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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 400 final

Brussels, 19 August 1980

Proposal for a
COUNCIL DECISION

laying down a procedure for the provision of
information in the field of TECHNICAL STANDARDS
AND REGULATIONS

(submitted to the Council by the Commission)

COM(80) 400 final

EXPLANATORY MEMORANDUM

HISTORICAL BACKGROUND

I. The Commission is concerned by the developments which have taken place in the field of technical barriers to trade in the Community in recent years.

For more than fifteen years it has been endeavouring to remove such barriers between the Member States. The free movement of goods is one of the principles underlying the Community, just as the creation of a single market is an indispensable element of the projects it seeks to promote in various fields.

In 1968, the Commission sent the Council a proposal for a general programme on the removal of technical barriers to trade. Since this was adopted, it has regularly submitted proposals for directives designed to implement the programme; it monitors the correct implementation by the Member States of directives already adopted and itself adopts directives designed to bring Community legislation into line with technical developments.

It is now apparent that measures taken in this field, with the assistance of the Member States and the two sides of industry, have formed an adequate economic basis in several industrial sectors which has enabled them to increase competitiveness in relation to their competitors in non-Member countries.

Nevertheless, prevailing economic trends have not always induced the Member States to continue their efforts to create the necessary Community basis from which the various branches of industry could meet competition from non-Member countries. In some cases even, several Member States seem tempted to erect de jure or de facto barriers around their own markets by exploiting the technical requirements and standards laid down in this field at national level.

This approach would constitute a danger if it were to persist since, as a result of similar measures taken by the other Member States, it would lead the industries concerned to fall back and concentrate on their national territory, thereby preventing consumers from enjoying the bene-

fits of economies of scale and the effects of competition within a unified market.

If European industrialists cannot take advantage of the "Community dimension" to increase production, they are at a disadvantage compared with competitors who already have access to a vast market. Their export opportunities are reduced, with resultant adverse effects on the economies of all the Member States.

With the machinery available to it at present, the Commission feels unable to achieve its goal of halting this development. This highlights the need to supplement the measures already taken. Thus, after roughly ten years of applying it, the Commission is of the opinion that the general programme ought to be supplemented in at least two respects.

Current problems

II. a) Whereas it is easy to draw up technical specifications at national level, the corresponding Community procedure is cumbersome and protracted because of the number of experts to be consulted and the institutions and bodies involved. Agreements having economic repercussions have to be obtained from all the governments concerned in respect of highly technical texts. The deadlines laid down in 1969 by the Agreement providing for standstill and notification to the Commission(*) have proved inadequate for this purpose.

The barriers which may be caught by the directives in question are those based on laws, regulations or administrative provisions. Yet the technical standards issued by the national standards institutes, although not legally binding, may create substantial de facto barriers.

In several Member States, standards constitute the "rules of the trade" and products conforming to these rules enjoy considerable advantages; for example, the manufacturer concerned need no longer provide evidence of compliance with safety regulations, whereas provision of such evidence frequently involves a lengthy, difficult and expensive procedure for a manufacturer producing articles to a foreign standard. Although

(*) OJ No C 76 of 17 June 1969, p. 9

national standards, which are drawn up in close cooperation with local producers and brought into line with their technical innovations, may occasionally give such manufacturers a decisive advantage in their own markets, this has been diminished by the fragmentation of the Community internal market. Similar machinery exists in virtually all the Member States and, in the final analysis, the lack of coordination between measures adopted at national level has adverse impact on Economic performance.

The decisions of the Court of Justice

III. As a result of the guidelines contained in the Court's interpretations of the law, technical regulations relating to goods which impede the marketing of products legally manufactured and sold in another Member State may be adopted only if they are necessary to meet essential requirements and have an objective in the public interest of which they constitute the main guarantee.

The creation and maintenance of barriers to trade between the Member States arising from the application of national regulations can be avoided by virtue of these decisions provided they are supplemented by more broadly-based measures which preclude the creation of technical barriers, particularly those resulting from the lack of coordination between the national standards institutes.

The Commission's proposal

IV. During 1979 and 1980, the Commission convened meetings of the senior officials responsible for standardization in the various Member States and examined the report which they sent to the heads of industry departments and which the latter approved.

