

**REGULATION (EC) No 764/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 9 July 2008**

**laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

(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 effects equivalent 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.

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

(3) The principle of mutual recognition, which derives from the case-law of the Court of Justice of the European Communities, is one of the means of ensuring the free movement of goods within the internal market. Mutual recognition applies to products which are not subject to Community harmonisation legislation, or to aspects of products falling outside the scope of such legislation. According to that principle, a Member State may not prohibit the sale on its territory of products which are lawfully marketed in another Member State, even where those products were manufactured in accordance with technical rules different from those to which domestic products are subject. The only exceptions to that principle are restrictions which are justified on the grounds set out in Article 30 of the Treaty, or on the basis of other overriding reasons of public interest and which are proportionate to the aim pursued.

(4) Many problems still exist as regards the correct application of the principle of mutual recognition by the Member States. It is therefore necessary to establish procedures to minimise the possibility of technical rules' creating unlawful obstacles to the free movement of goods between Member States. The absence of such procedures in the Member States creates 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 applying technical rules. Surveys have shown that many enterprises, in particular small and medium-sized enterprises (SMEs), either adapt their products in order to comply with the technical rules of Member States, or refrain from marketing them in those Member States.

(5) Competent authorities also lack appropriate procedures for the application of their technical rules to specific products lawfully marketed in another Member State. The lack of such procedures compromises their ability to assess the conformity of products in accordance with the Treaty.

(6) The Council Resolution of 28 October 1999 on mutual recognition <sup>(3)</sup> noted that economic operators and citizens did not always make full and proper use of the principle of mutual recognition because they were not sufficiently

<sup>(1)</sup> OJ C 120, 16.5.2008, p. 1.

<sup>(2)</sup> Opinion of the European Parliament of 21 February 2008 (not yet published in the Official Journal) and Council Decision of 23 June 2008.

<sup>(3)</sup> OJ C 141, 19.5.2000, p. 5.

aware of the principle and its operational consequences. It called upon the Member States to develop appropriate measures in order to provide economic operators and citizens with an effective framework for mutual recognition, *inter alia*, by dealing effectively with requests from economic operators and citizens and by replying rapidly to those requests.

- (7) The European Council of 8 and 9 March 2007 underlined the importance of giving fresh impetus to the internal market in goods by strengthening mutual recognition, while guaranteeing a high level of safety and consumer protection. The European Council of 21 and 22 June 2007 stressed that the further strengthening of the four freedoms of the internal market (the free movement of goods, persons, services and capital) and improving its functioning remain of paramount importance for growth, competitiveness and employment.
- (8) The smooth functioning of the internal market in goods requires adequate and transparent means of solving the problems that result from applying technical rules of a Member State to specific products lawfully marketed in another Member State.
- (9) This Regulation should not prejudice further harmonisation of technical rules, where appropriate, with a view to improving the functioning of the internal market.
- (10) Trade barriers may also result from other types of measures falling within the scope of Articles 28 and 30 of the Treaty. Those measures may, for example, include technical specifications drawn up for public procurement procedures or obligations to use official languages in the Member States. However, such measures should not constitute technical rules within the meaning of this Regulation and should not therefore fall within its scope.
- (11) Technical rules within the meaning of this Regulation are sometimes applied during and by means of mandatory prior authorisation procedures, established by the law of a Member State and in accordance with which, before a product or type of product may be placed on that Member State's market or on a part thereof, the competent authority of that Member State should give its formal approval following an application. The existence of such procedures in itself restricts the free movement of goods. Therefore, in order to be justified with regard to the fundamental principle of the free movement of goods within the internal market, a mandatory prior authorisation procedure should pursue a public-interest objective recognised by Community law, and should be non-discriminatory and proportionate; that is to say, it should be appropriate to ensure achievement of the aim pursued but not go beyond what is

necessary in order to achieve that aim. The compliance of such a procedure with the principle of proportionality should be assessed in the light of the considerations set out in the case-law of the Court of Justice.

