

Law of the Republic of Moldova On the Technical Barriers to Trade

The present law establishes the juridical basis for avoiding the creation of technical barriers to trade during the process of the preparation, adoption and application of technical regulations, standards and conformity assessment procedures in the Republic of Moldova.

CHAPTER 1 GENERAL PROVISIONS

Article 1. Principal Notions

(1) Within the context of the present law the following definitions are used:

Technical barriers to trade - differences between national standards and technical regulations, or national conformity assessment procedures, and of those, used in international practice, or the absence of such standards regulations or procedures, which imply supplementary expenditures of means and / or time in selling the products on world or domestic markets, in comparison with normal commercial practice;

Technical regulation - document providing the technical conditions with mandatory character, either directly or by reference to a normative document on standardization or integrally embraced by it and which is adopted by an authority;

Product - result of activities or processes;

National and equal treatment –the treatment of products, processes or services having their origins in other countries is no less favorable than that accorded to the similar products, processes or services of national origin or to those originating from any other country with a comparable situation.

Interested party – an authority or economic agent, applying or intending to apply a technical regulation or a standard.

conformity assessment procedure - any procedure used, directly or indirectly, to determine that relevant requirements of technical regulations or standards are fulfilled.

Article 2. The Aims of the Present Law and Its Application

- (1) Arising from the provisions of the Agreement on Technical Barriers to Trade of the World Trade Organization (WTO/TBT), the present law establishes the rules, the observance of which within the process of preparation, adoption and application of technical regulations, standards and conformity assessment procedures of the products with the provisions of the mentioned documents shall not create difficulties in the free movement of products on national and world markets, insuring at the same time the protection of the domestic market from dangerous, counterfeit, and low quality products.
- (2) The principal terms (notions) in the sphere related to the estimate of product conformity to the regulatory requirements shall be established in a separate law.

Article 3. The Legislation of the Republic of Moldova in the Field of Technical Barriers to Trade

- (1) The legislation of the Republic of Moldova in the field of technical barriers to trade comprises the Constitution of the Republic of Moldova, the present law, the law "On Standardization" and other normative documents related to the aims of this law.
- (2) A separate law shall regulate the relations arising in the sphere related to the estimate of the product (service) conformity to the regulatory requirements.
- (3) Where an international agreement, which the Republic of Moldova is a party to, sets the requirements or rules in respect of the technical barriers in the way of commerce, different to those provided for in the Moldovan Law, then the provisions of the international agreement shall prevail.

Article 4. Technical Regulations

(1) In the Republic of Moldova the following are considered as technical regulations:

- legislative acts of the Republic of Moldova, the Decrees of the President of the Republic of Moldova, the Decisions of the Government of the Republic of Moldova, where they contain requirements for products;
- national standards of the Republic of Moldova of which application is mandatory;

- normative acts of authorities (departmental normative acts), in the competence of which, in accordance with the legislation in force of the Republic of Moldova enters set mandatory requirements for products.

(2) In cases when for similar products, services, processes and modes of production, document are adopted, the requirements of which, duplicated or amend existing regulations, the following priority of application is established:

1. legislative acts of the Republic of Moldova;
2. decrees of the President of the Republic of Moldova;
3. decisions of the Government of the Republic of Moldova;
4. normative acts issued and adopted by the National Standardization Body
5. departmental normative documentation.

(3) In case of the existence of a document with greater priority, all subsequent documents are to be either adjusted in accordance with it or abrogated.

CHAPTER 2. GENERAL REQUIREMENTS ON THE CONTENT AND PROCESS OF PREPARATION OF TECHNICAL REGULATIONS

Article 5. The Content of Technical Regulations

1) In the elaboration of technical regulations the Republic of Moldova will utilize international standards or projects for such standards that are in the final stage of elaboration, except where these standards or parts of them are non utilizable or inefficient for realization of the specified in Section 2 objectives at thee p.2 of this Article, on the gramels of climatic factors or geographic ones or where they would introduce basic technological problems.

