# COUNCIL DIRECTIVE

## of 4 December 1990

## on transitional measures applicable in Germany in the context of the harmonization of technical rules

(90/657/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the Community has adopted, with regard to the placing on the market and the use of products, a set of rules which are binding on all the Member States and on all economic operators;

Whereas from the date of German unification, Community law will be automatically applicable in the territory of the former German Democratic Republic; whereas such application may give rise to difficulties owing to the level of development of the local economy;

Whereas under Article 8c of the Treaty the Commission is to take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market; whereas the derogations that the Commission may propose to that end must be temporary and must cause the least possible disturbance to the functioning of the common market; whereas they must not, however, have the effect of jeopardizing the health and safety of consumers;

Whereas the level of information available on the situation regarding the rules and regulations in force and regarding industry in the territory of the former German Democratic Republic is such that it is not possible to establish definitively the extent of the derogations; whereas, so that account can be taken of developments in that situation, a simplified procedure must be set up in accordance with the third indent of Article 145 of the Treaty for the purpose of adjusting and administering the derogations,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

1. By way of derogation from the Directives listed in Annexes A and B, the Federal Republic of Germany is authorized to maintain in force in the territory of the former German Democratic Republic the existing rules and regulations in respect of products which have been or which are manufactured there, on condition that this does not affect the placing on the market and the free movement in that territory of products complying with the said Directives.

2. This authorization shall be applicable to the Directives referred to in Annex A until 31 December 1992; in the case of the Directives referred to in Annex B, it shall apply under the conditions laid down in that Annex.

3. The German authorities may extend the derogations provided for in paragraphs 1 and 2 to include products covered by the agreements referred to in Annexes I and II to Council Regulation (EEC) No 3568/90 (4). Such measures shall be taken within the limits of the maximum quantities and values laid down in the said agreements and to satisfy the market requirements of the former German Democratic Republic.

*Article 2*

1. Without prejudice to paragraph 2, Member States shall ensure, in the context of product conformity checking procedures, that products which qualify for a derogation under Article 1 are not placed on markets other than that of the former German Democratic Republic.

(1) OJ No L 266, 28. 9. 1990, p. 4, as amended on 25 October 1990 and 28 November 1990.
(2) Opinion delivered on 24 October 1990 (not yet published in the Official Journal) and Decision of 21 November 1990 (not yet published in the Official Journal).
(3) Opinion delivered on 20 November 1990 (not yet published in the Official Journal).

(4) See page 1 of this Official Journal.

2. The Federal Republic of Germany shall take all measures necessary to ensure that products not complying with the Directives referred to in Article 1 are not placed on the market in the territory of the Community other than the territory of the former German Democratic Republic; such measures shall be compatible with the Treaty, and in particular with the objectives of Article 8a, and shall not give rise to any additional controls or formalities at frontiers between Member States.

3. Any Member State may refer any difficulties to the Commission. The Commission shall, as a matter of urgency, examine the question and submit its conclusions, possibly accompanied by appropriate measures. Such measures shall be adopted according to the procedure laid down in Article 5.

*Article 3*

1. The rules and regulations whose maintenance in force is authorized under Article 1 and the control measures taken pursuant to Article 2 shall be notified to the Commission no later than the date on which the interim measures adopted pursuant to Directive 90/476/EEC [1] are replaced by transitional measures and at any rate no later than 31 December 1990. Such rules, regulations and control measures as are notified to the Commission shall be immediately published in the *Official Journal of the European Communities*.

2. The Federal Republic of Germany shall report on the application of the measures taken pursuant to this Directive on 31 December 1991, 1992 and 1995. The report shall be forwarded to the Commission, which shall communicate it to the other Member States and the European Parliament.

*Article 4*

1. Adjusting measures to fill obvious loopholes and to make technical adjustments to those provided for in this Directive may be adopted in accordance with the procedure laid down in Article 5.

2. Adjustments must be designed to ensure coherent application of Community rules in the sector covered by this Directive in the territory of the former German Democratic Republic, with due regard for the specific circumstances in that territory and the special difficulties involved in the application of those rules.

They must be consistent with the principles of those rules, and be closely related to one of the derogations provided for by this Directive.

3. The measures referred to in paragraph 1 shall be adopted not later than 31 December 1992. Their applicability shall be limited to the same period; however, where this Directive sets later time limits for derogations, those time limits shall apply.

*Article 5*

For the purposes of Article 2 (3) and Article 4, the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by a representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on expiry of a period of one month from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

*Article 6*

This Directive is addressed to the Member States.

Done at Brussels, 4 December 1990.

*For the Council*

*The President*

G. DE MICHELIS

[1] OJ No L 266, 28. 9. 1990, p. 1.

