



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.11.1997  
COM(97) 601 final

96/0220 (COD)

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending for the third time Directive 83/189/EEC laying down a procedure  
for the provision of information in the field of technical standards and regulations

(presented by the Commission pursuant to Article 189 a (2)  
of the EC-Treaty)

## EXPLANATORY MEMORANDUM

### 1. The initial proposal

#### 1.1 Its content

This proposal for a Directive is designed to introduce a system of information and consultation between the Commission and the Member States on future national legislative initiatives relating specifically to Information Society services.

These services are defined as those provided at a distance, by electronic means and on the individual request of a service receiver.

Preservation of the area without internal frontiers, the internal market, is an essential precondition for safeguarding and promoting the development of on-line interactive services, which offer great potential for investment, the growth and competitiveness of European industry, job creation and consumers. The information and administrative cooperation mechanism proposed is specifically designed to establish a stable, transparent and cohesive framework for stimulating the development of these "new" services, based in particular on the internal market principles of free movement of services and freedom of establishment.

The content of the proposal is purely procedural: its aim is not to harmonise substantive law at all but simply to extend to future draft national legislation on Information Society services the same rules governing prior notification (with adoption of the national legislation initially postponed for three months) and consultation (i.e. within an ad hoc committee) that currently apply to goods under Directive 83/189/EEC.

#### 1.2 Institutional procedure

The Commission adopted the proposal for a Directive (and the related communication) on 24 July 1996.<sup>1</sup>

It transmitted it to Parliament, the Council and the Economic and Social Committee on 30 August 1996.

The proposal was officially presented at the Council meeting on the internal market on 25 October 1996; it was also discussed at the Council meeting on industry and the Information Society on 8 October 1996 and at the Council meeting on cultural affairs on 16 December 1996.

The Economic and Social Committee endorsed the proposal on 20 March 1997.

On 16 May 1997 Parliament adopted, on first reading and in accordance with the codecision procedure (Article 189b of the EC Treaty), a legislative resolution approving, subject to amendments contained in the resolution, the Commission's proposal and calling on the Commission to alter its proposal accordingly.

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<sup>1</sup> COM(96) 392 final, published in OJ No C 307, 16.10.1996.

## 2. The amended proposal

### 2.1 Parliament's amendments

The initial proposal has been amended to incorporate those Parliament amendments accepted by the Commission.

The Commission has taken maximum possible account of the amendments adopted by Parliament and of the aims underlying them.

These amendments are designed to bolster and reinforce the content and objectives of the Directive. For that reason, most of them, i.e. 12 out of 17, and in particular all those amendments (except one) relating to the operative part of the Directive, have been incorporated into the amended proposal, either as they stand or in terms of their objective.

However, the Commission is unable to accept a small number of amendments (largely wording amendments), for the following reasons:

- the amendments, relating to recitals, do not appear to be entirely consistent with the operative part and content of the Directive (amendments 1, 4 and 8);
- the amendment concerns matters which, although connected with this Directive, exceed its scope and objective (amendment 5);
- the amendment would affect the current Directive 83/189/EEC, which concerns goods, whereas the aim of this third amendment of the Directive is purely to extend the rules in force governing goods, without amendments, to on-line services (amendment 16).

### 2.2 The amendments incorporated into the proposal

The Commission's amended proposal is set out in the right-hand column, with the amendments to the initial proposal underlined.

For ease of understanding and comparison, the left-hand column shows the wording of the Commission's initial proposal.

Recital 1a (new) corresponds exactly to Parliament's amendment 20.

Recital 4a (new) adopts the wording of Parliament's amendment 2 but adds the words "having due regard for Community law" in the interests of clarity.

Recital 5a (new) adopts the exact wording of Parliament's amendment 3.

Recital 17a (new) corresponds exactly to Parliament's amendment 9.

Recital 17b (new) adopts the wording of Parliament's amendment 10.