- (12) A requirement that the placing of a product on the market be subject to prior authorisation should, as such, not constitute a technical rule within the meaning of this Regulation, so that a decision to exclude or remove a product from the market exclusively on the grounds that it does not have valid prior authorisation should not constitute a decision to which this Regulation applies. When, however, an application for such mandatory prior authorisation of a product is made, any intended decision to reject the application on the basis of a technical rule should be taken in accordance with this Regulation, so that the applicant could benefit from the procedural protection which this Regulation provides.
- (13) Decisions of national courts or tribunals assessing the legality of cases in which, on account of the application of a technical rule, products lawfully marketed in one Member State are not granted access to the market of another Member State, or applying penalties, should be excluded from the scope of this Regulation.
- (14) Weapons are products that can constitute a serious risk to the health and safety of persons and to the public security of Member States. Several specific types of weapons lawfully marketed in one Member State might, on grounds of the protection of the health and safety of persons and the prevention of crime, be subject to restrictive measures in another Member State. Such measures might consist of specific controls and authorisations before weapons lawfully marketed in one Member State are placed on the market of another Member State. Member States should therefore be permitted to prevent weapons being placed on their markets until their national procedural requirements are fully met.
- (15) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety <sup>(1)</sup> 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)(b) to (f) thereof, in the case of products posing a serious risk. Therefore, measures taken by the competent authorities of the Member States pursuant to national laws adopted in implementation of Article 8(1)(d) to (f) and Article 8(3) of that Directive should be excluded from the scope of this Regulation.

<sup>(1)</sup> OJ L 11, 15.1.2002, p. 4.

- (16) 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 <sup>(1)</sup> 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 notify the Commission immediately under the rapid alert system of any measure they adopt which is aimed at restricting the placing on the market of, withdrawing from the market or recalling food or feed in order to protect human health, and which requires rapid action. Measures taken by the competent authorities of the Member States pursuant to Article 50(3)(a) and Article 54 of that Regulation should therefore be excluded from the scope of this Regulation.
- (17) 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 <sup>(2)</sup> lays down general rules for the performance of official controls to verify compliance with rules intended, in particular, to prevent, eliminate or reduce to acceptable levels risks to humans and animals, either directly or through the environment, 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 economic operators remedy a situation of non-compliance with feed and food law, animal health and animal welfare rules. Measures taken by the competent authorities of the Member States pursuant to Article 54 of that Regulation should therefore be excluded from the scope of this Regulation. However, measures taken or intended to be taken by competent authorities on the basis of national technical rules, insofar as they do not concern the objectives of Regulation (EC) No 882/2004, should be subject to this Regulation.
- (18) Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (Railway Safety Directive) <sup>(3)</sup> provides for a procedure for authorisation of the placing in service of existing rolling stock, leaving scope for the application of certain national rules. Measures taken by the competent authorities pursuant to Article 14 of that Directive should therefore be excluded from the scope of this Regulation.
- (19) Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system <sup>(4)</sup> 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 <sup>(5)</sup> provide for the gradual harmonisation of systems and operations through the progressive adoption of Technical Specifications for Interoperability. Systems and interoperability constituents that fall within the scope of those Directives should therefore be excluded from the scope of this Regulation.
- (20) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products <sup>(6)</sup> establishes a system of accreditation which ensures the mutual acceptance of the level of competence of conformity-assessment bodies. The competent authorities of the Member States should therefore no longer refuse test reports and certificates issued by an accredited conformity-assessment body on grounds related to the competence of that body. Furthermore, Member States may also accept test reports and certificates issued by other conformity-assessment bodies in accordance with Community law.
- (21) 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>(7)</sup> obliges Member States to communicate to the Commission and the other Member States any draft technical regulation concerning any product, including agricultural and fish products, and a statement of the grounds which make the enactment of that regulation necessary. It is necessary, however, to ensure that, following the adoption of such a technical regulation, 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, by means of the obligation on the competent authority to indicate the technical or scientific grounds on which the specific product in its current form

<sup>(1)</sup> OJ L 31, 1.2.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 202/2008 (OJ L 60, 5.3.2008, p. 17).

