



Decision 3052/95

“Strawberry” Regulation

Katleen Hendrix

Unit ENTR.C.5

Decision 3052/95

(1)

- Decision 3052/95 of the European Parliament and of the Council of 13 December 1995 establishes a procedure for the exchange of information on individual cases of refusal to apply the principle of free movement of goods within the Community.
- (Official Journal of 30 December 1995, No L 321, p. 1)

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(2)

- This procedure should not be confused with the obligation of Member States to notify their draft technical regulations in advance (Directive 98/34/EC).
- This procedure is not an inspection or authorisation procedure.

Decision 3052/95

(3)

- The procedure is a means to increase transparency with regard to exceptions to the principle of free movement of goods.
- The procedure is designed to help keep Member States and the Commission informed.

Decision 3052/95

(4)

➤ Main obligations:

➤ Designate competent national authority

➤ Notify the Commission when taking steps to prevent free movement or marketing of a particular model of type of product lawfully produced or marketed in another MS

When the effect of the measure is a general ban, refusal to allow on the market, modification or withdrawal of the product.

➤ Use information sheet attached to the Decision

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(5)

- Link to mutual recognition:
 - The procedure enables identification of the sectors where there is a high concentration of difficulties regarding mutual recognition.
 - The procedure aims at transparency of individual decisions regarding the application of mutual recognition.

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(6)

➤ Recent judgment of the Court of Justice:

- Case C-432/03 Commission against Portugal

“by failing to take account of approval certificates issued by other Member States (...), and by not informing the Commission of such a measure, the Portuguese Republic has failed to fulfil its obligations under Articles 28 EC and 30 EC and under Articles 1 and 4(2) of 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”

« Strawberry » Regulation

(1)

- Council Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States (Official Journal of 12 December 1998, L 337/8)
- Aims, in a nutshell, to ensure free movement of goods in cases of blockades of roads, ports or railways.
- To this end, it sets up an information and monitoring mechanism.

« Strawberry » Regulation

(2)

- Main obligations:
 - Appoint a contact point/person to be part of the EC-wide network
 - In case obstacle occurs or is threatened, immediately transmit information to Commission / Commission transmits to the rest of the network
 - Respond to information requests from Commission/MS
 - In case obstacle occurs, take all necessary and proportionate measures to assure free movement of goods
 - Inform Commission of measures / Commission transmits to rest of network
- Balance free movement of goods against other rights such as right of freedom of expression or right of freedom to meet in restricting the exercise of those rights
 - Power of discretion (ECJ, Case 112/00, Schmidberger)
- The Regulation has the strength of exercising peer pressure on Member States in cases of serious disruption of the free movement of goods.

« Strawberry » Regulation (3)

- However, some Member States seem to have doubts about the actual scope of the Regulation and its procedures.
- Commission therefore envisages to specify guidelines for the identification of obstacles leading to serious disruption of the free movement of goods, so that the Commission and Member States can develop a common understanding of the cases in which the Regulation should apply in the future.
- Given the fact that the Commission should react whenever such serious disruptions occur, the guidelines should offer a more reliable framework to assess cases in which the Regulation actually applies.
- Guidelines to take the form of a recommendation to be adopted in 2006.