Recital 17c (new) accurately reflects the content of Parliament's amendment 18. As these are general considerations relating to developments in the market for new services and to the possibility of initiatives to safeguard their future development (which, however, are fully consistent with the approach underlying this proposal), the amendment has been included in an *ad hoc* recital instead of in the operative part of the Directive.

Recital 19 has been updated, in accordance with Parliament's amendment 11, by the exact reference to the recent Directive amending the "television without frontiers" Directive (97/36/EC)<sup>2</sup>.

Recital 21 incorporates Parliament's amendment 12 in full.

Article 1(2a) (new) - *relating to the new subparagraph introduced in Article 6(7) of Directive 83/189/EEC* - incorporates the substance of the first part of Parliament's amendment 14: although it does not set up an *ad hoc* Standing Committee - which would involve specific financial cover - provision is made for the existing Committee and the national authorities to consult experts from industry and academia on regulatory issues relating to Information Society services.

While accepting the purpose of the second part of amendment 14, the Commission proposes that it should be incorporated into the operative part of the Directive, in Article 11 rather than in Article 6 (new Article 1(6), see below). Article 6(2) of the Directive relates to a Commission report on the application of information procedures regarding standardisation; however, standardisation is not covered by this proposal. Nevertheless, Article 11 of the Directive provides for the Commission to present a report every two years to Parliament and the Economic and Social Committee on the application of the Directive as a whole and therefore also on technical legislation. The proposed amendment thus provides for this Commission report to take account in particular of the social, societal and cultural aims of future draft rules on services.

Article 1(3) - *on the sixth subparagraph of Article 8(1) of Directive 83/189/EEC* - adopts Parliament's amendment 15 in full.

Article 1(5)(b) - *on the sixth indent of Article 10(1) of Directive 83/189/EEC* - also corresponds exactly to Parliament's amendment 17.

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<sup>2</sup> OJ No L 202, 30.7.1997.

Article 1(6) (new) - *on the second subparagraph of Article 11 (new) of Directive 83/189/EEC* - incorporates the substance of the second part of Parliament's amendment 14 (see above).

Article 2a (new) incorporates the substance of Parliament's amendment 19. The only change made to the amendment concerns the deadline set for the Commission to assess the application of the Directive, particularly with respect to the definition of the services referred to in Article 1(2) of the Directive: the date 1 July 1999 is replaced by 1 July 2000 so as to ensure that the review can be carried out in the light of at least a year's application of the Directive following the new date set for its transposal (30 June 1998, see below).

### **2.3. The other amendments**

Three further amendments are being made to the initial proposal with the sole purpose of updating references to legislation which has now been adopted or to dates originally indicated.

Recital 17, like recital 19 (see above), has been updated by the exact reference to the Directive amending the "television without frontiers" Directive (97/36/EC).<sup>3</sup>

Recital 18 has been updated by the exact reference to Directive 97/13/EC<sup>4</sup> on a common framework for general authorisations and individual licences in the field of telecommunications services, adopted this year.

Article 2(1) updates the deadline for bringing national rules into line with this Directive: 30 June 1998 instead of 31 December 1997.

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<sup>3</sup> OJ No L 202, 30.7.1997.

<sup>4</sup> OJ No L 117, 10.4.1997.

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of the EC-Treaty)

## INITIAL PROPOSAL

The European Parliament and the Council of the European Union,

Having regard to the Treaty establishing the European Community, in particular Articles 100a and 213 thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure referred to in Article 189b of the Treaty,

1. Whereas, in order to promote the smooth functioning of the Internal Market, as much transparency as possible should be ensured as regards the future national rules and regulations that will apply to Information Society services by amending Directive 83/189/EEC;

1a.