2) The technical requirements shall not be more restrictive for commerce than is necessary to achieve the following objectives:

- a) to ensure national security;
- b) to protect human health and security;
- c) to protect the fauna and flora;
- d) to ensure environment protection;
- e) to ensure the rational use of natural resources and energy; and
- f) to prevent practices that are misleading to the consumers in respect of the product destination, quality or safety.

(3) The technical requirements shall:

- a) ensure equal treatment of the goods imported from any country;
- b) provide imported goods, treatment no more restrictive than the treatment of similar goods produced domestically;
- c) be developed and applied without the creation of any additional technical barriers to trade;
- d) be based on scientific data.

Article 6. Preparation of technical regulations and conformity assessment procedures

1. A new technical regulation will be elaborated whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards.
2. A new conformity assessment procedure will be prepared whenever a relevant guide or recommendation issued by an international standardizing body does not exist or the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies.
3. The bodies, in the Republic of Moldova preparing the draft technical regulations will publish, in the official press, not later than two weeks from the day of preparation a notice, informing the interested parties of the Republic of Moldova and abroad about such draft.
4. If the preparation of a technical regulation or (the modification of a valid technical regulation), is seen to have a significant effect on imports into the Republic of Moldova or on export from the Republic of Moldova, if the Republic of Moldova has signed with other states bilateral or multilateral agreements on exchange of relevant information, the developer of the technical regulation, upon the request of any member country will explain the justification of such a technical regulation and will send it to the concerned country through the Inquiry Point, mentioned in art. 13, in the way established by such agreements. If a

new technical regulation is drafted in accordance with the relevant international (regional) standards requirements, information regarding to the conformity of the elaborated technical regulation with the international (regional) standard will be applied.

5. The bodies responsible for the preparation of technical regulations, through the Inquiry Point, mentioned in art. 13 of the present law, upon adoption of a technical regulation shall:
 - notify to the member countries, mentioned in p.4 of the present article the types of products, covered by the prepared technical regulation, with a brief indication of the objective and rationale of the preparation (the notification has to be done in French, English and Spanish);
 - upon request, provide details or copies of the proposed technical regulation and, whenever possible, identify those parts, which in essence deviate from the relevant international (regional) standards.
6. In the process of preparation of the technical regulation, the drafter will set a reasonable period of time, but no longer than 6 months, in order to enable the countries-members and interested parties of the Republic of Moldova to present their comments in written regarding the draft regulation, for them be discussed with other interested parties, and to be taken into account.
7. In case of urgent problems of safety, health and hereditary matters, animal and plants or environmental protection or national security takes an exceptional character, the body, responsible for the preparation of the technical regulation may omit such of steps enumerated in paragraph 3 and paragraph 5 of the present article as it finds necessary, under the conditions that:
 - will notify the countries – members about the preparation of the concerned technical regulation, indicating the nature of urgent problems;
 - will supply, at the request of countries – members and will offer the opportunity to present their comments in written, which are going to be discussed and taken into account within the result of discussions.
8. Information concerning the adoption and entering into force of technical regulations in the Republic of Moldova is published in the official publications of the Government and of the national Body of Standardization within 2 weeks after their adoption.

The adopted technical regulations shall be published not later than 30 days from the day of their adoption.

The body adopting the technical regulation, at the proposal of interested parties will establish a reasonable interval between the publication of technical regulations and their entry into force,, in order that they may adapt their products or methods of production to the concerned requirements.
9. If the circumstances or objectives, which led to the adoption of technical regulations no longer apply or are modified, the authorities shall abrogate or modify the respective technical regulations and shall publish a notice regarding the abrogation or modification of the technical regulation. In the cases the body, which has adopted the technical regulation has ceased its activity, the relevant decision will be taken by its legal successor.
10. The authorities empowered to set up conformity assessment procedures shall in case of mandatory conformity assessment procedures observe the provisions of paragraphs 3, 4, 5, 6, 7 and 8 of the present article.

