Administrative cooperation will be enhanced by improving dialogue and facilitating contacts between Member States' administrations.*

Amendment 68  
Article 10, title (new)

***Reporting obligations***

*Justification*

*It is appropriate, for the sake of legal clarity, to indicate titles for each of the provisions of this Regulation.*

Amendment 69  
Article 10, paragraph 1

1. Member States shall send to the Commission, ***upon its request***, an in-depth report on the ***implementation*** of this Regulation, including detailed information about any written notices or decisions sent pursuant to ***Article 4(1), (2) or (3)***.

1. Member States shall send to the Commission, ***on a yearly basis***, an in-depth report on the ***application*** of this Regulation, including detailed information about any written notices or decisions sent pursuant to ***Article 4, including any relevant information regarding the type of products affected***.

*Justification*

*Decision 3052/95/EC, which will be repealed by this Regulation, established that Member States needed to inform the Commission and the other Member States when they had refused mutual recognition. However, this was not done in practice. In order to ensure that the principle of mutual recognition is correctly applied by the Member States, this Regulation should establish effective and regular monitoring mechanisms.*

Amendment 70  
Article 10, paragraph 1 a (new)

***1a. In light of the information provided by Member States as referred to in***

*paragraph 1, the Commission shall analyse the decisions and measures taken and make an assessment of their justification.*

*Where necessary, the Commission shall take appropriate steps, including proceedings provided for in Article 226 of the Treaty, in order to ensure that the Member States concerned comply with this Regulation.*

#### *Justification*

*In order to ensure that the principle of mutual recognition is correctly applied by the Member States, this Regulation should establish effective and regular monitoring mechanisms, where the Commission plays a crucial role.*

#### Amendment 71 Article 10, paragraph 2

2. The Commission shall, within **five** years following the date specified in Article 13, submit a report on the **implementation** of this Regulation to the European Parliament and the Council.

2. The Commission shall, within **three** years following the date specified in Article 13, **and every five years thereafter, 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.**

#### *Justification*

*Parliament and Council should be regularly informed in order to monitor the application of the principle of mutual recognition by the Member States. The evaluation carried out by the Commission could also serve to identify sectors where further harmonisation or other Community measures might be appropriate, in order to improve the functioning of the internal market.*

#### Amendment 72 Article 10, paragraph 2 a (new)

**2a. The Commission shall establish, publish and regularly update an indicative**

***list of products falling within the scope of this Regulation. The Commission shall make this list accessible through a website.***

*Justification*

*One of the reasons why the free movement of goods is far from being achieved in the non-harmonised area, is the lack of legal certainty about the scope of the principle of mutual recognition. It is often unclear to which categories of products mutual recognition applies. This means that, for every special aspect of a product, companies and administrations need to examine first whether it is regulated at Community level, before concluding whether mutual recognition applies. The Commission could therefore establish a list of products in order to provide legal certainty about the scope of this Regulation, provided that such a list is purely indicative.*

Amendment 73  
Article 11, title (new)

***Committee procedure***

*Justification*

*It is appropriate, for the sake of legal clarity, to indicate titles for each of the provisions of this Regulation.*

Amendment 74  
Article 12, title (new)

***Repeal***

*Justification*

*It is appropriate, for the sake of legal clarity, to indicate titles for each of the provisions of this Regulation.*

Amendment 75  
Article 13, title (new)

***Entry into force and application***

*Justification*

*It is appropriate, for the sake of legal clarity, to indicate titles for each of the provisions of this Regulation.*

Amendment 76

Article 13, subparagraph 1 a (new)

***Articles 7 and 8 shall apply from [the first day of the month following six months after the date of publication].***

*Justification* Member States will require time to set up the Product Contact Points. Since Member States are encouraged to entrust this role to existing structures, and in particular, contact points established in accordance with other Community instruments, a transitional period of six months should be sufficient.

## EXPLANATORY STATEMENT

### 1. Introduction

The Internal Market is the cornerstone of Europe's economic growth, which is built on the four freedoms: free movements of people, goods, services and capital. For a fully functioning internal market for goods, the elimination of technical obstacles is fundamental.

In the field of goods this can be done through the harmonisation of technical rules of Member States or through mutual recognition of technical rules of Member States. The harmonized area covers 75% of the Internal market (approximately €1,5 trillion) for goods and the non-harmonized (for which mutual recognition should apply) cover the remaining 25% (approximately 500 billion).

The cost of the non-application of mutual recognition has been estimated at around €150 billion.

The present proposal for regulation aims at removing barriers to the proper application of mutual recognition.

### 2. Background information on Mutual Recognition

The Mutual Recognition Principle derives from the jurisprudence of the ECJ, in particular from the well-known case *Cassis de Dijon* of 20 February 1979. The principle is based on a rule and an exception:

a) **General rule:** a Member State cannot, in principle, prohibit or restrict the sale on its territory of goods which are lawfully produced and marketed in another Member State, even if those goods do not fully comply with the rules of the Member State of destination.

b) **Exception:** in the absence of harmonisation, the Member State may depart from this principle and take measures prohibiting or restricting access by such goods to the national market, only if those measures are (i) necessary, (ii) proportionate and (iii) are justified on the grounds described in Article 30 EC Treaty or on the basis of overriding requirements in the general interest.

There are two broad categories of products to which mutual recognition applies:

(i) products for which there is no harmonisation of laws at EU level. This category includes for example bicycles, ladders, scaffolding, articles of precious metal, childcare articles, tanks and containers.

(ii) products which are partially harmonised. The functionality, for instance, of climatic and

efficiency aspects of alarm systems are not harmonised but all other aspects are. This category also includes (among others) textiles, footwear, information technology, specific types of motor vehicles, electrical material and certain foodstuffs.

There are three main reasons for the weak functioning of mutual recognition:

- (i) Member states not applying the principle correctly or at all.
- (ii) Lack of knowledge on the part of both the economic operators and Member States about the principle of mutual recognition.
- (iii) Legal uncertainty on how the principle should be implemented in practice.

### **3. Main points of the Commission's proposal**

*Scope of the proposal* (Articles 2 and 3). The regulation applies to decisions having the direct or indirect effect that the product lawfully marketed in another Member State cannot remain or cannot be put on the market of another Member State in its current form. Products concerned fall under technical rules which are not subject of harmonisation at Community level.