2. Whereas a wide variety of services within the meaning of Articles 59 and 60 of the Treaty will benefit from the opportunities afforded by the Information Society for being provided at a distance, electronically and on the individual request of a service receiver;

3. Whereas the area without internal frontiers of which the Internal Market consists enables the providers of such services to develop their

## AMENDED PROPOSAL

The European Parliament and the Council of the European Union,

Having regard to the Treaty establishing the European Community, in particular Articles 100a and 213 thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure referred to in Article 189b of the Treaty,

1. Whereas, in order to promote the smooth functioning of the Internal Market, as much transparency as possible should be ensured as regards the future national rules and regulations that will apply to Information Society services by amending Directive 83/189/EEC;

1a. Whereas the concepts of "service" and "provision of service" used in this Directive must be understood in the broad sense of the term give to them by the case-law of the Court of Justice in its interpretation of Articles 59 to 66 of the EC Treaty;

2. Whereas a wide variety of services within the meaning of Articles 59 and 60 of the Treaty will benefit from the opportunities afforded by the Information Society for being provided at a distance, electronically and on the individual request of a service receiver;

3. Whereas the area without internal frontiers of which the Internal Market consists enables the providers of such services to develop their

cross-border activities with a view to increasing their competitiveness, and thus affords ordinary citizens new opportunities for transmitting and receiving information regardless of frontiers, and consumers new forms of access to goods and services;

4. Whereas the various social, societal and cultural implications of the advent of the Information Society may require account to be taken of the specificity of the content of such services;

4a.

5. Whereas the European Council has stressed the need to create a clear and stable legal framework at Community level in order to foster the development of the Information Society; whereas Community law and the rules governing the Internal Market in particular, including both the principles enshrined in the Treaty and secondary legislation, already constitute a basic legal framework for the growth of such services;

5a.

6. Whereas the current national rules and regulations applicable to existing services will have to be adapted to take account of the new Information Society services, either with a view to ensuring that the general interest is better safeguarded or, on the contrary, with a view to simplifying them where their application is

cross-border activities with a view to increasing their competitiveness, and thus affords ordinary citizens new opportunities for transmitting and receiving information regardless of frontiers, and consumers new forms of access to goods and services;

4. Whereas the various social, societal and cultural implications of the advent of the Information Society may require account to be taken of the specificity of the content of such services;

4a. Whereas there may be instances in which Member States deem it necessary to take measures in the interest of preserving cultural identity and diversity, having due regard for Community law;

5. Whereas the European Council has stressed the need to create a clear and stable legal framework at Community level in order to foster the development of the Information Society; whereas Community law and the rules governing the Internal Market in particular, including both the principles enshrined in the Treaty and secondary legislation, already constitute a basic legal framework for the growth of such services;

5a. Whereas the Commission has committed itself to submitting Green Papers followed by proposals for joint actions on the new services;

6. Whereas the current national rules and regulations applicable to existing services will have to be adapted to take account of the new Information Society services, either with a view to ensuring that the general interest is better safeguarded or, on the contrary, with a view to simplifying them where their application is

disproportionate to the objectives they pursue;

7. Whereas, without co-ordination at Community level, this foreseeable regulatory activity at national level might result in restrictions to the free movement of services and the freedom of establishment, leading in turn to a refragmentation of the Internal Market, overregulation and regulatory inconsistencies;

8. Whereas, in order to ensure real and effective protection of the general interest objectives which play a part in the development of the Information Society, there is a need for a co-ordinated approach at Community level when dealing with questions relating to activities with such highly transnational connotations as the new services have;

8a. Whereas there already exists Community harmonisation for telecommunications services and that the existing Community legislation foresees adaptations to account for technological developments and the supply of new services;

9. Whereas, for the other, less well-known fields of the Information Society, it would be premature, however, to co-ordinate such rules and regulations by means of an extensive or exhaustive harmonisation at Community level of the substantive law, given, first, that neither the form the new services will take nor their nature is sufficiently well known, secondly, that there is as yet at national level no specific regulatory activity in this field, and, thirdly, that the need for and content of such harmonisation in the light of the Internal Market cannot be defined

disproportionate to the objectives they pursue;