It monitored the progress of the discussions in the Economic and Social Committee which resulted in the "Opinion on the problem of trade barriers

and the alignment of laws in this area"(*). It also contacted the senior officials of the European Committee for Standardization (CEN) (**) and the European Electrotechnical Standardization Committee (CENELEC) (**).

In January 1980, it sent a communication to the European Parliament which gave rise to fruitful discussions.

All these considerations prompted the Commission to submit the attached proposal for a decision to the Council. As the wording indicates, the proposal relates mainly to the industrial sector, where the problems referred to have become particularly acute. This is the main, if not the exclusive, field of activity of the national and European standards institutes; a different approach is adopted in respect of specifications concerning agricultural products and mandatory health, veterinary or plant-protection regulations. It therefore seems preferable at present to exclude them from the scope of this decision, which is based on the following considerations:

A. INFORMATION

The Commission must ensure that technical regulations and standards do not create barriers. In this context, it can only act in so far as the relevant information is complete and available in time. On the basis of an examination of both the technical and the economic aspects, it can propose action at Community level and submit comments to the national authorities in an effort to prevent their contemplated measures from disrupting intra-Community trade. It is also essential that each Member State be informed. National standards and technical requirements may give rise to barriers which are subsequently extremely difficult to remove if the specifications in question do not from the outset take account of procedures employed in the other Member States. If, as has happened on several occasions recently, foreign producers are taken unawares by the introduction of a new provision, they are forced to make sudden alterations to their products for export to countries where the new requirement applies, with all the costs and constraints which this entails, or to relinquish their share of the market.

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(*) OJ No C 72 of 24 March 1980, p. 8

(**) The members of CEN and CENELEC are the national standards institutes of the EFTA, Member States, Spain and Greece

The prior exchange of information is therefore necessary to prevent the various industries being confronted by unexpected measures on the part of partner countries.

How should this information be exchanged and what should the effect be?

A distinction should be made between standards drawn up by standards institutes and technical regulations adopted by governments.

1. Standards

- a) Standards are detailed, precise technical texts which cannot be drawn up rapidly, even by the largest national standards institutes. At the beginning of every year, each of these institutes is aware of its work programme for the coming months, which can be very heavy since some are obliged to cope with several hundred, and occasionally more than a thousand, new standards a year.

The Commission proposal requires details of the programmes to be submitted to the Commission and the Member States.

- b) This information must be in a form which makes comparative examination possible in order to allow in-depth study of the programmes. The Commission is considering asking the CEN and the CENELEC to collect this information in a form which will facilitate comparison. There are advantages in assigning this role to the CEN or the CENELEC; since they are the umbrella organizations of the Community's standards institutes, they should be able to obtain from among their membership adequate information and the services of experts capable of interpreting the programmes submitted. With a minimum of effort, the CEN should be able to develop an information network of the type which already exists within CENELEC where the latter's own responsibilities are concerned.

The composition of these two bodies, however, is such that they cover a wider geographical area than the Community.

They should therefore establish appropriate internal procedures (which already exist to some extent in CENELEC) by which only institutes in the Member States can hold meetings on questions arising from Community work programmes.

- c) Every quarter, each national institute will send the Commission the draft standards it has prepared, accompanied by an assessment of their originality compared with international and European standards. The more a standard departs from internationally accepted specifications, the more likely it is to create barriers. The institute should also supply all the appropriate information of a general nature on the progress of its work programme.
- d) Hence:
- where a given subject is of interest to only a small number of institutions, the latter may decide to draw up their national requirements jointly;
 - if it seems more appropriate to allow some institutes to draw up their proposed standards at national level any other institutes interested in the preparation of such texts may send passive observers;
 - if a particular subject is of interest to the majority of the Member States, they can jointly draw up a European standard within the framework of the CEN or the CENELEC.

In this case, a precise brief prepared by the Commission after consulting the main parties concerned will have to be sent to the European organization; for their part, the national bodies will refrain from taking action while work is in progress at the European level.

- e) In order to monitor the correct implementation of the above-mentioned principles, the Commission would like to convene periodically and at least twice a year a standing committee the members of which would be appointed by the Member States. The Committee would examine reports received from the CEN and the CENELEC and, together with the national standards organizations, would attempt to provide solutions to the problem of barriers which might be created by some of the proposed national standards (e.g., preparation of a European standard, its amendment or the postponement of its introduction).