*Procedure in case a Member State intends to apply its own technical rules* (Articles 4, 5 and 6). In case the authority decides to implement its own technical rule (i.e. when mutual recognition is not applied for any reason), the authority is required to justify the reasons for doing so. The economic operator concerned is given 20 days to react on the justification of the authorities before the authorities can take the final decision on applying or not applying its own technical rules.

*Tasks of the Product Contact Points* (Articles 7 and 8). The main task involves providing information on technical rules to enterprises and to the competent authorities of other member States.

*Telematics network* (Article 9). This article gives the possibility to establish a telematics network, in accordance with Decision 2004/387/EC to enhance the application of mutual recognition.

*A reporting scheme* (Article 10) on the implementation of this regulation is laid down in this article.

### **4. Rapporteur's position**

The Rapporteur fully endorses the Commission's aim at making the principle of mutual recognition to work up to its full potential and to give legal clarity to economic operators as well as to Member States on how the principle should be implemented.

#### ***Subject-matter and scope (Chapter 1)***

## *Article 1*

The Rapporteur considers that the Proposal should state more clearly its principal aim, namely to ensure the free movement of goods in the non-harmonised area.

## *Article 2*

### Paragraph 1

In order to bring more legal clarity, industrially manufactured products have been changed to all products. Products produced for own use, for example, are still excluded as these products are not marketed in any Member State at any point of time.

The Rapporteur considers that to ban a product is equivalent to the refusal or withdrawal of the product from the market.

### Paragraph 2

The definition of 'technical rule' has been taken from Directive 98/34/EC. For enhanced clarity the Rapporteur groups testing and certificates as a separate sub-paragraph. Whereas the existence of conformity assessment procedures (or prior authorisation procedures in line with ECJ rulings) do not constitute a technical rule, all testing and test methods and certificates are technical rules and thus within the scope of this regulation. It is essential to avoid unjustified additional testing of products in the Member State of destination with the means of this regulation.

## *Article 3*

In the exclusions from the scope of this regulation the Rapporteur sees Article 54 of Regulation (EC) No 882/2004 unnecessary as Regulation (EC) No 178/2002 already ensures that dangerous food or feed can be withdrawn from the market. However, exclusion of Article 54 of Regulation (EC) No 882/2004 would enable Member states to withdraw products which do not comply with their own national legislation from the market without needing to apply the principle of mutual recognition.

### ***Procedure for the application of a technical rule of the Member State of destination. (Chapter 2)***

## *Article 3a (new)*

The Rapporteur sees that Article 4 of this regulation depicts a culmination of regular market surveillance activities. Normally before that point of culmination the economic operator and the competent authority of the Member State engage into a market surveillance dialogue. The Rapporteur deems necessary to clarify that during this dialogue the economic operator needs to provide information about the provisions under which the product has been marketed in

another Member State.

#### *Article 4*

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. Thus, the economic operator will have at least 20 days to react to the notice. After these, the Member State still holds a period of 20 working days to come up with its final decision taking into account the comments of the economic operator. Whatever the final decision of the Member State, the economic operator can plan its activities with more certainty concerning the timing of this decision.

If no final decision is issued by the Member State, the product is deemed to be legally on the market of that Member State.

#### *Article 4a (new)*

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. The Member State needs still to show scientific evidence and take into account the comments of economic operator while issuing the final decision. Thus the final decision can be opposite to the interim measure of withdrawal from the market.

#### *Article 5*

In this article the Rapporteur has seeks to clarify to whom the notice and decision done by the Member State should be sent.

#### *Article 6*

To give greater coherence to Chapter 2, the Rapporteur includes the text of Article 6 to the Paragraph 2 of Article 4.

### ***Product Contact Points (Chapter 3)***

#### *Articles 7 and 8*

The Rapporteur amends these two articles to clarify that the Product contact points should:

- provide first and foremost information on the principle of mutual recognition and the subsequent rights of the economic operators and of the Member States.
- serve as helpdesks providing practical (but by no means legal) assistance on the



implementation of the principal of mutual recognition.

- provide information both to the economic operators as well as to the competent authorities of the Member States.
- liaise with one another across countries to form an efficient network of information.

### ***Final Provisions (Charter 4)***

#### *Article 10*

The Rapporteur believes that the term «upon its request» creates legal uncertainty for Member States, which cannot know when exactly they will need to fulfil their reporting obligations. Hence, the Rapporteur introduces a yearly reporting obligation to Member States. This would further ensure, that the Commission is regularly informed about the application of this regulation in the Member States. The Commission shall also analyse these reports and act upon infringements.

In order to raise awareness on the principle of mutual recognition and to give further guidance to economic operators on the areas where the principle applies, the Rapporteur deems necessary for the Commission to publish an indicative list of products falling under the scope of this regulation. The list would by no means even attempt to be exhaustive and would serve merely as an indication through examples.

#### *Article 13*

The Rapporteur considers that the Member States need to be given six months time to set up the Product Contact Points upon entry into force of the regulation.

The regulation itself, however should enter into force within 20 days of its publishing. This would give the economic operator the possibility to use mutual recognition in a more efficient manner from the beginning on be it then even without the assistance of Product Contact Points in the first six months.

17.9.2007

## **OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY**

for the Committee on the Internal Market and Consumer Protection

on the proposal for a Regulation 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 3052/95/EC (COM(2007)0036 – C6-0065/2007 – 2007/0028(COD))

Draftsman: Jan Březina

### **SHORT JUSTIFICATION**

The free movement of goods is one of the four basic freedoms on which the European Union is founded. The Union has succeeded in achieving this freedom by, in particular, abolishing customs duties and through other measures such as harmonising technical requirements on certain categories of products. Nevertheless, there are still a number of products whose technical parameters have not been harmonised at EU level. This has allowed Member States to impose requirements on such products in their own legislation. However, this practice has created significant and costly administrative obstacles for traders, who have had to go through additional administrative procedures and adapt their products in the non-harmonised field in order to export them to other Member States. In a number of cases, this has led to traders deciding not to export their products to certain countries.