<sup>(2)</sup> OJ L 165, 30.4.2004; corrected version in OJ L 191, 28.5.2004, p. 1. Regulation as amended by Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

<sup>(3)</sup> OJ L 164, 30.4.2004, p. 44; corrected version in OJ L 220, 21.6.2004, p. 16.

<sup>(4)</sup> OJ L 235, 17.9.1996, p. 6. Directive as last amended by Commission Directive 2007/32/EC (OJ L 141, 2.6.2007, p. 63).

<sup>(5)</sup> OJ L 110, 20.4.2001, p. 1. Directive as last amended by Commission Directive 2007/32/EC.

<sup>(6)</sup> See page 30 of this Official Journal.

<sup>(7)</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).

- cannot be marketed in its Member State, in accordance with Articles 28 and 30 of the Treaty. In the context of this Regulation, evidence should not be understood as meaning legal proof. The authorities of the Member States are not obliged, in the context of this Regulation, to justify the technical rule itself. However, they should justify, as laid down in this Regulation, the possible application of the technical rule to a product lawfully marketed in another Member State.
- (22) In accordance with the principle of mutual recognition, the procedure laid down in this Regulation should provide for the competent authorities to communicate in each case to the economic operator, on the basis of the relevant technical or scientific elements available, that there are overriding reasons of public interest for imposing national 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 on all relevant aspects of the intended decision restricting access to the market. Nothing prevents the competent authority from taking action after the deadline for the receipt of those comments in the absence of a reply from the economic operator.
- (23) 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 principle of proportionality should always be respected, regard being had to whether the competent authority has in fact made use of the least restrictive measure.
- (24) While applying the procedure laid down in this Regulation, the competent authority of a Member State 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 a competent authority be able to adopt provisional measures where rapid intervention is required to prevent harm to safety and health of users. Such provisional measures may also be adopted by a competent authority to prevent the placing on its market of a product the marketing of which is generally prohibited on grounds of public morality or public security, including the prevention of crime. Therefore, Member States should be allowed, at any stage of the procedure laid down in this Regulation, to suspend temporarily the marketing on their territories of products or types of product under those circumstances.
- (25) Any decision to which this Regulation applies should specify the remedies available so that an economic operator can bring proceedings before the competent national court or tribunal.
- (26) It is appropriate that the economic operator also be informed of the availability of non-judicial problem-solving mechanisms, such as the SOLVIT system, in order to prevent legal uncertainty and legal costs.
- (27) 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, no further action taken in relation to that product which is based on that decision and on the same technical rule should be subject to the requirements of this Regulation.
- (28) It is important for the internal market in goods that the accessibility of national technical rules be ensured, so that enterprises, and in particular SMEs, can gather reliable and precise information concerning the law in force.
- (29) It is therefore necessary to implement principles of administrative simplification, *inter alia*, through the establishment of a system of Product Contact Points. This should be designed to ensure that enterprises can gain access to information in a transparent and correct manner, so that the delays, costs and dissuasive effects which result from national technical rules can be prevented.
- (30) In order to facilitate the free movement of goods, Product Contact Points should provide, free of charge, information concerning their national technical rules and the application of the principle of mutual recognition as regards products. Product Contact Points should be adequately equipped and resourced and encouraged also to make the information available through a website and in other Community languages. Product Contact Points could also provide economic operators with additional information or observations during the procedure laid down in this Regulation. For additional information, Product Contact Points may charge fees that are proportionate to the costs of this information.
- (31) Since the creation of Product Contact Points should not interfere with the allocation of functions among competent authorities within the regulatory systems of the Member States, 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 order to prevent the 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 the public administration, but also to national SOLVIT centres, chambers of commerce, professional organisations and private bodies, in order not to increase administrative costs for enterprises and competent authorities.

