

European Communities

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EUROPEAN PARLIAMENT

# Working Documents

1984-1985

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7 May 1984

DOCUMENT 1-227/84

REPORT

drawn up on behalf of the Legal Affairs Committee

on preventive legal supervision in the Community  
to avoid future barriers to trade

Rapporteur: Mr Amedee TURNER

PE 88.804/fin.



At its sitting of 7 February 1983, the European Parliament referred the motion for a resolution by Mr Von Wogau and others on preventive legal supervision in the Community to avoid future barriers to trade (Doc. 1-1159/82) to the Legal Affairs Committee as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion.

At its meeting of 16 March 1983, the committee appointed Mr Turner rapporteur.

The committee examined the draft report at its meeting of 24 and 25 April 1984, and adopted it unanimously at this meeting.

The following were present at the vote: Mrs Veil, Chairman; Mr Luster, Vice-chairman, Mr Turner, Vice-chairman and rapporteur; Messrs D'Angelosante, De Gucht, Bruno Friedrich, Geurtsen, Gontikas, Schieler, Sieglerschmidt, Tyrrell and Vié.

The opinion of the Committee on Economic and Monetary Affairs is attached.

This report was tabled on 3 May 1984.

The deadline for the tabling of amendments to this report appears in the draft agenda for the part-session at which it will be debated.

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The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on

preventive legal supervision in the Community  
to avoid future barriers to trade

The European Parliament,

- having regard to the motion for a resolution, tabled by Mr Von Wogau and others on preventive legal supervision in the Community to avoid future barriers to trade (Doc. 1-1159/82),
  - having regard to Council Directive 83/189/EEC, laying down a procedure for the provision of information in the field of technical standards and regulations<sup>1</sup>,
  - having regard to the report of the Legal Affairs Committee, and the opinion of the Committee on Economic and Monetary Affairs (Doc. 1-227/84),
- A. whereas the adoption by the Council of a different legal instrument to that on which the European Parliament had given its opinion could give rise to cases where the European Parliament would wish to be consulted on this change if the effect either in practical, legal or institutional significance was to be different from that of the instrument originally proposed,
- B. whereas no objection arises in this case,
1. Considers that it would be desirable in future if the fact of a change in the legal instrument were to be set out clearly and notified to the European Parliament,
  2. Takes the view that it would be undesirable except for expressly stated and specific reasons during the period of the same elected Parliament for the European Parliament to adopt a resolution, following a parliamentary initiative, which is contrary to one of its earlier decisions on a consultation on proposed legislation, and for this reason does not press for a Council regulation instead of a directive in the present instance to introduce an advance information procedure to prevent the appearance of further barriers to trade in the Common Market,
  3. Considers that the machinery which the Commission had proposed, as modified by the directive adopted, is sufficient to this end,

<sup>1</sup> OJ L 109, 26 April 1983, page 8

4. Agrees with the purpose of motion for a resolution (Doc. 1-1159/82) that the newly-elected European Parliament should continue to monitor progress in the removal of non-tariff barriers diligently and make further proposals once it is in a position to evaluate how Directive 83/189/EEC has operated in practice.
5. Instructs its President to forward this resolution to the Council and the Commission of the European Community.

EXPLANATORY STATEMENT

1. The motion for a resolution (Doc. 1-1159/82) of Mr Von Wogau and others was tabled on 20 January 1983 and calls for a regulation to provide for a notification procedure for all intended measures laying down technical standards which are liable to justify, perpetuate or intensify barriers to trade, on the grounds that the proposal for a Council decision (OJ C 253, 1 October 1980, page 2) was not sufficiently watertight to "effectively prevent the appearance of further barriers to trade in the Common Market". The European Parliament had, however, on 8 May 1981<sup>1</sup> already approved in principle this proposal for a decision which sought to create machinery to prevent the creation of barriers to trade and the use of an advance information procedure to achieve this had been welcomed. It can be assumed that in approving the proposed decision the European Parliament had considered and given its approval to the machinery in question.

2. The legal instrument chosen by the Council, however, was a directive<sup>2</sup>, which was adopted on 28 March 1983, and lays down substantially the same machinery. In these circumstances, the Council is entitled to assume that it knew the European Parliament's views on the appropriate procedures. However, switching the legal instrument could result in cases where the European Parliament would wish to be consulted if the effect either in practical, legal or institutional significance of the substituted instrument was to be different from that of the instrument originally proposed. The Council, the Commission and the European Parliament should be aware of the possible dangers of the modification of the instrument chosen between the adoption by Parliament of its opinion, and the adoption by the Council of a legislative measure; although no objection arises in this particular case, it would be desirable in future for this fact to be set out clearly and notified to the European Parliament.

3. The motion for a resolution states that a Council regulation would be preferable to a Council decision which the European Parliament had already approved without modification. As such the motion for a resolution is contrary to a prior decision of the European Parliament during the period of the same elected Parliament which would be undesirable and perhaps even inadmissible except for expressly stated and specific reasons. No doubt a regulation in this particular case could be said to have certain advantages compared to a directive; however, as the national legislators are bound to

<sup>1</sup> OJ C 144, 15 June 1981, page 122

<sup>2</sup> OJ L 109, 26 April 1983, page 8

take the measures necessary to implement the Council directive within a period of twelve months, it would be wrong to hold up matters by objecting,

4. Secondly, the motion for a resolution claims that the machinery which the Commission had proposed is insufficient to prevent the appearance of new barriers to trade; as the Parliament had previously accepted the sufficiency of the machinery proposed, this argument ought not to be pushed, in the absence of expressly stated and specific reasons.