In 1979, a solution was found by the European Court of Justice, which, in its judgment on the ‘Cassis de Dijon’ case, established a ‘principle of mutual recognition’ on the basis of the EC Treaty. According to this principle, goods produced or placed on the market in one Member State may have access to the market of another Member State even if they do not entirely fulfil the relevant national requirements. This approach is perfectly understandable because it can be assumed that the public interest, e.g. protection of health or of the environment, is safeguarded in a similar way in the different Member States. A Member State may restrict access to its market only when it can demonstrate that the public interest is threatened.

For clarification, it should be pointed out that the principle of mutual recognition does not apply to non-quality products that are immediately dangerous or harmful to consumers. Pursuant to Directive 2001/95/EC on general product safety, such products may be withdrawn from the market immediately and information on their incidence communicated by the

national authorities to other Member States through the Community Rapid Information System (RAPEX).

However, according to information provided by the Member States and the Commission, the situation, even after 25 years of application of the principle of mutual recognition in the EU, is unsatisfactory. It is common practice for national authorities in the Member States to request that traders adapt their products to local rules and undergo costly and time-consuming processes, such as subjecting products to local checks, although in the majority of cases this contravenes European law.

That is why the Commission has come forward with a draft regulation intended to increase legal certainty for traders – and for national authorities themselves – by setting clear rules on mutual recognition. The draft regulation contains several key aspects:

- a compulsory procedure for national authorities in the event that they decide not to apply the principle of mutual recognition but instead to restrict the movement of a product from another Member State onto their market;
- sufficient time for observations to traders to be acted upon before a final written decision is issued by the national authority;
- concerning the information submitted by the trader, the national authority must justify its final decision in writing;
- the national authority also bears the burden of proof as to why it deems it necessary to restrict access of a product from another Member State to its market and why a special national rule needs to be applied;
- the trader can also appeal against such a decision in court;
- an important part of the proposal is the creation of contact and information points in individual EU Member States from whom both national authorities and traders can request information on specific products. These points will be connected in a ‘telematic’ network.

Concerning the application of the principle of mutual recognition in the non-harmonised field of products and the text of the proposal, the draftsman of the opinion of the Committee on Industry, Research and Energy welcomes the Commission’s proposal because it is of great significance for the implementation of the principle of mutual recognition and for the free movement of goods. This is because practice has not, to date, been uniform. Although the principle itself is enshrined in Articles 28 and 30 of the EC Treaty, several companies are confronted with problems when seeking access to another market within the EU, often because of ignorance of the existence or scope of the principle. The proposal itself rightly transfers the burden of proof back to the Member States, who must demonstrate that a product fulfils one of the criteria laid down in Article 30 of the Treaty or in other judgments of the European Court of Justice and that, therefore, the principle of mutual recognition does not have to be applied.

Concerning current practice and the different positions of national authorities and traders exporting their products to the markets of other Member States, the draftsman is of the opinion that the proposal will strike a fair balance between traders and the state bodies taking decisions on market access.

The draftsman proposes the following changes in particular:

- it is vital that there should be access to relevant national technical rules on which the decision of the national authority is based, particularly for small and medium-sized enterprises (SMEs). An addition to Article 4(1) is therefore made to include a binding commitment on national authorities to attach to their decision a copy of the appropriate technical standards or at least information as to where the relevant technical standards may be consulted.
- As cooperation between contact points at national and European level is of vital importance and ensures better exchange of information on national legislation and specific implementation of national norms, it is proposed that Article 9 be changed accordingly.

## AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission <sup>1</sup>	Amendments by Parliament
<p style="text-align: center;">Amendment 77 Article 2, paragraph 1, subparagraph 1, introductory part</p>	
<p>1. This Regulation applies to decisions taken in respect of any <b><i>industrially manufactured product or agricultural product, including fish products</i></b>, lawfully marketed in another Member State, on the basis of a technical rule, where the direct or indirect effect of that decision is any of the following:</p>	<p>1. This Regulation applies to decisions taken in respect of any <b><i>goods</i></b> lawfully marketed in another Member State, on the basis of a technical rule, where the direct or indirect effect of that decision is any of the following:</p>

### *Justification*

*Consistency with the terminologies used in the Treaty and in the ECJ jurisprudence.*

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<sup>1</sup> Not yet published in OJ.

Amendment 78  
Article 2, paragraph 1, subparagraph 1, point (b)

(b) to refuse to allow the **product** or type of **product** to be placed on the market;

(b) to refuse to allow the **goods** or type of **goods** to be placed on the market **or used**;

*Justification*

*Some national technical rules draw a line between the following two concepts: 'the placing of a product on the market' and 'the use of a product'. Thus there are types of products, which can be placed on the market but cannot be used in certain conditions. This wording would enable to cover the whole scale of possible situations.*

Amendment 79  
Article 2, paragraph 1, subparagraph 1, point (c)

(c) to require modification of the **product** or type of **product** before it can be placed or kept on the market;

(c) to require modification **or certification** of the **goods** or type of **goods** before **they** can be placed or kept on the market;

*Justification*

*The current wording of the regulation prohibits Member States from requesting that traders adapt their products to the technical requirements of the importing country. However, traders are often required to have their products checked in the importing country despite the fact that their products have been checked in the country in which they were produced and have the appropriate certificates. This is in contravention of the principle of mutual recognition and represents more unnecessary expense for traders. Requesting unjustified checks is therefore just as harmful as requesting that products be adapted.*

Amendment 80  
Article 2, paragraph 1, subparagraph 2

For the purposes of point (c) of the first subparagraph, modification of the **product** or type of **product** means any modification of one or more of the characteristics of a particular **product** or a particular type of **product** as listed in **a technical specification within the meaning of Article 1(3) of Directive 98/34/EC of the European Parliament and of the Council**.

For the purposes of point (c) of the first subparagraph, modification of the **goods** or type of **goods** means any modification of one or more of the characteristics of particular **goods** or a particular type of **goods** as listed in **paragraph 2(a)**.