Article 7: The Coordination of Technical Regulation Development Activities

- (1) The programs of technical regulation development activities shall be made known to all interested public authorities and coordinated with them.
- (2) Where information on the development of certain technical regulations by a certain public authority has been properly made available and made to published as provided for in Article 6 (3) hereof, other public authorities shall have no right to initiate the development of any technical regulations with similar application, except where a decision has been made to develop an alternative version. Other public authorities will be provided an opportunity to take part in such developments.

Article 8: The recognition of equivalency of technical regulations of other countries

- 1) Technical regulations of other countries are considered equivalent with national technical regulations where they :
 - a) are not in contradiction with the provisions of the legislation of the Republic of Moldova
 - b) contribute, in effective way and to the same degree, to the implementation of the stipulated objectives of the technical regulations
 - c) The recognition of the equivalency of technical regulations of other countries with those of the Republic of Moldova lies within the is under the competence of public authorities which, in accordance with the legislation of the Republic of Moldova, have the power to establish mandatory requirements for products.

- 2) For the imported products requiring a confirmation, technical regulations or national standards, the results of the tests and controls carried out by certification bodies in the export country will be recognized and applied in Republic of Moldova where:
 - a) The product standards of a product and the procedures of conformity assessment are equivalent with those applied within the territory of the Republic of Moldova;
 - b) In the exporting country the national standardization body has the technical competence to carry out conformity assessments.

CHAPTER 3. THE APPLICATION OF TECHNICAL REGULATIONS AND STANDARDS

Article 9. The Reference to Standards in Technical Regulations

(1) Where national standards of the Republic of Moldova exist, where they have been prepared and adopted in full, conformity with the objectives laid down for the preparation of such technical standards and correspond fully with comparable objectives (regional) standards, the authorities, adopting technical regulations:

- a) use the national standards as a basis for the preparation of technical regulations;
- b) or will partially or entirely include the text of national standards in the technical regulations; or will give refer to the national standards in the text of technical regulations.

(2) In the case of reference in the text of technical regulations to standards, any modification to these standards should be coordinated with the authority which has adopted the respective technical regulations.

Article 10. The Mandatory Application of Standards

(1) The provisions of national standards, referred to in the technical regulations in accordance with article 8 of the present law, are mandatory for domestic production, and for imports.

(2) The basic legislation of the Republic of Moldova sets out provisions of the national standards, the observance of which is mandatory for all economic agents without the need for them to be repeated in technical regulations.

Article 11. The Voluntary Application of Standards

(1) The application of standards not specified in the technical regulations, in the Law of the Republic of Moldova "On Standards" or in any other legislative acts, is voluntary.

(2) Observance of the provisions of the voluntary standards becomes mandatory when:

- a) in signed contracts by economic agents references, are made to each standards;
- b) an economic agent has made a formal declaration on the conformity of products to the requirements of these standards.

Article 12. National treatment concerning the Application of Technical Regulations and Standards for domestic and Imported Goods

1. Technical regulations and standards in the Republic of Moldova are to be applied in the same manner to both, the domestic and imported products.
2. Where an authority is given notice of the effect or, the possible effect of technical regulations, adopted within the limits of its competence as a technical barrier to trade, including the international trade, the authority should urgently undertake measures, to end an effect.:
 - a) when needed, re- specification of the provisions in technical regulations or in standards;
 - b) publication of an official commentary on the purpose and practice of the regulations with the aim of reducing as far as possible the barrier to trade.
3. Conformity assessment procedures shall be initiated and completed, as soon as possible and in a manner no more restrictively for imported products than for like domestic products.
4. Information requirements shall be limited to what is necessary to assess conformity and determine fees.
5. Confidentiality of information about imported products shall be respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected.
6. Fees for assessing the conformity of imported products shall be comparable to those fees chargeable for assessing the conformity of like products of national origin or originating in any other country.