Although it does not expect these discussions and meetings to eliminate current problems completely and immediately, the Commission is convinced that a large number of difficulties can be overcome in this way. The mere fact that information on standards which are being drafted is available in sufficient time to enable the industries of the other Member States to prepare for their introduction can, in itself, eliminate a large proportion of the barriers which they would otherwise create.

2. National technical regulations

- a) In this case, the problem is different. Because these texts are generally less detailed, they can be drawn up much more rapidly than standards and their preparation is less centralized since a large number of government departments may, each in its own particular field, be responsible for drafting texts.

It would therefore be difficult for governments to submit a programme relating to this field at the beginning of each year, since their intentions may be realized in a period of much less than a year in the absence of a definite work programme on the subject.

On the other hand, because of their legally binding nature, technical regulations are even more likely to create barriers than standards. In recent years, some Member States have created serious adaptation problems for producers in the rest of the Community by changing their regulations at very short notice. This has been demonstrated by the

appreciable reduction over several months of exports to one such state in the sectors concerned.

It is therefore necessary to provide information sufficiently in advance of the adoption of such measures.

- b) In 1969, the Member States themselves raised this problem in the Council, seeking to arrive at a solution within the framework of the Agreement providing for standstill and notification to the Commission. Experience gained over ten years has shown that, although this agreement has proved well worth while, it needs to be supplemented in several respects.

B. AMENDMENT OF THE STANDSTILL AGREEMENT

1. First, it is necessary under the agreement to inform the Member States and the Commission not only of draft technical regulations but also of any intention to prepare such a regulation. The drafts currently submitted to the Commission which forwards them to the other Member States are in many cases already in a more or less definitive form, lacking only a ratifying signature, which is sometimes provided in the next few days. It is almost impossible to exert any influence on the content of these texts. It would often be advisable to act while they are being prepared, before they have been finalized, in order to warn the Member States of any aspect of importance as regards the free movement of goods.
2. It is also important that the time limits laid down in the 1969 Agreement should be extended so as to apply to all industrial products and not merely to those covered by the General Programme drawn up at that date.

Current priority areas may no longer include sectors which were regarded as priority areas ten years ago. During these ten years, numerous

considerations have led the Member States to adopt technical regulations as a result of greater awareness of such questions as the environment, consumer protection and the rational use of energy. Since it is difficult to predict where the main areas of concern will lie in the future, it is important to cover all products and the corresponding technical regulations which may affect their marketing.

3. Experience has shown that the deadlines imposed on the Commission and the Council, especially the latter, are too short following the amendments made in 1973 (*). It has been difficult for the Commission to meet these deadlines, so that it has only managed to comply with them in rare instances; the Council, for its part, has never been able to meet the deadlines which it has set for itself.

While the Commission is aware of the Member States' desire for speed in this matter, it hopes that notification of intentions to legislate will make it possible to commence work at Community level at an early stage so that proposals can be drawn up rapidly. Accordingly, the Commission is only proposing a limited extension of the deadlines.

V. CONCLUSION

This proposal for a Council Decision will supplement the activities already undertaken in pursuance of the resolutions which formed the 1969 General Programme. It relates to the acquisition and dissemination of greater information in respect of national standards and technical regulations which are in the course of preparation and the establishment of procedures for the management of this information in order to obviate any adverse effects on the movement of goods.

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(*) OJ No C 9 of 15 March 1973, p. 3

The Commission requests that the Council, when adopting the proposal, formally take note of the Commission's statement laying down the procedures for its implementation. The Commission does not have at its disposal a sufficient number of suitably qualified staff for the proper implementation of the decision as regards comparative study of national standards. As has been pointed out, however, such staff are available in the national standards bodies which are affiliated to the CEN and the CENELEC. It therefore seems reasonable to assign to them a certain number of tasks in this field, and the Commission intends to notify the Council of its decisions on this subject.

The Commission does not expect these measures to bring about the immediate removal of all technical barriers to trade. Other barriers derive from the Member States' certification requirements and being actively examined in cooperation with the senior officials responsible for standardization. It is probable that different procedures will be required to solve this entirely separate problem.

Moreover, the establishment and the actual management of the information system which the Commission wishes to introduce will undoubtedly call for efforts on the part of the Commission, the Member States and the standards organizations concerned.