### *Justification*

*There is no reason to refer to Directive 98/34/EC of the European Parliament and of the Council, as the relevant provisions of that directive (definition of the technical specification) are set out in Article 2(2)(a). It is, therefore, simpler and clearer from a legislative point of view to replace the reference to Directive 98/34/EC with a reference to Article 2(2)(a) of the draft regulation*

### Amendment 81

Article 4, paragraph 1, subparagraph -1 (new)

***-1. It is for the national authority to show in each case that the application of national technical rules to specific goods lawfully marketed in another Member State is justified on the grounds set out in Article 30 of the EC Treaty or by reference to an overriding requirement in the public interest.***

### *Justification*

*The burden of proof must be clearly stated not only in the recitals (Recital 14 of the proposal) but in the body of the proposal itself.*

### Amendment 82

Article 4, paragraph 1, subparagraph 1

1. Where a national authority intends to adopt a decision as referred to in Article 2(1), it shall send the economic operator identified in accordance with Article 5 written notice of its intention, specifying the technical rule on which the decision is to be based and setting out sufficient technical or scientific evidence that the intended decision is justified on one of the grounds of public interest listed in Article 30 of the Treaty or by reference to another overriding requirement in the public interest, and that it is appropriate for securing the attainment of the objective pursued and does not go beyond what is necessary in order to attain that objective.

1. Where a national authority intends to adopt a decision as referred to in Article 2(1), it shall send the economic operator identified in accordance with Article 5, ***as well as the Commission and the Product Contact Point in that Member State***, the written notice of its intention, specifying the technical rule on which the decision is to be based and setting out sufficient technical or scientific evidence that the intended decision is justified on one of the grounds of public interest listed in Article 30 of the Treaty or by reference to another overriding requirement in the public interest, and that it is appropriate for securing the attainment of the objective pursued and does not go beyond what is necessary in order to attain

that objective.

*Justification*

*By imposing on national authorities the obligation to inform the Commission and the Product Contact Point foreseen in article 8 of their intention to adopt a decision foreseen in article 2, the objective is to further prevent national authorities from adopting unjustified decision.*

Amendment 83

Article 4, paragraph 1, subparagraph 1 a (new)

***Where a decision of a national authority is based on a national technical rule, the text of that rule shall be attached to the notice, or the notice shall state where that rule can be consulted.***

*Justification*

*Access to the relevant national technical rules must be made easier for economic operators, in particular for SMEs.*

Amendment 84

Article 4, paragraph 1, subparagraph 2

The economic operator concerned shall, following receipt of such notice, be allowed ***at least twenty working days*** in which to submit comments.

The economic operator concerned shall, following receipt of such notice, be allowed ***one month*** in which to submit comments.

*Justification*

*As the proposal sets a 20-day deadline as a minimum ('at least twenty working days'), the length of the period may differ in individual Member States. Setting a single deadline applicable throughout the EU would make a significant contribution to strengthening legal certainty for traders. As for calculating the deadline, it would appear simpler to change it to one month.*

Amendment 85

Article 4, paragraph 3

3. Where, after giving written notification in accordance with paragraph 1 of this Article,

3. Where, after giving written notification in accordance with paragraph 1 of this Article,

the national authority decides not to adopt a decision as referred to in Article 2(1), it shall inform the economic operator concerned accordingly.

the national authority decides not to adopt a decision as referred to in Article 2(1), it shall inform the economic operator concerned accordingly ***without delay***.

*Justification*

*When a trader is served with a written notice of intention to issue a decision restricting the free movement of a product, the trader is in a state of some uncertainty. It is therefore desirable that this period of uncertainty should be kept as brief as possible in case the national authority decides in the end not to restrict the movement of a product. A solution would be to add the words 'without delay' to the last sentence of Article 4(3). The authorities would therefore have to inform the business immediately if restricting measures were not to be imposed, which would avert possible delays on the part of the authorities.*

Amendment 86

Article 8, paragraph 1, point (a)

(a) the technical rules applicable to a specific type of ***product*** in the national territory;

(a) the technical rules applicable to a specific type of ***goods*** in the national territory ***and information on the implementation of the principle of mutual recognition***;

*Justification*

*Contact points should provide information not only on national technical rules but in particular on how the principle of mutual recognition is applied. Extending the obligation to provide information does not require any fundamental increase in the contact points' scope of duties, and information on the principle of mutual recognition is a useful tool for traders operating on the internal market. An increased level of information can boost traders' confidence in the possibility of the principle of mutual recognition, which can lead to a growth in the level of trade in such goods on the EU internal market.*

Amendment 87

Article 9, paragraph -1 (new)

***The Commission shall ensure cooperation and the exchange of information between all Product Contact Points in all Member States.***

*Justification*

*National and cross-border cooperation of Product Contact Points is necessary to ensure*



*better flow of information on restrictive national technical rules and their practical application. Cooperation at European level should be organized by the European Commission, however Member States should also be willing to and cooperate actively.*

Amendment 88  
Article 9

The Commission **may** establish a telematic network for the implementation of the exchange of information between Product Contact Points under this Regulation, in accordance with the procedure provided for in Article 11(2).

The Commission **shall** establish a telematic network for the implementation of the exchange of information between Product Contact Points under this Regulation, in accordance with the procedure provided for in Article 11(2).

*Justification*

*The creation of a telecommunication tool between the Commission and the Product Contact Points is of utmost importance to ensure the smooth functioning of the market, therefore its creation and use should be mandatory. Consistent with am. 2.*

Amendment 89  
Article 10, paragraph 2

2. The Commission shall, **within five years following** the date specified in Article 13, submit a report on the implementation of this Regulation to the European Parliament and the Council.

2. The Commission shall, **two years after** the date specified in Article 13, submit a report on the implementation of this Regulation to the European Parliament and the Council.

*Justification*

*The two years seems to be more reasonable time to provide the European parliament and the Council with the implementation report. The same time has been used in case of the Directive 98/34/ES.*

Amendment 90  
Article 13

This Regulation shall enter into force **on the 20th day** following **that** of its publication in the Official Journal of the European Union.

This Regulation shall enter into force **three months** following **the date** of its publication in the Official Journal of the European Union.