- (32) Member States and the Commission should be encouraged to work closely together to facilitate the training of staff employed in Product Contact Points.
- (33) 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 (IDABC) <sup>(1)</sup>.
- (34) Reliable and efficient monitoring and evaluation mechanisms should be established in order to provide information on the application of this Regulation so as to enhance knowledge concerning the functioning of the internal market in goods in sectors not subject to harmonisation and to ensure that the principle of mutual recognition is duly applied by the competent authorities of the Member States. Such mechanisms should not go beyond what is necessary to achieve those objectives.
- (35) This Regulation applies only to products or particular features of products which are not subject to Community harmonisation measures intended to eliminate obstacles to trade between Member States resulting from the existence of divergent national technical rules. The provisions of such harmonisation measures are often exhaustive, in which case Member States may not prohibit, restrict or impede the placing on the market in their territories of products complying with those measures. Some Community harmonisation measures, however, permit Member States to impose additional technical conditions on the placing of a product on their market. Such additional conditions should 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 should establish an indicative and non-exhaustive list of products which are not subject to harmonisation at Community level.
- (36) The monitoring scheme established by Decision No 3052/95/EC of the European Parliament and of the Council of 13 December 1995 establishing a procedure for the exchange of information on national measures

derogating from the principle of the free movement of goods within the Community <sup>(2)</sup> has proved largely unsuccessful in that its implementation has not provided the Commission with sufficient information to identify sectors where harmonisation might be appropriate. Nor has it brought about a rapid resolution of certain free-movement problems. Decision No 3052/95/EC should therefore be repealed.

- (37) It is appropriate to introduce a transitional period for the application of this Regulation, in order to enable the competent authorities to adapt to the requirements laid down herein.
- (38) Since the objective of this Regulation, namely the elimination of technical obstacles to the free movement of goods between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (39) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(3)</sup>,

HAVE ADOPTED THIS REGULATION:

## CHAPTER 1

### SUBJECT MATTER AND SCOPE

#### Article 1

#### Subject matter

1. The aim of this Regulation is to strengthen the functioning of the internal market by improving the free movement of goods.
2. This Regulation lays down the rules and procedures to be followed by the competent authorities of a Member State when taking or intending to take a decision, as referred to in Article 2(1), which would hinder the free movement of a product lawfully marketed in another Member State and subject to Article 28 of the Treaty.

<sup>(1)</sup> OJ L 144, 30.4.2004; corrected version in OJ L 181, 18.5.2004, p. 25.

<sup>(2)</sup> OJ L 321, 30.12.1995, p. 1.

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

3. It also provides for the establishment of Product Contact Points in the Member States to contribute to the achievement of the aim of this Regulation, as set out in paragraph 1.

#### Article 2

##### Scope

1. This Regulation shall apply to administrative decisions addressed to economic operators, whether taken or intended, 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 effect of that decision is any of the following:

- (a) the prohibition of the placing on the market of that product or type of product;
- (b) the modification or additional testing of that product or type of product before it can be placed or kept on the market;
- (c) the withdrawal of that product or type of product from the market.

For the purposes of point (b) of the first subparagraph, modification of the product or type of product shall mean any modification of one or more of the characteristics of a product or a type of product as listed in point (b)(i) of paragraph 2.

2. For the purposes of this Regulation, a technical rule is any provision of a law, regulation or other administrative provision of a Member State:

- (a) which is not the subject of harmonisation at Community level; and
- (b) which prohibits the marketing of a product or type of product in the territory of that Member State or compliance with which is compulsory when a product or type of product is marketed in the territory of that Member State, and which lays down either:
  - (i) the characteristics required of that product or type of product, such as levels of quality, performance or 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; or
  - (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, nature or marketing of the product or type of product.