7. Whereas, without co-ordination at Community level, this foreseeable regulatory activity at national level might result in restrictions to the free movement of services and the freedom of establishment, leading in turn to a refragmentation of the Internal Market, overregulation and regulatory inconsistencies;

8. Whereas, in order to ensure real and effective protection of the general interest objectives which play a part in the development of the Information Society, there is a need for a co-ordinated approach at Community level when dealing with questions relating to activities with such highly transnational connotations as the new services have;

8a. Whereas there already exists Community harmonisation for telecommunications services and that the existing Community legislation foresees adaptations to account for technological developments and the supply of new services;

9. Whereas, for the other, less well-known fields of the Information Society, it would be premature, however, to co-ordinate such rules and regulations by means of an extensive or exhaustive harmonisation at Community level of the substantive law, given, first, that neither the form the new services will take nor their nature is sufficiently well known, secondly, that there is as yet at national level no specific regulatory activity in this field, and, thirdly, that the need for and content of such harmonisation in the light of the Internal Market cannot be defined

at this stage;

10. Whereas it is therefore necessary to preserve the smooth functioning of the area without internal frontiers and to avert the risks of refragmentation by providing for a procedure for the provision of information, the holding of consultations, and administrative co-operation in respect of the new draft rules and regulations; whereas such a procedure will contribute *inter alia* to ensure that the Treaty, in particular Articles 52 and 59 thereof, is effectively applied, and, where appropriate, to detect the need to safeguard the general interest at Community level; whereas, moreover, the improved application of the Treaty made possible by such an information procedure will have the effect of reducing the need for Community rules to that which is strictly necessary and proportional in the light of the Internal Market and of the protection of general interest objectives; whereas, lastly, such a procedure will enable businesses to exploit the advantages of the Internal Market more effectively;

11. Whereas Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations pursues the same objectives; whereas this procedure is effective, being the most comprehensive one for attaining these objectives; whereas the experience that has been gained in implementing the Directive and the procedures provided for therein can be applied to draft rules on Information Society services; whereas the procedure it lays down is now well established among national authorities;

at this stage;

10. Whereas it is therefore necessary to preserve the smooth functioning of the area without internal frontiers and to avert the risks of refragmentation by providing for a procedure for the provision of information, the holding of consultations, and administrative co-operation in respect of the new draft rules and regulations; whereas such a procedure will contribute *inter alia* to ensure that the Treaty, in particular Articles 52 and 59 thereof, is effectively applied, and, where appropriate, to detect the need to safeguard the general interest at Community level; whereas, moreover, the improved application of the Treaty made possible by such an information procedure will have the effect of reducing the need for Community rules to that which is strictly necessary and proportional in the light of the Internal Market and of the protection of general interest objectives; whereas, lastly, such a procedure will enable businesses to exploit the advantages of the Internal Market more effectively;

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12. Whereas, moreover, in accordance with Article 7a of the Treaty, the Internal Market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured; whereas Directive 83/189/EEC provides only for an administrative co-operation procedure and not for any harmonisation of substantive rules;
  13. Whereas, therefore, amendment of Directive 83/189/EEC with a view to applying it to draft rules and regulations on Information Society services is the approach best suited to meeting effectively the need for transparency in the Internal Market as far as the legal framework for Information Society services is concerned;
  14. Whereas, in view of the diversity of Information Society services and their future growth, notification should be provided for only in the case of rules which are likely to evolve in future; whereas the services which are likely to necessitate and generate the largest number of new rules and regulations are those which are provided at a distance, electronically, and on the individual request of a service receiver; whereas provision must accordingly be made for the notification of draft rules and regulations relating to such services;
  15. Whereas specific rules on the taking-up and pursuit of service activities which are capable of being carried on in the manner described above should thus be communicated even where they are included in a set of rules and regulations with a more general purpose; whereas, however, general rules which do not contain any specific provision concerning
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  13. Whereas, therefore, amendment of Directive 83/189/EEC with a view to applying it to draft rules and regulations on Information Society services is the approach best suited to meeting effectively the need for transparency in the Internal Market as far as the legal framework for Information Society services is concerned;
  14. Whereas, in view of the diversity of Information Society services and their future growth, notification should be provided for only in the case of rules which are likely to evolve in future; whereas the services which are likely to necessitate and generate the largest number of new rules and regulations are those which are provided at a distance, electronically, and on the individual request of a service receiver; whereas provision must accordingly be made for the notification of draft rules and regulations relating to such services;
  15. Whereas specific rules on the taking-up and pursuit of service activities which are capable of being carried on in the manner described above should thus be communicated even where they are included in a set of rules and regulations with a more general purpose; whereas, however, general rules which do not contain any specific provision concerning