### *Justification*

*The 20-day deadline for entry into force of the regulation is disproportionately short. A certain amount of time is required, in particular, for the contact points to be set up, for information to be provided to all state administration employees who, in practice, will implement the regulation, and, if necessary, for vital legislative measures to be adopted relating to the new elements introduced by the regulation. For these reasons, it would appear appropriate to increase the deadline to three months.*

## PROCEDURE

<b>Title</b>	Application of certain national technical rules to products lawfully marketed in another Member State
<b>References</b>	COM(2007)0036 - C6-0065/2007 - 2007/0028(COD)
<b>Committee responsible</b>	IMCO
<b>Opinion by</b> Date announced in plenary	ITRE 13.3.2007
<b>Drafts(wo)man</b> Date appointed	Jan Březina 3.5.2007
<b>Discussed in committee</b>	26.6.2007                      17.7.2007
<b>Date adopted</b>	13.9.2007
<b>Result of final vote</b>	+ :                      47 - :                      0 0 :                      0
<b>Members present for the final vote</b>	Šarūnas Birutis, Jan Březina, Philippe Busquin, Jorgo Chatzimarkakis, Giles Chichester, Silvia Ciornei, Den Dover, Nicole Fontaine, Adam Gierak, Norbert Glante, András Gyürk, Erna Hennicot-Schoepges, Ján Hudacký, Romana Jordan Cizelj, Romano Maria La Russa, Eluned Morgan, Angelika Niebler, Reino Paasilinna, Atanas Paparizov, Francisca Pleguezuelos Aguilar, Miloslav Ransdorf, Herbert Reul, Paul Rübig, Andres Tarand, Britta Thomsen, Radu Țîrle, Claude Turmes, Nikolaos Vakalis, Alejo Vidal-Quadras, Dominique Vlasto
<b>Substitute(s) present for the final vote</b>	Alexander Alvaro, Ivo Belet, Danutė Budreikaitė, Joan Calabuig Rull, Manuel António dos Santos, Neena Gill, Françoise Grossetête, Vittorio Prodi, Bernhard Rapkay, Esko Seppänen, Peter Skinner, Silvia-Adriana Țicău
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Luisa Fernanda Rudi Ubeda, Hans-Peter Mayer, Sepp Kusstatscher, Thomas Mann, Rosa Miguélez Ramos

12.9.2007

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on the Internal Market and Consumer Protection

on the proposal for a European Parliament and Council 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  
(COM(2007)0036 – C6-0065/2007 – 2007/0028(COD))

Draftsman: Jacques Toubon

### **SHORT JUSTIFICATION**

Under Articles 28 and 30 of the Treaty Member States of destination cannot forbid the sale on their territories of products which are lawfully marketed in another Member State and which are not subject to Community harmonisation, unless the technical restrictions laid down by the Member State of destination are justified on the grounds described in Article 30 of the EC Treaty, or on the basis of overriding requirements of general public importance recognised by the Court of Justice's case law, and are proportionate. This is the so-called 'principle of mutual recognition'.

The implementation of this principle is hampered by several problems: (i) the lack of awareness of enterprises and national authorities about the existence of the mutual recognition principle; (ii) the legal uncertainty about the scope of the principle and the burden of proof, because it is often unclear to which categories of product mutual recognition applies; (iii) the risk for enterprises that their products will not get access to the market of the Member State of destination; (iv) the absence of regular dialogues between competent authorities in different Member States. It is therefore necessary to lay down procedures to ensure that national technical rules do not create illegal barriers to the free movement of goods between Member States.

The draftsman has made changes to the proposal for a regulation in order to make its scope clearer, to improve access to information for economic operators and to make the Commission's task of monitoring easier. The amendments also seek to increase the responsibility of the Community's executive arm: as the guardian of the Treaties, it has a duty to exercise its monitoring role more actively.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

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Text proposed by the Commission<sup>1</sup>

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Amendments by Parliament

### Amendment 91 Citation 1

Having regard to the Treaty establishing the European Community, and in particular **Articles 37 and 95** thereof,

Having regard to the Treaty establishing the European Community, and in particular **Article 95** thereof,

### Amendment 92 Recital 1

(1) The internal market comprises an area without internal frontiers in which the free movement of goods is ensured under the Treaty, which prohibits measures having equivalent effect to quantitative restrictions on imports. ***That prohibition covers any national measure which is capable of hindering, directly or indirectly, actually or potentially, intra-Community trade in goods.***

(1) The internal market comprises an area without internal frontiers in which the free movement of goods is ensured under the Treaty, which prohibits measures having equivalent effect to quantitative restrictions on imports.

### *Justification*

*This sentence has been replaced by Recitals 1a and 1b, which spell out the ban on any national measure which is capable of hindering intra-Community trade directly or indirectly, actually or potentially.*

### Amendment 93 Recital 1 a (new)

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<sup>1</sup> Not yet published in OJ.

***(1a) Any trade rules in the Member States which are capable of hindering intra-Community trade directly or indirectly, actually or potentially, have to be deemed to be a measure having equivalent effect to quantitative restrictions on imports and, accordingly, are prohibited by Article 28 of the Treaty. Thus, standards which are applicable without distinction to national and imported products and the application of which is likely to reduce their volume of sales also constitute, in principle, measures having equivalent effect which are prohibited by Article 28 of the Treaty.***

#### *Justification*

*The procedure laid down in the proposal for a regulation represents an exception to the principle of mutual recognition. The purpose of Recitals 1a and 1b is to spell out the ban on any national measure which is capable of hindering intra-Community trade directly or indirectly, actually or potentially. They constitute a warning directed at the Member States, based on the case law of the Court of Justice<sup>1</sup>.*

#### *Amendment 94 Recital 1 b (new)*

***(1b) According to the Court of Justice a system which maintains the requirement, even a purely formal one, for import licences or any other similar procedure is, in principle, contrary to Article 30 of the Treaty. The fact of imposing import formalities which create a system of preventive authorisation is actually capable of hindering intra-Community trade and of hindering market access for products which are lawfully manufactured and marketed in other Member States. The obstacle is even more serious if the system exposes the products concerned to additional costs. In such circumstances this***

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<sup>1</sup> See, in particular, the judgments of 11 July 1974, Dassonville, 8/74, ECR p. 837, paragraph 5; 19 June 2003, Commission v Italy, C-420/01, ECR p. I-6445, paragraph 25; 26 May 2005, Burmanjer and others, C-20/3, ECR p. I-4133, paragraph 23; and 20 February 1979 Rewe-Zentral 'Cassis de Dijon', 120/78, ECR p. 649.