3. This Regulation shall not apply to:

- (a) decisions of a judicial nature taken by national courts or tribunals;
- (b) decisions of a judicial nature taken by law enforcement authorities in the course of the investigation or prosecution of a criminal offence as regards the terminology, symbols or any material reference to unconstitutional or criminal organisations or offences of a racist or xenophobic nature.

#### Article 3

##### Relationship with other provisions of Community law

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

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

- (a) Article 8(1)(d) to (f) and Article 8(3) of Directive 2001/95/EC;
- (b) Article 50(3)(a) and Article 54 of Regulation (EC) No 178/2002;
- (c) Article 54 of Regulation (EC) No 882/2004;
- (d) Article 14 of Directive 2004/49/EC.

#### CHAPTER 2

##### PROCEDURE FOR THE APPLICATION OF A TECHNICAL RULE

#### Article 4

##### Information on the product

Where a competent authority submits a product or type of product to an evaluation to determine whether or not to adopt a decision as referred to in Article 2(1), it may request from the economic operator identified in accordance with Article 8, with due regard to the principle of proportionality, any of the following in particular:

- (a) relevant information concerning the characteristics of the product or type of product in question;

- (b) relevant and readily available information on the lawful marketing of the product in another Member State.

#### Article 5

### Mutual recognition of the level of competence of accredited conformity-assessment bodies

Member States shall not refuse certificates or test reports issued by a conformity-assessment body accredited for the appropriate field of conformity-assessment activity in accordance with Regulation (EC) No 765/2008 on grounds related to the competence of that body.

#### Article 6

### Assessment of the need to apply a technical rule

1. Where a competent authority intends to adopt a decision as referred to in Article 2(1), it shall send the economic operator identified in accordance with Article 8 written notice of that intention, specifying the technical rule on which the decision is to be based and setting out technical or scientific evidence to the effect that:

- (a) the intended decision is justified on one of the grounds of public interest set out in Article 30 of the Treaty or by reference to other overriding reasons of public interest; and
- (b) the intended decision is appropriate for the purpose of achieving the objective pursued and does not go beyond what is necessary in order to attain that objective.

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 20 working days in which to submit comments. The notice shall specify the time limit within which comments may be submitted.

2. Any decision as referred to in Article 2(1) shall be taken and notified to the economic operator concerned and to the Commission within a period of 20 working days from the expiry of the time limit for the receipt of comments from the economic operator referred to in paragraph 1 of this Article. It shall take due account of those comments and shall state the grounds 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.

Where duly justified by the complexity of the issue, the competent authority may, once only, extend the period specified in the first subparagraph by a maximum of 20 working days. That extension shall be duly reasoned and shall be notified to the economic operator before the expiry of the initial period.

Any decision as referred to in Article 2(1) shall also specify the remedies available under the law in force in the Member State concerned and the time limits applying to such remedies. Such a decision may be challenged before national courts or tribunals or other instances of appeal.

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

4. When the competent authority fails to notify the economic operator of a decision as referred to in Article 2(1) within the period specified in paragraph 2 of this Article, the product shall be deemed to be lawfully marketed in that Member State insofar as the application of its technical rule as referred to in paragraph 1 of this Article is concerned.

#### Article 7

### Temporary suspension of the marketing of a product

1. The competent authority shall not temporarily suspend the marketing of the product or type of product in question, during the procedure laid down in this Chapter, except where either:

- (a) under normal or reasonably foreseeable conditions of use, the product or type of product in question poses a serious risk to the safety and health of the users; or
- (b) the marketing of the product or type of product in question is generally prohibited in a Member State on grounds of public morality or public security.

2. The competent authority shall immediately notify the economic operator identified in accordance with Article 8 and the Commission of any suspension as referred to in paragraph 1 of this Article. In the cases referred to in paragraph 1(a) of this Article, that notification shall be accompanied by a technical or scientific justification.

3. Any suspension of the marketing of a product pursuant to this Article may be challenged before national courts or tribunals or other instances of appeal.