7. The selection of samples for testing shall not be such as to cause unnecessary inconvenience to foreign suppliers

CHAPTER 4. INFORMATIONAL INSURANCE IN THE FIELD OF TECHNICAL BARRIERS TO TRADE

Article 13. The Information Center in the Field of Technical Barriers to Trade

(1) An Information Center on Standardization and Certification has been created in the Republic of Moldova which, at the request of interested parties (bodies, physical and legal persons) will supply with information regarding:

- a) technical regulations, standards and other normative documentation adopted, or in the process of preparation in the Republic of Moldova;
- b) the conformity assessment procedures in force or supposed to be applied on the territory within the Republic of Moldova;
- c) Moldovan authorities belong and participate in international or regional bodies on standardization and conformity assessment, the bilateral and multilateral agreements, and have or in the process of negotiating in this area;
- d) notifications, mentioned in art. 6 of the present law are published in official journals.

(2) the Information Center on Standardization and Certification, created for the realization of provisions of the Agreement on Technical Barriers to Trade (WTO / TBT), is the responsibility of the National Standardization Body.

Article 14. Principles of Operation of the Information Center in the Field of Technical Barriers to Trade

(1) Those authorities, allowed to adopt technical regulations and standards will systematically create and update their informational resources (database) in these fields, as specified in art. 13, p.1 of the present law.

(2) In order to satisfy the requests for information of interested parties, the authorities pass to the Information Center on Standardization and Certification electronic versions of the bibliographic data regarding the technical regulations, the contents of which is established by the National Standardization Body.

(3) The authorities will grant free access of interested parties to relevant information at the Information Center, except their access needs to be limited on the grounds of state, business or commercial confidentiality.

(4) The costs of any service supplied in terms of the issue of copies of requested documents should be the same for the domestic and foreign beneficiaries, with the exception of actual freight costs.

(5) The presentation of draft technical regulations or of draft standards for a notice (or comments) to foreign interested parties is undertaken by the means of the Information Center on standardization and certification of the Republic of Moldova, or by the mandatory notification procedures for the Center regarding this presentation in the way, established by the National Standardization Body.

(6) The presentation of draft technical regulations or of draft standards for a notice or comment, in accordance with the legislation of the Republic of Moldova is undertaken by the developer in accordance with the requests for information from natural and legal persons of the Republic of Moldova.

CHAPTER 5. RIGHTS AND ATTRIBUTIONS OF THE NATIONAL STANDARDIZATION BODY AND OF AUTHORITIES

Article 15. The Rights of the National Standardization Body

The National Standardization Body has the following rights:

- a) to require from authorities information concerning the adoption and preparation of technical regulations;
- b) to coordinate with the programs of preparation of normative documentation, adopted by other authorities within the limits of their competence, stipulated by the legislation of the Republic of Moldova;

- c) to coordinate the draft decisions of the Government of the Republic of Moldova and other legislative acts regarding products, services or processes and methods of production regarding the usage of terms and definitions;
- d) to adopt technical regulations within the limits of its competence;
- e) to apply taxes to the maintenance of a written record of decision in standardization, metrology and conformity assessment;
- f) to form groups of experts with the aim of giving consultations and solve problems of technical character;
- g) to participate in the activity of international (regional) bodies on standardization.

Article 16. *The Attributions of the National Standardization Body*

1. The National Standardization Body has the following attributions:
 - a) to ensure the functioning of the Information Center on standardization and certification;
 - b) to ensure the management of the database regarding the problems mentioned in art.13 (p.1) of the present law;
 - c) to ensure the publication of the notifications, received from the Secretariat WTO;
 - d) to respond to request for information on relevant agreements and documentation;
 - e) to fulfill the provisions of the Code of Practice for the preparation, adoption and application of standards of the WTO / TBT Agreement.
2. The National Standardization Body shall ensure that non-governmental bodies within their territories, which use conformity assessment procedures, comply with the provisions of Article 6 and 7, with the exception of the obligation to notify proposed conformity assessment procedures.