*ANNEX A*

## 1. FOODSTUFFS

1. *Council Directive of 23. 10. 1962*

Colouring matters

Date of adoption: 23. 10. 1962
OJ No 115, 11. 11. 1962, p. 2645/62

*Council Directive 65/469/EEC*

First amendment to the Directive of 23. 10. 1962

Date of adoption: 25. 10. 1965
OJ No 178, 26. 10. 1965, p. 2793/65

*Council Directive 81/20/EEC*

Seventh amendment to the Directive of 23. 10. 1962

Date of adoption: 20. 1. 1981
OJ No L 43, 14. 2. 1981, p. 11

2. *Council Directive 64/54/EEC*

Preservatives

Date of adoption: 5. 11. 1963
OJ No 12, 27. 1. 1964, p. 161/64

*Council Directive 71/160/EEC*

Amendment to Directive 64/54/EEC

Date of adoption: 30. 3. 1971
OJ No L 87, 17. 4. 1971, p. 12

*Council Directive 14/62/EEC*

Ninth amendment to Directive 64/54/EEC

Date of adoption: 17. 12. 1973
OJ No L 38, 11. 12. 1974, p. 29

*Council Directive 74/394/EEC*

Tenth amendment to Directive 64/54/EEC

Date of adoption: 22. 7. 1974
OJ No L 208, 30. 7. 1974, p. 25

*Council Directive 76/462/EEC*

Eleventh amendment to Directive 64/54/EEC

Date of adoption: 4. 5. 1976
OJ No L 126, 14. 5. 1976, p. 31

3. *Council Directive 65/66/EEC*

Preservatives — criteria of purity

Date of adoption: 26. 1. 1965
OJ No 22, 9. 2. 1965, p. 373/65

*Council Directive 67/428/EEC*

First amendment to Directive 65/66/EEC

Date of adoption: 27. 6. 1967
OJ No L 148, 11. 7. 1967, p. 10

*Council Directive 76/463/EEC*

Second amendment to Directive 65/66/EEC

Date of adoption: 4. 5. 1976
OJ No L 126, 14. 5. 1976, p. 33

*Council Directive 86/604/EEC*

Third amendment to Directive 65/66/EEC

Date of adoption: 8. 12. 1986
OJ No L 352, 13. 12. 1986, p. 45

*Council Directive 67/427/EEC*

Use of certain preservatives for the surface treatment of citrus fruit and the control measures to be used for the qualitative and quantitative analysis of preservatives in and on citrus fruit

Date of adoption: 27. 6. 1967
OJ No L 148, 11. 7. 1967, p. 1

4. *Council Directive 70/357/EEC*

Antioxidants

Date of adoption: 13. 7. 1970
OJ No L 157, 18. 7. 1970, p. 31

5. *Council Directive 78/664/EEC*

Antioxidants — criteria of purity

Date of adoption: 25. 7. 1978
OJ No L 223, 14. 8. 1978, p. 30

*Council Directive 82/712/EEC*

First amendment to Directive 78/664/EEC

Date of adoption: 18. 10. 1982
OJ No L 297, 23. 10. 1982, p. 31

6. *Council Directive 73/241/EEC*

Cocoa and chocolate products

Date of adoption: 24. 7. 1973
OJ No L 228, 16. 8. 1973, p. 23

*Council Directive 75/155/EEC*

Third amendment to Directive 73/241/EEC

Date of adoption: 4. 3. 1975
OJ No L 64, 11. 3. 1975, p. 21

*Council Directive 76/628/EEC*

Fourth amendment to Directive 73/241/EEC

Date of adoption: 20. 7. 1976
OJ No L 223, 16. 8. 1976, p. 1

*Council Directive 78/609/EEC*

Fifth amendment to Directive 73/241/EEC

Date of adoption: 29. 6. 1978
OJ No L 197, 22. 7. 1978, p. 10

*Council Directive 80/608/EEC*

Seventh amendment to Directive 73/241/EEC

Date of adoption: 30. 6. 1980
OJ No L 170, 3. 7. 1980, p. 33

*Council Directive 89/344/EEC*

Amendment of Directive 73/241/EEC

Date of adoption: 3. 5. 1989
OJ No L 142, 25. 5. 1989, p. 19

7. *Council Directive 74/329/EEC*

Emulsifiers, stabilizers, thickeners and gelling agents

Date of adoption: 18. 6. 1974
OJ No L 189, 12. 7. 1974, p. 1

*Council Directive 78/612/EEC*

First amendment to Directive 74/329/EEC

Date of adoption: 29. 6. 1978
OJ No L 197, 22. 7. 1978, p. 22

*Council Directive 80/597/EEC*

Second amendment to Directive 74/329/EEC

Date of adoption: 29. 5. 1980
OJ No L 155, 23. 6. 1980, p. 23

*Council Directive 86/102/EEC*

Fourth amendment to Directive 74/329/EEC

Date of adoption: 24. 3. 1986
OJ No L 88, 3. 4. 1986, p. 40

8. *Council Directive 78/663/EEC*

Emulsifiers, stabilizers, thickeners and gelling agents — criteria of purity

Date of adoption: 25. 7. 1978
OJ No L 223, 14. 8. 1978, p. 7

*Council Directive 82/504/EEC*

Amendment of Directive 78/663/EEC

Date of adoption: 12. 7. 1982
OJ No L 230, 5. 8. 1982, p. 35

9. *Council Directive 77/436/EEC*

Coffee extracts and chicory extracts

Date of adoption: 27. 6. 1977
OJ No L 172, 12. 7. 1977, p. 20

*Council Directive 85/573/EEC*

Amendment of Directive 77/436/EEC

Date of adoption: 19. 12. 1985
OJ No L 372, 31. 12. 1985, p. 22

10. *Council Directive 78/142/EEC*

Materials and articles which contain vinyl chloride monomer

Date of adoption: 30. 1. 1978
OJ No L 44, 15. 2. 1978, p. 15

11. *Council Directive 79/112/EEC*

Labelling and presentation

Date of adoption: 18. 12. 1978
OJ No L 33, 8. 2. 1979, p. 1

*Council Directive 86/197/EEC*

Amendment of Directive 79/112/EEC

Date of adoption: 26. 5. 1986
OJ No L 144, 29. 5. 1986, p. 38

*Council Directive 89/395/EEC*

Amendment of Directive 79/112/EEC

Date of adoption: 14. 7. 1989
OJ No L 186, 30. 6. 1989, p. 17

12. *Council Directive 80/777/EEC*

Mineral waters

Date of adoption: 15. 7. 1980
OJ No L 229, 30. 8. 1980, p. 1

13. *Council Directive 89/107/EEC*

Additives

Date of adoption: 21. 12. 1988
OJ No L 40, 11. 2. 1989, p. 27