such services should not be notified;

such services should not be notified;

16. Whereas "rules on the taking-up and pursuit of service activities" means rules laying down any form of requirement, such as those relating to service providers, services and service receivers and to an economic activity capable of being provided electronically, at a distance and on the individual request of the service receiver; whereas, for example, rules on the establishment of service providers, in particular those on authorisation or licensing arrangements, are thus covered; whereas shall be considered as such a rule a provision specifically aimed at Information Society services even if part of a more general regulation;

16. Whereas "rules on the taking-up and pursuit of service activities" means rules laying down any form of requirement, such as those relating to service providers, services and service receivers and to an economic activity capable of being provided electronically, at a distance and on the individual request of the service receiver; whereas, for example, rules on the establishment of service providers, in particular those on authorisation or licensing arrangements, are thus covered; whereas shall be considered as such a rule a provision specifically aimed at Information Society services even if part of a more general regulation;

17. Whereas this Directive is without prejudice to the scope of Council Directive 89/552/EC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities such as modified by Directive 96/.../EC of the European Parliament and the Council or any future modification of that directive;

17. Whereas this Directive is without prejudice to the scope of Council Directive 89/552/EC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities such as modified by Directive 97/36/EC of the European Parliament and the Council or any future modification of that directive;

17a.

17a. Whereas the Commission has undertaken to submit a Green Paper on the development of the cultural aspects of the new services; whereas this initiative could, if applicable, be followed by a proposal for appropriate measures;

17b.

17b. Whereas, therefore, this Directive is also without prejudice to the scope of cultural aspects of any future Community policy;

17c.

17c. Whereas developments in the market for new Information Society services

should be regularly examined at Community level, especially from the viewpoint of the convergence between telecommunications, information technology and the media, with a view, where appropriate, to legislative initiatives being taken to encourage the development of the new services at European level;

18. Whereas this Directive is without prejudice to the negotiations concerning and the content of the proposal for a European Parliament and Council Directive on a common framework for general authorisations and individual licences for telecommunications services;
19. Whereas, at all events, this Directive does not cover the drafts of national provisions aimed at implementing the content of Community Directives in force or awaiting adoption inasmuch as they already form the subject-matter of a specific examination; whereas it accordingly does not cover either national rules and regulations implementing Council Directive 89/552/EC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by European Parliament and Council Directive 96/.../EC or any future amendments of that Directive or national rules and regulations implementing the future Directive on a common framework for general authorisations and individual licences for telecommunications services;
20. Whereas definition of the framework for the provision of information and the holding of consultations at
18. Whereas this Directive is without prejudice to the content of European Parliament and Council Directive 97/13/EC on a common framework for general authorisations and individual licences for telecommunications services;
19. Whereas, at all events, this Directive does not cover the drafts of national provisions aimed at implementing the content of Community Directives in force or awaiting adoption inasmuch as they already form the subject-matter of a specific examination; whereas it accordingly does not cover either national rules and regulations implementing Council Directive 89/552/EC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by European Parliament and Council Directive 97/36/EC or any future amendments of that Directive or national rules and regulations implementing Directive 97/13/EC on a common framework for general authorisations and individual licences for telecommunications services;
20. Whereas definition of the framework for the provision of information and the holding of consultations at