Article 17. *The Rights of Authorities*

The authorities, participating in the processes of preparation, adoption and application of technical regulations have the following rights:

- a) to receive in the established way from the Information Center on Standardization and Certification information regarding the technical regulations, standards, the procedures of conformity assessment, regarding the belonging to and participation at the international or regional bodies on standardization and conformity assessment, and participation in and belonging to bilateral or multilateral agreements in the field of standardization and conformity assessment;
- b) to receive information regarding technical regulations and the procedures of conformity assessment, elaborated by other authorities of the Republic of Moldova;
- c) to participate in the established way in the activity of the technical committees, belonging to the international and regional standardization bodies, to which the Republic of Moldova takes part.

Article 18. *The Attributions of Authorities*

The authorities, participating at the processes of preparation, adoption and application of technical regulations have the following attributions:

- a) to fulfill the provisions of the Code on practice for the preparation, adoption and application of standards of the WTO / TBT Agreement;
- b) to coordinate with the National Standardization Body regarding the terminology and the conformity of the draft technical regulations with the provisions of the WTO / TBT Agreement;
- c) to use preparing technical regulations the international (regional) standards or their appropriate elements which are in the process of being finalized;
- d) at the request for information from any WTO Member to justify the necessity of adoption of technical regulations not conforming to international (regional) standards and to submit this notification to the

Information Center on Standardization and Certification; the notifications are to be presented in one of the working languages of the WTO (French, English, Spanish);

- e) to supply the Information Center on Standardization and Certification with detailed information regarding adopted technical regulations and those in the process of preparation and regarding their conformity with the requirements of international (regional) standards;
- f) to adopt technical regulations within the limits of its competence;
- g) to abrogate adopted technical regulations in cases when the circumstances or objectives, that caused their adoption do not exist any longer or have changed;
- h) to publish approved technical regulations.

CHAPTER 6. SUPERVISION AND RESPONSIBILITIES

Article 19. The State Control and Supervision of the Observance of Technical Regulations Requirements

1. State control and supervision of the observance by the economic agents of requirements of the technical regulations adopted in the Republic of Moldova is carried out at the level of preparation, launching for production, fabrication, delivery, commercialization, usage (exploitation), custody and transportation of goods and service supply.
2. The state control and supervision of the observance of requirements of the technical regulations is undertaken in accordance with the legislation in force, stipulating the allowances of control bodies in the Republic of Moldova.
3. State control and supervision of the observance of technical regulations is carried out by the state Inspectorate of public authorities from the count of economic agents submitted to the control and supervision, with report of expenses to the cost of production.

Article 20. The Responsibility for the Infringement of the Provisions of the Present Law

(1) Authorities preparing, adopting or ensuring the application of technical regulations infringing the provisions of the present law of the Republic of Moldova are to be brought under the administrative, penal or civil responsibility in accordance with current legislation.

Article 21. Objections to the Application of the Present Law

Objections to the application and interpretation of the present law are examined by the courts in the way, within the legal justification of the Republic of Moldova.

CHAPTER 7. FINANCING

Article 21. The Financial Support of Activities

The financial resources for the preparation of technical regulations and the creation of informational resources (database) are personal and cooperated means of authorities, with the expenditures at the account of the supplied services' costs.

CHAPTER 8. FINAL AND TEMPORARY PROVISIONS

ARTICLE 22.

By the 1st of January, 2002, the authorities are obliged to adopt and make known the technical regulations, which should enhance provisions of the respective standards regarding the life and health protection and the security of natural persons, of the environment and of consumers' interests, all that if it considers necessary the maintenance of the obligatory character of the application of voluntary standards' provisions.

ARTICLE 23.

The present law enters into force at the moment of its publication.

ARTICLE 24

Within 3 months, the Government will

- Elaborate and present to the Parliament the proposals for adjustment of existing legislation in conformity with the present law.

The President of Parliament

Dumitru Diacov

Chisinau, 10 March 2000
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