5. The committee is however in complete agreement with the desire to have non-tariff barriers to trade removed which inspired both the motion for a resolution and the opinion of the Committee on Economic and Monetary Affairs attached herewith.

tabled by Mr von Wogau, Mr Wedekind, Mr Notenboom, Mr Blumenfeld, Mr Chanterie, Mr Langes, Mr Barbagli, Mr Konrad Schon, Mr Beumer Mr Klepsch, Mr Antoniozzi, Mr Pottering, Mr Jonker, Mr Giavazzi, Mr Aigner, Mr Malangre, Mr Franz, Mr Travaglini and Mr Schnitker on behalf of the Group of the European People's Party (CD Group) pursuant to Rule 47 of the Rules of Procedure on preventive legal supervision in the Community to avoid future barriers to trade

The European Parliament,

- A. concerned for the freedom of intra-Community trade in goods,
- B. whereas barriers to intra-Community goods trade are increasing instead of decreasing,
- C. convinced that the consultation machinery envisaged by the Commission in its proposal for a Council decision laying down a procedure for the provision of information in the field of technical standards and regulations (OJ No C 253/80 p.2) is not sufficient to effectively prevent the appearance of further barriers to trade in the common market in future, especially those resulting from new legislative measures by the Member States,
- D. having regard to the provisions of Article 93(3) of the EEC Treaty and the related case law of the Court of Justice of the European Communities<sup>1</sup>, according to which national aid arrangements are invalid even within that particular state unless the Commission is informed in good time of the intended introduction or alteration of the aid or if it has initiated the procedure provided for in Article 93(2) of the EEC Treaty,
- E. convinced that only the adoption of a Community regulation which, in the event of new national arrangements, empowers the Commission to block even the legal provisions of the Member States for an appropriate period of time to establish whether such arrangements are consistent with the principles of the common market, can prevent the appearance of new barriers to trade within the Community,

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<sup>1</sup> Court of Justice of the European Communities, judgment of 15.7.1964, Case 6/64 reports 1964 p.585; judgment of 11.12.1973, Case 121/73, rep. 1973, 1495; judgment of 12.10.1978, Case 156/77, rep. 1978, 1881; judgment of 17.9.1980, Case 730/79, rep. 1980, 2671

1. Calls on the Commission to submit forthwith to the Council a proposal for a regulation which, inter alia, requires the Member States to notify the Commission of the European Communities in good time of all intended measures laying down standards which are liable to justify, perpetuate or intensify barriers to trade in the common market, so that the Commission may give its opinion thereon. If the Commission considers that the proposed course of action is incompatible with Community law, it shall initiate a procedure whereby, after allowing the parties concerned a period of time in which to

state their case, it can establish, if need be that the act of laying down the standard contemplated by the Member State in question is incompatible with Community law. The Member State may not enact the law in question until the Commission has given a final decision or if it rules that the intended measure runs counter to the provisions of Community law;

2. Instructs its President to forward this resolution to the Council, the Commission and the Ministers of Justice of the Member States.

OPINION

(Rule 101 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs

Draftsman : Mr von WOGAU

At its meeting on 15/16 February, the Committee on Economic and Monetary Affairs appointed Mr von Wogau draftsman of the opinion.

The committee considered the draft opinion at its meeting of 21 March 1984, on which occasion it unanimously adopted the conclusions contained therein.

The following took part in the vote : Mr J. Moreau, chairman; Mr von Wogau, draftsman; Mr Beazley, Mr von Bismarck, Mr Bonaccini, Mr Delorozoy, Mr Herman, Mr Leonardi, Mr Marchesin (deputizing for Mrs Desouches), Mr Müller-Hermann, Mr Rogalla (deputizing for Mr Schinzel) and Mrs Theobald-Paoli.

## The Committee on Economic and Monetary Affairs

1. Draws attention to the large number of standards still being elaborated by national standards institutes; expresses its concern at the barriers to intra-Community trade and the compartmentalization of the Community market into separate national markets that inevitably result from the application of such national standards and points out that their adverse effect on the competitiveness of European industry should not be underestimated;
2. Emphasizes that these barriers to trade cannot be removed unless national standards are replaced by European standards;
3. Views the Council Directive of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations as an initial step in this direction; emphasizes, however, that the Directive should in no way be regarded as the final stage, but that on the basis of the experience gained from the information procedure, the Commission should be empowered in a subsequent phase to block the introduction of standards which would constitute barriers to trade and be incompatible with Community law, and requests the Commission to submit a proposal along these lines;
4. Draws the attention of the Legal Affairs Committee finally to the fact that the motion for a resolution in question (Doc. 1-1159/82) does not relate to the legal instrument (directive or regulation) used for this information procedure but that the central issue involved in this resolution is the widening of the Commission's powers to block standards that constitute barriers to trade; underlines, moreover, that such a measure is not incompatible with the information procedure since introduced and approved by Parliament but is a further step towards the ultimate objective, namely European standardization;
5. Requests the Legal Affairs Committee to incorporate these considerations into its report.