Nevertheless, the Commission is convinced that adoption by the Council of the attached decision, indicating the intention of the Commission, the Council and the Member States to take all possible measures to ensure its proper implementation, will constitute a significant stage in the process of removing technical barriers to trade and will consequently represent a further step towards the achievement of the Community's internal market.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and, in particular Article 213 thereof,

Having regard to the proposal from the Commission,

Whereas the prohibition of quantitative restrictions on the movement of goods and of measures having an equivalent effect is one of the basic principles of the Community;

Whereas technical regulations relating to products, where they impede the free movement of goods legally manufactured and sold in a Member State, are lawful only if they are necessary in order to meet essential requirements and have an objective in the public interest of which they constitute the main guarantee;

Whereas it is essential for the Commission to have the necessary preliminary information at its disposal; whereas consequently the Member States, which are required to facilitate the achievement of its task pursuant to Article 5 of the EEC Treaty, must notify it of their intentions and projects in the field of technical regulations;

Whereas all the Member States must also be informed of the technical regulations contemplated by any one Member State;

Whereas the Commission and the Member States must also be allowed sufficient time in which to propose amendments to a contemplated measure, in order to remove or reduce any barriers which it might create to the free movement of goods,

Whereas the Commission must also have the option of proposing or adopting a Community directive governing the subject of the national measure contemplated;

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Whereas, in the two instances set out above, the Member State in question must, pursuant to the general obligations laid down in Article 5 of the Treaty, defer implementation of the contemplated measure for a period sufficient to allow either /joint examination of the proposed amendments or /^{the}preparation of the proposal for a directive or of a Community directive; and whereas the time limits laid down in the Agreement of the Representatives of the Governments of the Member States meeting in the Council of 28 May 1969 providing for standstill and notification to the Commission (¹), as amended by the Agreement of 5 March 1973 (²), have proved inadequate in the cases concerned and should accordingly be extended;

Whereas, in practice, national technical standards may have the same effects on the free movement of goods as technical regulations;

Whereas it would therefore appear necessary to inform the Commission of draft standards under similar conditions to those which apply to technical regulations; whereas, pursuant to Article 213 of the EEC Treaty, the Commission may, within the limits and under the conditions laid down by the Council in accordance with the provisions of the Treaty, collect any information and carry out any checks required for the performance of the tasks entrusted to it;

Whereas it is also necessary for the Member States and their standards institutions to be informed of standards contemplated by standards institutions in the other Member States;

Whereas it is necessary to set up within the Commission a Standing Committee, the members of which will be appointed by the Member States, with the task of

(¹) OJ C 76, 17.6.1969, p. 9.

(²) OJ C 9, 15.3.1973, p. 3.

helping the Commission to examine draft national standards and cooperating in its efforts to lessen any adverse effects thereof on the free movement of goods;

HAS ADOPTED THIS DECISION:

Article 1

The Member States shall take all measures necessary to ensure that the competent national standards institutions submit their standards programmes to the Commission annually not later than 31 January. A list of relevant bodies is annexed hereto. The Commission may amend or supplement such list.

Article 2

Before 1 March each year, the Commission shall make available to the Member States and national standards institutions the programmes which have been communicated to it in a form which makes possible the comparison of these various programmes.

Article 3

The Member States shall ensure that, before 1 May each year, their standards institutions inform the Commission whether they wish

- to enjoy associate status; or
- to participate by sending an observer to activities planned by other standards institutions; or
- a European standard to be prepared on a given subject.

Article 4

The Member States shall ensure that their standards institutions inform the other standards institutions and the Commission of their draft standards each quarter, stating:

- a) whether the standard in question is merely the transposition of an existing international or European standard,

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- b) whether the standard in question is the transposition of an existing international or European standard with a number of amendments,
- c) whether the standard in question is of national origin and represents:
 - the amendment of an existing standard;
 - a new standard.

Article 5

Within the Commission, a Standing Committee shall be set up, the members of which shall be appointed by the Member States. The Chairman and Secretariat of such Committee shall be representatives of the Commission.

Article 6

The Commission shall submit a report within the Committee on:

- requests for information and cooperation made by national standards institutions;
- whether a European standard is possible, and if so, how it should be drawn up.

Article 7

The Committee shall meet at least twice a year with the national standards institutions in order to:

- consider jointly objections made by Member States, the Commission, standards institutions, industrial associations or individuals to any draft standard or standard which has been adopted;
- propose, where appropriate, that the Commission draw up terms of reference for the purposes of establishing a European standard.