Community level as established by this Directive is a precondition for a coordinated and effective participation by the European Community in work involving matters relating to the regulatory aspects of Information Society services in the international context;

21. Whereas this Directive seeks to amend Directive 83/189/EEC, which for its part (with the exception of Article 43) is based on Articles 100a and 213 of the Treaty; whereas there should be a degree of consistency in the legal bases used for the same Directive;

#### Article 1

Directive 83/189/EEC is amended as follows:

1. The title of the Directive is replaced by the following:

*European Parliament and Council Directive laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services.*

2. Article 1 is amended as follows:

(a) a new point is added after point 1:

2. "service", any service provided at a distance, by electronic means and on the individual request of a service receiver;

Community level as established by this Directive is a precondition for a coordinated and effective participation by the European Community in work involving matters relating to the regulatory aspects of Information Society services in the international context;

21. Whereas this Directive seeks to amend Directive 83/189/EEC and should therefore be based on Articles 100a and 213 of the Treaty;

#### Article 1

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1. The title of the Directive is replaced by the following:

*European Parliament and Council Directive laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services.*

2. Article 1 is amended as follows:

(a) a new point is added after point 1:

2. "service": any service provided at a distance, by electronic means and on the individual request of a service receiver;

(b) points 2 and 3 become points 3 and 4 respectively;

(c) a new point 5 is added:

5. "rule on services", a requirement relating to the taking-up and pursuit of service activities within the meaning of point 2 of this Article, and in particular provisions concerning the service provider, the services and the service receiver, to the exclusion of any rules that are not specifically aimed at the services defined within this same point;

(d) points 4 to 10 become points 6 to 12;

(e) the first paragraph of point 9 (new point 11) is replaced by the following:

*"technical regulation", technical specifications and other requirements or a rule on services, including the relevant administrative provisions, the observance of which is compulsory, de jure or de facto, in the case of marketing, provision, establishment of a service operator or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 10, prohibiting the manufacture, importation, marketing or use of a product or prohibiting the provision or use of a service or establishment as a service provider.*

*De facto technical regulations*

(b) points 2 and 3 become points 3 and 4 respectively;

(c) a new point 5 is added:

5. *"rule on services", a requirement relating to the taking-up and pursuit of service activities within the meaning of point 2 of this Article, and in particular provisions concerning the service provider, the services and the service receiver, to the exclusion of any rules that are not specifically aimed at the services defined within this same point;*

(d) points 4 to 10 become points 6 to 12;

(e) the first paragraph of point 9 (new point 11) is replaced by the following:

*"technical regulation", technical specifications and other requirements or a rule on services, including the relevant administrative provisions, the observance of which is compulsory, de jure or de facto, in the case of marketing, provision, establishment of a service operator or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 10, prohibiting the manufacture, importation, marketing or use of a product or prohibiting the provision or use of a service or establishment as a service provider.*

*De facto technical regulations*

include:

- laws, regulations or administrative provisions of a Member State which refer either to technical specifications or other requirements or rules on services, or to professional codes or codes of practice which in turn refer to technical specifications or other requirements or rules on services and compliance with which confers a presumption of conformity with the obligations imposed by the aforementioned laws, regulations or administrative provisions;
- voluntary agreements to which a public authority is a contracting party and which provide, in the general interest, for compliance with technical specifications or other requirements or rules on services, excluding public procurement tender specifications;
- technical specifications or other requirements which are linked to fiscal or financial measures affecting the consumption of products or services by encouraging compliance with such technical specifications or other requirements or rules on services; technical specifications or other requirements or rules on

include:

- laws, regulations or administrative provisions of a Member State which refer either to technical specifications or other requirements or rules on services, or to professional codes or codes of practice which in turn refer to technical specifications or other requirements or rules on services and compliance with which confers a presumption of conformity with the obligations imposed by the aforementioned laws, regulations or administrative provisions;
- voluntary agreements to which a public authority is a contracting party and which provide, in the general interest, for compliance with technical specifications or other requirements or rules on services, excluding public procurement tender specifications;
- technical specifications or other requirements which are linked to fiscal or financial measures affecting the consumption of products or services by encouraging compliance with such technical specifications or other requirements or rules on services; technical specifications or other requirements or rules on

*services linked to national social-security systems are not included;*

(f) point 10 (new point 12) is replaced by the following:

12. **"draft technical regulation"**, *the text of a technical specification or other requirement or of a rule on services, including administrative provisions formulated with the aim of enacting it or of ultimately having it enacted as a technical regulation, the text being at a stage of preparation at which substantial amendments can still be made.*

3. The last subparagraph of Article 8(1) is replaced by the following:

*With respect to the technical specifications or other requirements or rules on services referred to in the third indent of the second paragraph of point 11 of Article 1, the detailed comments or opinions of the Commission or the Member States may concern only the aspect which may hinder trade or the free movement of services and not the fiscal or financial aspect of the measure.*

*services linked to national social-security systems are not included;*

(f) point 10 (new point 12) is replaced by the following:

12. **"draft technical regulation"**, *the text of a technical specification or other requirement or of a rule on services, including administrative provisions formulated with the aim of enacting it or of ultimately having it enacted as a technical regulation, the text being at a stage of preparation at which substantial amendments can still be made.*

2a The following new subparagraph is added to Article 6(7):

"In particular, with regard to rules concerning services, the Committee and national administrations may consult experts from industry and academia, who will be asked, where appropriate, to formulate advice or guidelines for the Standing Committee."

3. The last subparagraph of Article 8(1) is replaced by the following:

*With respect to the technical specifications or other requirements or rules on services referred to in the third indent of the second paragraph of point 11 of Article 1, the detailed comments or opinions of the Commission or the Member States may concern only the aspect which may hinder trade, the free movement of services or the freedom of establishment of a service operator and not the fiscal or financial aspect of the measure.*

4. Article 9 is modified as follows:  
a) the first paragraph of point 2 is replaced by the following:

*Member States shall postpone:*

- *for four months the adoption of a draft technical regulation in the form of a voluntary agreement within the meaning of the second indent of the second paragraph of point 11 of Article 1,*
- *without prejudice to paragraphs 3, 4 and 5, for six months the adoption of any other draft technical regulation,*

*from the date of receipt by the Commission of the communication referred to in Article 8(1) if the Commission or another Member State delivers a detailed opinion, within three months of that date, to the effect that the measure envisaged may create obstacles to the free movement of goods or services or to the freedom of establishment of operators within the internal market.*

4. Article 9 is modified as follows:  
a) the first paragraph of point 2 is replaced by the following:

*Member States shall postpone:*

- *for four months the adoption of a draft technical regulation in the form of a voluntary agreement within the meaning of the second indent of the second paragraph of point 11 of Article 1,*
- *without prejudice to paragraphs 3, 4 and 5, for six months the adoption of any other draft technical regulation,*

*from the date of receipt by the Commission of the communication referred to in Article 8(1) if the Commission or another Member State delivers a detailed opinion, within three months of that date, to the effect that the measure envisaged may create obstacles to the free movement of goods or services or to the freedom of establishment of operators within the internal market.*

b) point 7 is replaced with the following text:

*Paragraphs 1 to 5 shall not apply in those cases where, for urgent reasons, occasioned by serious and unforeseeable circumstances, relating to the protection of public health or safety, the protection of animals or the preservation of plants, and for rules relating to services also for public order, a Member State is obliged to prepare technical regulations in a very short space of time in order to enact and introduce them immediately without any consultations being possible. The Member State shall give, in the communication referred to in Article 8, the reasons which warrant the urgency of the measures taken. The Commission shall give its views on the communication as soon as possible. It shall take appropriate action in cases where improper use is made of this procedure. The European Parliament shall be kept informed by the Commission.*