***is not a simple restriction or simple prohibition of certain sales arrangements. The fact of imposing preventive authorisation must therefore be considered to constitute a barrier to trade between the Member States which falls within the scope of Article 28 of the Treaty.***

*Justification*

*The purpose of Recitals 1a and 1b is to spell out the ban on any national measure which is capable of hindering intra-Community trade directly or indirectly, actually or potentially. They constitute a warning directed at the Member States, based on the case law of the Court of Justice<sup>1</sup>.*

Amendment 95  
Recital 2

(2) Obstacles to the free movement of goods between Member States may be unlawfully created by the national authorities, in the absence of harmonisation of legislation, as a consequence of applying, to goods coming from other Member States where they are lawfully marketed, technical rules laying down requirements to be met by such goods, such as those relating to designation, form, size, weight, composition, presentation, labelling and packaging. ***The application of such technical rules to products lawfully marketed in another Member States can be contrary to Articles 28 and 30 of the EC Treaty, even if those national rules apply without distinction to all products.***

(2) Obstacles to the free movement of goods between Member States may be unlawfully created by the national authorities, in the absence of harmonisation of legislation, as a consequence of applying, to goods coming from other Member States where they are lawfully marketed, technical rules laying down requirements to be met by such goods, such as those relating to designation, form, size, weight, composition, presentation, labelling and packaging.

*Justification*

*The final sentence of this recital is covered by the new Recitals 1a and 1b.*

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<sup>1</sup> See the judgments of 8 February 1983, Commission v United Kingdom, known as 'UHT milk', 124/81, ECR p. 203, paragraph 9 and 5 July 1990, Commission v Belgium, C-304/88, ECR p. I-2801, paragraph 9; see also the judgment of 26 May 2005, Commission v France, C-212/03, ECR p. I-4213, paragraph 16, and the judgment of 23 October 1977, Franzén, C-189/95, ECR p. 5909, paragraph 71.

Amendment 96  
Recital 7a (new)

***(7a) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services<sup>1</sup> obliges Member States to communicate to the Commission and the other Member States any draft technical rules concerning industrially manufactured products and agricultural (including fish) products and a statement of the grounds which make the enactment of such technical rules necessary. It is necessary, however, to ensure that, following the adoption of a national technical rule, the principle of mutual recognition is correctly applied in individual cases to specific products. This Regulation lays down a procedure for the application of the principle of mutual recognition in individual cases, through the obligation for the national authorities to specify the technical or scientific grounds on which the specific product in its current form cannot be authorised on the national market, in accordance with Articles 28 and 30 of the Treaty. National authorities are not required under this Regulation to state the grounds for the technical rule itself.***

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<sup>1</sup> OJ L 204, 21.7.1998, p. 37. Directive last amended by Council Directive 2006/96/EC (OJ L 363, 20.12.2006, p. 81).

*Justification*

*La directive 98/34 et le règlement doivent être deux systèmes complémentaires, le règlement ne doit pas remettre en cause les procédures de notifications existantes.*

*En outre, en communiquant à la Commission toute règle technique à l'état de projet relative à un produit industriel, un produit agricole ou de la pêche et en lui notifiant les éléments qui le poussent à prendre cette mesure technique, l'Etat membre par la directive 98/34 s'assure ainsi que les contraintes pesant sur les autorités nationales ensuite seront les plus légères possible : il ne devra pas rejuster la règle technique en elle-même. Le présent règlement*



*renforce le système ex ante en obligeant les Etats membres à notifier tout projet de règle technique aux opérateurs économiques concernés par l'intermédiaire des points de contact "produit". Il assure donc une information à l'interlocuteur direct avant que l'entrave ne soit créée et encourage le dialogue entre les entreprises et les Etats membres.*

Amendment 97  
Recital 8 a (new)

***(8a) A distinction must be drawn between the obligation to provide the consumer with specific information concerning the product by affixing certain specifications to the product or by appending to it documents such as instructions for use, and the obligation to provide such information in a given language. This is why the obligation to provide specific information concerning a product by affixing certain specifications to the product or by appending documents to it constitutes a 'technical rule' for the purposes of this Regulation, whereas the obligation to provide mandatory labelling information and instructions for use at least in the language(s) of the area in which those products are to be marketed does not constitute a technical rule within the meaning of this Regulation.***

*Justification*

*The reason for this recital is the concern not only to ensure proper information for operators and consumers but also to clarify the scope of this regulation in accordance with the case law of the Court of Justice. In its COLIM NV judgment (C-33/97) the Court of Justice spelled out what was and was not covered by the idea of a 'technical rule', and this must therefore be clarified in a recital so as to ensure the satisfactory application of this regulation.*

Amendment 98  
Recital 8 b (new)

***(8b) Procedures entailing prior authorisation do not constitute a technical rule within the meaning of this Regulation.***

### *Justification*

*There are national procedures for authorising the marketing of products (medical products). Under Community law, where any prior authorisation procedure is concerned there is no obligation to have a standstill period, and this regulation therefore does not apply.*

### Amendment 99 Recital 9

(9) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety specifies that only safe products may be ***placed on the market***. It entitles the authorities to ban any dangerous product with immediate effect or, for the period needed for the various safety evaluations, checks and controls, to ban temporarily a product that could be dangerous. ***It is necessary, therefore, to exclude from the scope of this Regulation measures*** taken by the national authorities pursuant to national laws implementing Directive 2001/95/EC.