Article 8

The Member States shall take all appropriate measures to ensure that their standards ^{institutions} undertake not to draw up or introduce national standards on a subject covered by terms of reference. This undertaking shall lapse unless a European standard has been introduced within six months of the final timetable date laid down in the terms of reference. This timetable may be extended by agreement between the parties concerned meeting in the Committee.

Article 9

The Member States shall forward to the Commission:

- a brief communication notifying their intention of drawing up technical regulations relating to certain industrial products;
- all draft technical regulations relating to industrial products, stating the essential requirements which have led them to contemplate such measures.

The Commission shall inform the other Member States of the notifications of intent and draft regulations which have been forwarded to it.

It may also submit them to the Committee for an opinion.

Article 10

1. The Member States shall postpone the adoption of draft technical regulations for six months from the date of their communications as provided for in Article 9 if the Commission or another Member State delivers a reasoned opinion within two months of that date to the effect that the contemplated measure should be amended in order to remove or reduce any barriers which it might create to the free movement of goods.

2. This period shall be extended to twelve months if, within two months of the communication provided for in Article 9, the Commission notifies its intention to propose or adopt a directive on the subject.

Article 11

This Decision is addressed to the Member States.

DECLARATION BY THE COMMISSION
appended to the Council Decision
laying down a procedure for the provision of information in
the field of technical standards and regulations

The Commission,

- Being aware of the need to improve the provision of information within the Community concerning the preparation and final establishment of standards relating to industrial products drawn up by the standards institutions of the Member States;
- Having regard to the Council Decision relating to technical standards and regulations, which assigns it a number of tasks in this field;
- Whereas it cannot, at present, provide the necessary qualified staff from within its own departments to implement such Decision;
- Whereas all the standards institutions of the Member States are members of the European Committee for Standardization (CEN) and the European Electrotechnical Standardization Committee (CENELEC); whereas those committees are empowered to make a comparison and critical examination of texts relating to standards,

hereby declares:

- As part of the duties assigned to it by the Council Decision on technical standards and regulations, the Commission intends to conclude a subcontract with the CEN and the CENELEC.

Such contract will provide inter alia for:

- the transmission to these institutions of the information provided for in Article 1 of the Decision in cases where such information has not been supplied directly to them;

- . the presentation of these programmes by the CEN and the CENELEC in a form in which they can be compared, as provided for in Article 2;
 - . the provision of information to the CEN and the CENELEC concerning requests made by the Member States pursuant to Article 3;
 - . the communication to the CEN and the CENELEC of the information supplied by the Member States pursuant to Article 4 where such information has not been supplied directly;
 - . the preparation by the CEN and the CENELEC of the report provided for in Article 6;
 - . the participation by the CEN and the CENELEC in the activities of the Committee referred to in Article 5 when the latter discusses the matters referred to in Article 7;
 - . the preparation by the CEN or the CENELEC of the European standards to be drawn up on the basis of the terms of reference referred to in Article 7.
- The Commission will examine whether it is necessary to amend or supplement the contract drawn up with the CEN and the CENELEC in the light of the results obtained during the first year(s) of implementation of the Decision.
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List of the national standards institutions of the Member States of the
European Communities

AFNOR (France)	Association Française de Normalisation Tour Europe - Cédex 7 F - 92080 PARIS LA DEFENSE
BSI (United Kingdom)	British Standards Institution 2, Park Street GB - LONDON W1A 2BS
DS (Danmark)	Dansk Standardiseringsrad Aurehøjvej 12 Postboks 77 DK - 2900 HELLERUP 12
DIN (Deutschland)	Deutsches Institut für Normung e.V. Burggrafenstrasse 4-10 Postfach 1107 D - 1000 BERLIN 30
IBN/BIN (Belgique-België)	Institut Belge de Normalisation Belgisch Instituut voor Normalisatie 29, avenue de la Brabançonne (laan) B - 1040 BRUXELLES / BRUSSEL
IIRS (Ireland)	Institute for Industrial Research and Standards Ballymun Road EI - DUBLIN 9
NNI (Nederland)	Nederlands Normalisatie-Instituut Polakweg 5 - Postbus 5810 NL - 2280 HV RIJSWIJK ZH
UNI (Italia)	Ente Nazionale Italiano di Unificazione Piazza Armando Diaz 2 I - 20123 MILANO