II

*(Acts whose publication is not obligatory)*

# COUNCIL

## COUNCIL DIRECTIVE

**of 4 December 1990**

**on transitional measures applicable in Germany in the context of the harmonization of technical rules for certain products**

(90/650/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

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

Having regard to the opinion of 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 utilization 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 onwards, 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 Article 8c of the Treaty calls on the Commission 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 such derogations must be temporary and must cause the least possible disturbance to the functioning of the common market; whereas they must not, however, jeopardize the health and safety of consumers;

Whereas the 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 the Annex, 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

(1) OJ No L 263, 26. 9. 1990, p. 8, as amended on 25 October 1990.
(2) Opinion delivered on 21 November 1990 (not yet published in the Official Journal).
(3) Opinion delivered on 20 November 1990 (not yet published in the Official Journal).

the placing on the market and the free movement in that territory of products complying with Community Directives.

2. This authorization shall be applicable to the Community Directives listed in the Annex until 31 December 1992.

3. The German authorities may extend the derogations provided for in paragraphs 1 and 2 to include products covered by the agreements appearing in Annexes I and II to Council Regulation (EEC) 3568/90 [1]. 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.

2. The Federal Republic of Germany shall take all measures necessary to ensure that products not complying with the Community 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 not later than on the date when the interim measures adopted pursuant to Regulation No 2684/90/EEC [1] are replaced by transitional measures, and at any rate no later than 31 December 1990. Such rules, regulations and control measures that 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, 31 December 1992 and 31 December 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. A decision may be made in accordance with the procedure laid down in Article 5 to take measures involving adjustments to fill obvious loopholes and technical adjustments to the measures taken pursuant to this Directive.

2. Such adjustments shall be designed to ensure the consistent application of Community rules in the sector covered by this Directive in the territory of the former German Democratic Republic, taking into account the specific situation obtaining in that territory and the particular difficulties attending implementation of such rules.

They shall respect the principles underlying these rules and shall be closely related to one of the derogations provided for in the Directive.

3. The measures referred to in paragraph 1 may be taken until 31 December 1992. They shall cease to be operative on that date.

*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 the 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 requiered 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.

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[1] See page 1 of this Official Journal.
[2] OJ No L 263, 26. 9. 1990, p. 1.