II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 17 September 1990

on interim measures applicable after the unification of Germany in anticipation of the adoption of transitional measures by the Council in cooperation with the European Parliament

(90/476/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49, 57, 66, 100a and 118a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament [1],

Whereas the Economic and Social Committee, having been consulted on the Commission proposal, has failed to issue its opinion within the time limit set by the Council in accordance with Article 198 of the Treaty; whereas it is necessary to proceed, notwithstanding the absence of an opinion from that Committee;

Whereas, from the date of German unification onwards, Community law will be fully applicable to the territory of the former German Democratic Republic;

Whereas, to take account of the special situation obtaining in that territory, provision must be made for transitional measures for the implementation of a number of Community acts;

Whereas, in its communication of 21 August 1990, the Commission submitted a number of proposals for Directives to be adopted by the Council in cooperation with the European Parliament, which must be closely associated at all times in the decision-making process envisaged during the phase prior to the definitive entry into force of the interim measures;

Whereas the Council will not be able to adopt those acts before the date of unification; whereas, taking account of the exceptional nature of the situation, interim measures must be introduced;

Whereas no such interim measures should pre-empt modifications to the proposals for Directives during their consideration and final adoption,

HAD ADOPTED THIS DIRECTIVE:

Article 1

As the Council was unable to act before the date of German unification on the transitional measures for the application to the territory of the former German Democratic Republic of Community Directives as provided for in the Commission proposals submitted to the Council by the communication of 21 August 1990 and as set out in the Annex to this Directive, interim measures shall apply by way of derogation from the Directives covered by those proposals, subject to the limits and conditions laid down in this Directive.

Article 2

1. The Commission may authorize the Federal Republic of Germany to maintain provisionally in force, legislation applicable in the territory of the former German Democratic Republic which does not comply with a Community act as referred to in Article 1.

[1] Opinion delivered on 11 September 1990 (not yet published in the Official Journal) and Decision of 13 September 1990 (not yet published in the Official Journal).

Such legislation maintained in force must not go beyond the limits of the Commission proposals in the Annex.

2. This authorization, which is the result of exceptional circumstances and may not be subsequently cited as a precedent, shall remain in force until the date on which the Council takes a final decision on the Commission proposals referred to in Article 1 or, where appropriate, until the date on which the transitional measure in question enters into force and no later than 31 December 1990.

After this time limit, should the Council have failed to adopt the requisite transitional measures, Community law shall apply in full.

3. The Federal Republic of Germany shall notify the Commission forthwith of any use made of this authorization. The Commission shall in turn forthwith notify the European Parliament, the Council and the Economic and Social Committee.

The European Parliament may invite the Commission to give further information on the scope of this authorization, so that it can give its views either on the specific use made of it or any related measures that may need to be taken at Community level.

Article 3

1. The Commission and the Federal Republic of Germany shall consult each other on the measures to be taken to ensure that no difficulties arise from the fact that legislation maintained in force under this Directive does not comply with Community law.

The Commission shall forthwith inform the European Parliament and the Council of the outcome of such consultations.

2. 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.

3. Measures to be taken at Community level on the basis of paragraphs 1 and 2 may not go beyond the limits of the Commission proposals listed in the Annex. They shall be adopted in accordance with the procedure laid down in Article 4.

Article 4

1. The measures provided for in Article 3 and any other necessary implementing arrangements shall be adopted in accordance with the following procedure.

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 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 measures which shall be immediately applicable. However, if they are not in accordance with the opinion of the committee, the Commission shall forthwith communicate the measures to the Council.

In that event, the Commission may delay application of the measures it has decided by up to one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the period laid down in the preceding subparagraph.

2. The measures provided for in paragraph 1 may not be decided after the date referred to in Article 2 (2). They shall not apply beyond that date.

Article 5

The Commission shall present to the European Parliament and to the Council, before the European Parliament states its views on the transitional measures, a further communication:

— listing the legislative and administrative measures already taken in respect of the territory of the former German Democratic Republic by the Community and by the competent German authorities:

  (a) to verify and enforce the application of Community law; and

  (b) to assure the full receipt of the Community's own resources and the proper management of Community expenditure,

— describing the further legislative and administrative measures which it considers necessary to achieve the above objectives, and

— proposing, where appropriate, the texts of further legislative measures where they are Community measures.

Article 6

1. The measures provided for in Articles 2 (1), 3 (2) and 4 (1) may be taken from the date of notification of this Directive [1].

2. Measures adopted pursuant to Articles 2 (1), 3 (2) and 4 (1) shall be published immediately in the *Official Journal of the European Communities*.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 17 September 1990.

For the Council
The President
G. DE MICHELIS

[1] This Directive was notified to the Member States on 20 September 1990.

ANNEX

Proposal for a

COUNCIL DIRECTIVE

of . . .

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

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 European 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 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 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 adopting and administering the derogations,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. By way of derogation from the Directives listed in Annexes A and B, 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 Community Directives.

2. This authorization shall be applicable to the Community Directives listed in Annex A until 31 December 1992; in the case of the Directives listed 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 originating in and coming from third countries within the limits of traditional trade patterns.

Article 2

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 controls or formalities at frontiers between Member States.

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 of German unification.

2. Germany shall report on the application of the measures taken pursuant to this Directive on 31 December 1991 and 31 December 1992, and, as regards the application of the measures taken pursuant to Article 1, in conjunction with Annex B, on 31 December 1995. The report shall be transmitted to the Community, which shall communicate it to the other Member States.

Article 4

1. A decision may be made in accordance with the procedure laid down in Article 5 to take measures involving additions and amendments to the measures taken pursuant to this Directive.

(1) OJ No C . . .
(2) OJ No C . . .
(3) OJ No C . . .

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

They shall respect the principles underlying this legislation.

3. The measures referred to in paragraph 1 may be taken until 31 December 1991. They shall cease to be operative on that date.

Article 5

For the purposes of 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 required to adopt on a proposal from the Commission. The votes of the representatives of the Member States wihthin 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 the 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, . . .

For the Council

The President