

Case C-359/92 Germany v Council [1994]

Facts: Council Directive 92/59/EEC on general product safety empowered the Commission to require Member States to take specific temporary measures in cases where a product placed on the market put in jeopardy the health and safety of consumers in a number of Member States, whose measures adopted or planned with regards to that product differed. According to Germany, since the directive was adopted on the basis of Article 100a of the Treaty, it could only empower the Commission to check whether provisional measures taken by the Member States comply with Community law, but it could not allow the Commission to take decisions replacing those which the national authorities had taken. Germany also argued that these provisions failed to comply with the principle of proportionality, since the Commission could attain the same objectives by recourse to the infringement procedure under Article 169 of the Treaty. Germany brought an action for the declaration of the relevant provisions as void.

Held: The measures which the Council is empowered to take under that Article 100a of the Treaty are aimed at the establishment and functioning of the internal market. In certain fields, the approximation of general laws alone may not be sufficient. Consequently, this article must be interpreted as encompassing the Council's power to lay down, if necessary, individual measures concerning a specific product. Action by the Community authorities is justified by the fact that the risk can be eliminated effectively only by adopting appropriate measures at Community level, in order to ensure the protection of the health and safety of consumers and the proper functioning of the Common Market. The infringement procedure laid down in Article 169 of the Treaty does not permit to oblige Member states to take one of the specified measures listed in the directive, and the Commission would be obliged to bring proceedings, rendering the procedure more cumbersome and lengthier. Moreover, it is not certain that a declaration by the Court would enable the objectives set out in the directive to be achieved as effectively as would be the case by a Community harmonization measure.