(9) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety specifies that only safe products may be ***marketed, and lays down the obligations of producers and distributors with regard to product safety***. It entitles the authorities to ban any dangerous product with immediate effect or, for the period needed for the various safety evaluations, checks and controls, to ban temporarily a product that could be dangerous. ***Under that Directive the authorities are also entitled to take the requisite steps so as to apply appropriate measures, such as those referred to in Article 8(1)(b)-(f) of the Directive, with the requisite speed in cases where products pose a serious risk. Measures taken by the national authorities pursuant to national laws implementing Article 8(1)(d)-(f) and Article 8(3) of Directive 2001/95/EC should therefore be excluded from the scope of this Regulation.***

### *Justification*

*This amendment clarifies the content of Directive 2001/95/EC on product safety.*

### Amendment 100 Recital 10

(10) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law,

(10) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law,

establishing the European Food Safety Authority and laying down procedures in matters of food safety establishes inter alia a rapid alert system for the notification of a direct or indirect risk to human health deriving from food or feed. It obliges the Member States to immediately notify the Commission under the rapid alert system of any measure they adopt which is aimed at restricting the placing on the market or forcing the withdrawal from the market or the recall of food or feed in order to protect human health and requiring rapid action. Measures taken by the ***national*** authorities pursuant to Article 50(3)(a) of Regulation (EC) No 178/2002 should therefore be excluded from the scope of this Regulation.

establishing the European Food Safety Authority and laying down procedures in matters of food safety establishes inter alia a rapid alert system for the notification of a direct or indirect risk to human health deriving from food or feed. It obliges the Member States to immediately notify the Commission under the rapid alert system of any measure they adopt which is aimed at restricting the placing on the market or forcing the withdrawal from the market or the recall of food or feed in order to protect human health and requiring rapid action. Measures taken by the ***Member States'*** authorities pursuant to Article 50(3)(a) ***and Article 54*** of Regulation (EC) No 178/2002 should therefore be excluded from the scope of this Regulation.

#### *Justification*

*It is necessary to refer to Article 54 of Regulation (EC) No 178/2002, which provides for emergency measures to withdraw products from the market in the event of the Commission failing to act with regard to food safety.*

#### Amendment 101 Recital 11 a (new)

***(11a) This Regulation is without prejudice to Community directives which harmonise measures concerning the protection of human, animal or plant health and which lay down procedures for monitoring compliance with such measures.***

#### *Justification*

*There is a specific procedure concerning the protection of human, animal and plant health which continues to apply, because monitoring is already harmonised within the European Union. Any specific procedure which has already been harmonised is excluded from the scope of the proposal for a regulation (see judgment C-249/92) and is thus not covered by the rules concerning the inversion of the burden of proof, the standstill period, etc.*

#### Amendment 102

#### Recital 14

(14) It is for the national authority to show in each case that the application of national technical rules to specific products lawfully marketed in another Member State falls within the permitted exceptions.

(14) It is for the national authority to show in each case that the application of national technical rules to specific products lawfully marketed in another Member State falls within the permitted exceptions ***and that less restrictive measures cannot be used. The written notice sent to the economic operator by the national authority should enable the former to submit comments, in good faith, on all the relevant aspects of the intended decision to limit access to the market. The authority should consequently inform the economic operator concerned of the technical and scientific reasons for the intended decision, in accordance with the principle of proportionality. If there is no response from the economic operator by the end of the time allowed, there is nothing to prevent the national authority taking more restrictive measures.***

#### *Justification*

*It is essential to balance obligations between the operator and the Member State of destination. Consequently, it has to be ensured that if the economic operator has not responded within the time allowed the State may impose an additional national technical rule.*

#### Amendment 103

##### Recital 23

(23) In view of the development and establishment of a pan-European eGovernment service and the underlying interoperable telematic networks, the possibility of establishing an electronic system for the exchange of information between Product Contact Points should be ***envisaged***, in accordance with Decision 2004/387/EC of the European Parliament and of the Council of 21 April 2004 on the interoperable delivery of pan-European eGovernment services to public administrations, businesses and citizens

(23) In view of the development and establishment of a pan-European eGovernment service and the underlying interoperable telematic networks, the possibility of establishing an electronic system for the exchange of information between Product Contact Points should be ***provided for***, in accordance with Decision 2004/387/EC of the European Parliament and of the Council of 21 April 2004 on the interoperable delivery of pan-European eGovernment services to public administrations, businesses and citizens

(IDABC).

(IDABC).

*Justification*

*It is not enough to envisage the establishment of such a system: it must be provided for. See also the amendment to Article 9.*

Amendment 104

Article 2, paragraph 1, subparagraph 1, introductory part

1. This Regulation applies to decisions taken in respect of any industrially manufactured product or agricultural product, including fish products, lawfully marketed in another Member State, on the basis of a technical rule, where the direct or indirect effect of that decision is any of the following:

1. This Regulation applies to decisions taken in respect of any ***new or used*** industrially manufactured product or agricultural product, including fish products, lawfully marketed in another Member State, on the basis of a technical rule, where the direct or indirect effect of that decision is any of the following:

Amendment 105

Article 2, paragraph 1, subparagraph 1, point (c)

(c) to require modification of the product or type of product before it can be placed or kept on the market;

(c) to require modification of the product or type of product before it can be placed or kept on the market, ***or to permit its use or, in the case of vehicles, its registration or use;***

Amendment 106

Article 3, paragraph 2, point a

(a) Article 8(d), ***(e) or*** (f) of Directive 2001/95/EC;

(a) Article 8***(1)***(d)-(f) ***and Article 8(3)*** of Directive 2001/95/EC;

*Justification*

*The amendment spells out the measures for withdrawal from the market applicable to all product categories in the event of serious risk.*

Amendment 107

Article 3, paragraph 2, point (b)

(b) Article 50(3)(a) of Regulation (EC)  
No 178/2002;

(b) Article 50(3)(a) **and Article 54** of  
Regulation (EC) No 178/2002;

*Justification*

*The amendment hereby excludes from this regulation Article 54 of Regulation (EC) No 178/2002, which provides for emergency measures to withdraw products from the market in the event of the Commission failing to act with regard to food safety.*

Amendment 108

Article 4, paragraph 1, subparagraph 2 a (new)

***National authorities shall not be required to state the grounds for the technical rule itself where this has already been done under Directive 98/34/EC.***

*Justification*

*Given that Recital 7a explains the relationship between the regulation and Directive 98/34, the operative part of the regulation needs to include a reference to that relationship.*

Amendment 109

Article 4, paragraph 3 a (new)

***3a. The national authority shall inform the Commission of the decision to commence the procedure laid down by this article and of all action taken following that decision.***