5. Article 10 is amended as follows:

(a) the first and second indents of paragraph 1 are replaced by the following:

- *comply with binding Community acts which result in the adoption of technical specifications or rules on services;*
- *fulfil the obligations arising out of international agreements which result in the adoption of common technical specifications or rules on services in the Community;*

b) point 7 is replaced with the following text:

*Paragraphs 1 to 5 shall not apply in those cases where, for urgent reasons, occasioned by serious and unforeseeable circumstances, relating to the protection of public health or safety, the protection of animals or the preservation of plants, and for rules relating to services also for public order, a Member State is obliged to prepare technical regulations in a very short space of time in order to enact and introduce them immediately without any consultations being possible. The Member State shall give, in the communication referred to in Article 8, the reasons which warrant the urgency of the measures taken. The Commission shall give its views on the communication as soon as possible. It shall take appropriate action in cases where improper use is made of this procedure. The European Parliament shall be kept informed by the Commission.*

5. Article 10 is amended as follows:

(a) the first and second indents of paragraph 1 are replaced by the following:

- *comply with binding Community acts which result in the adoption of technical specifications or rules on services;*
- *fulfil the obligations arising out of international agreements which result in the adoption of common technical specifications or rules on services in the Community;*

- (b) the sixth indent of paragraph 1 is replaced by the following:
- *restrict themselves to amending a technical regulation within the meaning of point 11 of Article 1 of this Directive, in accordance with a Commission request, with a view to removing an obstacle to trade or the free movement of services;*
- (c) in paragraphs 3 and 4 the reference to Article 1(9) is replaced by: point 11 of Article 1
- d) paragraph 4 is amended as follows:
4. *Article 9 shall not apply to the technical specifications or other requirements or the rules on services referred to in the third indent of the second paragraph of point 11 of Article 1.*
- 6.
- (b) the sixth indent of paragraph 1 is replaced by the following:
- *restrict themselves to amending a technical regulation within the meaning of point 11 of Article 1 of this Directive, in accordance with a Commission request, with a view to removing an obstacle to trade, the free movement of services or the freedom of establishment for service operators;*
- (c) in paragraphs 3 and 4 the reference to Article 1(9) is replaced by: point 11 of Article 1
- d) paragraph 4 is amended as follows:
4. *Article 9 shall not apply to the technical specifications or other requirements or the rules on services referred to in the third indent of the second paragraph of point 11 of Article 1.*
6. The following second subparagraph is added to Article 11:
- "The Commission, in its report, should take duly into account the social, societal and cultural aims envisaged for any draft rule on services".

## **Article 2**

1. Member States shall bring into force the regulations and administrative provisions necessary to comply with this Directive by 31/12/97 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication.

## **Article 2**

1. Member States shall bring into force the regulations and administrative provisions necessary to comply with this Directive by 30 June 1998 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication.

The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate the main provisions of national law which they adopt in the field covered by this Directive to the Commission.

#### Article 2a

#### Article 3

This Directive is addressed to the Member States.

Done at Brussels,

The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate the main provisions of national law which they adopt in the field covered by this Directive to the Commission.

#### Article 2a

Before 1 July 2000, the Commission shall review whether it should submit to the European Parliament and the Council proposals for a revision of this Directive, in particular in the light of the technological development of the services referred to in Article 1(2). To this end, the Commission shall take account of any comments communicated to it by Member States.

#### Article 3

This Directive is addressed to the Member States.

Done at Brussels,

ISSN 0254-1475

COM(97) 601 final

# DOCUMENTS

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15 16 06

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Catalogue number : CB-CO-97-610-EN-C

ISBN 92-78-27506-9

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Office for Official Publications of the European Communities

L-2985 Luxembourg