#### Article 8

### Information to the economic operator

References to the economic operators in Articles 4, 6 and 7 shall be considered references:

- (a) to the manufacturer of the product, if established in the Community, or the person who has placed the product on the market or requests to the competent authority that the product be placed on the market;

- (b) where the competent authority cannot establish the identity and contact details of any of the economic operators referred to in point (a), to the manufacturer's representative, when the manufacturer is not established in the Community or, if there is no representative established in the Community, to the importer of the product;
- (c) where the competent authority cannot establish the identity and contact details of any of the economic operators referred to in points (a) and (b), to any professional in the supply chain whose activity may affect any property of the product regulated by the technical rule which is being applied to it;
- (d) where the competent authority cannot establish the identity and contact details of any of the economic operators referred to in points (a), (b) and (c), to any professional in the supply chain whose activity does not affect any property of the product regulated by the technical rule which is being applied to it.

#### CHAPTER 3

### PRODUCT CONTACT POINTS

#### Article 9

#### Establishment of Product Contact Points

- Member States shall designate Product Contact Points in their territories and shall communicate their contact details to the other Member States and to the Commission.
- The Commission shall draw up and regularly update a list of Product Contact Points and publish it in the *Official Journal of the European Union*. The Commission shall also make that information available through a website.

#### Article 10

#### Tasks

- Product Contact Points shall, at the request of, *inter alia*, an economic operator or a competent authority of another Member State, provide the following information:
  - the technical rules applicable to a specific type of product in the territory in which those Product Contact Points are established and information as to whether that type of product is subject to a requirement for prior authorisation under the laws of their Member State, together with information concerning the principle of mutual recognition and the application of this Regulation in the territory of that Member State;
  - the contact details of the competent authorities within that Member State by means of which they may be contacted directly, including the particulars of the authorities responsible for supervising the implementation of the technical rules in question in the territory of that Member State;

- (c) the remedies generally available in the territory of that Member State in the event of a dispute between the competent authorities and an economic operator.

2. Product Contact Points shall respond within 15 working days of receiving any request as referred to in paragraph 1.

3. Product Contact Points in the Member State in which the economic operator concerned has lawfully marketed the product in question may provide the economic operator or the competent authority as referred to in Article 6 with any relevant information or observations.

4. Product Contact Points shall not charge any fee for the provision of the information referred to in paragraph 1.

#### Article 11

#### Telematic network

The Commission may, in accordance with the advisory procedure referred to in Article 13(2), establish a telematic network for the implementation of the provisions of this Regulation concerning the exchange of information between Product Contact Points and/or the competent authorities of the Member States.

#### CHAPTER 4

### FINAL PROVISIONS

#### Article 12

#### Reporting obligations

1. Each Member State shall send the Commission on a yearly basis a report on the application of this Regulation. That report shall include the following information at least:

- the number of written notices sent pursuant to Article 6(1) and the type of products concerned;
- sufficient information concerning any decisions taken pursuant to Article 6(2), including the grounds on which those decisions were based and the type of products concerned;
- the number of decisions taken pursuant to Article 6(3) and the type of products concerned.

2. In the light of the information provided by Member States pursuant to paragraph 1, the Commission shall analyse the decisions taken pursuant to Article 6(2) and assess the grounds on which they were based.

3. By 13 May 2012, and every five years thereafter, the Commission shall review the application of this Regulation and shall submit a report thereon to the European Parliament and to the Council. The Commission may, where appropriate, accompany the report with proposals with a view to improving the free movement of goods.



4. The Commission shall draw up, publish and regularly update a non-exhaustive list of products which are not subject to Community harmonisation legislation. It shall make that list accessible through a website.

*Article 13*

**Committee procedure**

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.

2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in accordance with Article 7(3) and Article 8 thereof.

*Article 14*

**Repeal**

Decision No 3052/95/EC is hereby repealed with effect from 13 May 2009.

*Article 15*

**Entry into force and application**

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

It shall apply from 13 May 2009.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 9 July 2008.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

J.-P. JOUYET

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