*Justification*

*To enable the Commission to carry out its monitoring function, it must be informed of the decision to commence the procedure and of all action taken following that decision.*

Amendment 110

Article 5 a (new)

***Article 5a***

***It is for the national authority to show in each case that the application of national technical rules to specific products lawfully marketed in another Member State falls within the permitted exceptions and that less restrictive measures cannot be used. The written notice shall enable the economic operator to submit comments, in good faith, on all the relevant aspects of the intended decision to limit access to the market. The national authority shall consequently inform the economic operator concerned of the technical and scientific reasons for the intended decision, in accordance with the principle of proportionality. If there is no response from the economic operator, the national authority may take measures after the expiry of the time limit.***

#### *Justification*

*It is essential to balance obligations between the operator and the Member State of destination. Consequently, it has to be ensured that if the economic operator has not responded within the time allowed the State may impose an additional national technical rule.*

Amendment 111  
Article 8 a (new)

#### ***Article 8a***

- 1. Each Member State shall collect the information referred to in Article 8(1) in its own database.***
- 2. The Commission shall ensure that the databases are interconnected and shall use the information for the purposes of:***
  - checking the information and checking that the technical rules in question comply with Community law;***
  - making this information accessible, via the Internet, to economic operators and to the Member States.***
- 3. The Member States shall ensure that all the information supplied to the***

***Commission is kept up to date.***

*Justification*

*The Commission must ensure that the databases are interconnected, to check that the national technical rules comply with Community law and to make the information relating thereto accessible to economic operators.*

Amendment 112  
Article 9

The Commission ***may*** establish a telematic network for the implementation of the exchange of information between Product Contact Points under this Regulation, in accordance with the procedure provided for in Article 11(2).

***No later than 31 December 2009*** the Commission ***shall*** establish a telematic network for the implementation of the exchange of information between Product Contact Points under this Regulation, in accordance with the procedure provided for in Article 11(2).

*Justification*

*This amendment makes it mandatory for the Commission to establish a telematic network within a reasonable period of time.*

Amendment 113  
Article 10, paragraph 2 a (new)

***2a. The Commission shall draw up, publish and regularly update an indicative list of products which are not subject to Community harmonisation.***

*Justification*

*Such an indicative list of non-harmonised products may be drawn up on the basis of the customs code and customs nomenclature, and on the basis of the judgments of the Court of Justice, which is the final arbiter as to whether a product belongs to the harmonised sector or not.*

Amendment 114  
Article 13, paragraph 1 a (new)



***Notwithstanding the first paragraph of this article, Articles 7 and 8 shall apply with effect from the first day of the month following a period of one year after the date of publication of this Regulation.***

*Justification*

*Since this text is a regulation, its provisions are immediately applicable. This amendment is intended to postpone the point at which the regulation takes effect, since the establishment of Product Contact Points and the development of a network enabling operators to consult the list of non-harmonised products will require substantial financial investment, training in the use of those tools for officials and the introduction in practice of the inversion of the burden of proof.*

## PROCEDURE

<b>Title</b>	Application of certain national technical rules to products lawfully marketed in another Member State						
<b>References</b>	COM(2007)0036 - C6-0065/2007 - 2007/0028(COD)						
<b>Committee responsible</b>	IMCO						
<b>Opinion by</b> Date announced in plenary	JURI 13.3.2007						
<b>Drafts(wo)man</b> Date appointed	Jacques Toubon 10.4.2007						
<b>Discussed in committee</b>	25.6.2007						
<b>Date adopted</b>	11.9.2007						
<b>Result of final vote</b>	<table> <tr> <td>+:           </td><td>24</td></tr> <tr> <td>–:           </td><td>0</td></tr> <tr> <td>0:           </td><td>0</td></tr> </table>	+:	24	–:	0	0:	0
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<b>Members present for the final vote</b>	Marek Aleksander Czarnecki, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Othmar Karas, Piia-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Alain Lipietz, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Francesco Enrico Speroni, Daniel Stroj, Rainer Wieland						
<b>Substitute(s) present for the final vote</b>	Janelly Fourtou, Jean-Paul Gauzès, Barbara Kudrycka, Michel Rocard, Jacques Toubon						
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Albert Deß, María Sornosa Martínez						

## PROCEDURE

<b>Title</b>	Application of certain national technical rules to products lawfully marketed in another Member State			
<b>References</b>	COM(2007)0036 - C6-0065/2007 - 2007/0028(COD)			
<b>Date submitted to Parliament</b>	14.2.2007			
<b>Committee responsible</b> Date announced in plenary	IMCO 13.3.2007			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	INTA 13.3.2007	ENVI 13.3.2007	ITRE 13.3.2007	JURI 13.3.2007
<b>Not delivering opinions</b> Date of decision	INTA 28.2.2007	ENVI 27.2.2007		
<b>Rapporteur(s)</b> Date appointed	Alexander Stubb 20.3.2007			
<b>Discussed in committee</b>	7.5.2007	27.6.2007	16.7.2007	12.9.2007
	2.10.2007	5.11.2007	26.11.2007	
<b>Date adopted</b>	27.11.2007			
<b>Result of final vote</b>	+: -: 0:	38 0 0		
<b>Members present for the final vote</b>	Charlotte Cederschiöld, Gabriela Crețu, Mia De Vits, Janelly Fourtou, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Malcolm Harbour, Anna Hedh, Iliana Malinova Iotova, Pierre Jonckheer, Kurt Lechner, Lasse Lehtinen, Toine Manders, Arlene McCarthy, Nickolay Mladenov, Catherine Neris, Bill Newton Dunn, Zita Pleštinská, Zuzana Roithová, Heide Rühle, Leopold Józef Rutowicz, Christel Schaldemose, Andreas Schwab, Alexander Stubb, Eva-Britt Svensson, Marianne Thyssen, Horia-Victor Toma, Jacques Toubon			
<b>Substitute(s) present for the final vote</b>	Emmanouil Angelakas, André Brie, Wolfgang Bulfon, Colm Burke, Giovanna Corda, András Gyürk, Filip Kaczmarek, Manuel Medina Ortega, Ieke van den Burg			
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Samuli Pohjamo			