

**DIRECTIVE 98/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 20 July 1998****amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 189b of the Treaty <sup>(3)</sup>,

- (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 applying to Information Society services, by amending Directive 98/34/EC <sup>(4)</sup>;
- (2) Whereas a wide variety of services within the meaning of Articles 59 and 60 of the Treaty will benefit by the opportunities afforded by the Information Society of being provided at a distance, electronically and at the individual request of a recipient of services;
- (3) Whereas the area without internal frontiers comprising the internal market enables providers of such services to develop their cross-border activities with a view to increasing their competitiveness, and thus affords citizens new opportunities to transmit and receive information regardless of frontiers, and consumers new forms of access to goods and services;
- (4) Whereas the extension of the scope of Directive 98/34/EC should not prevent Member States from taking account of the different social, societal and cultural implications inherent in the advent of the Information Society; whereas, in particular, the use of the procedural rules laid down in that Directive for

Information Society services should not affect cultural policy measures, particularly in the audiovisual field, which Member States might adopt in accordance with Community law, taking account of their linguistic diversity, their specific national and regional characteristics and their cultural heritage; whereas the development of the Information Society should ensure, in any event, proper access of European citizens to the European cultural heritage supplied in a digital environment;

- (5) Whereas Directive 98/34/EC is not intended to apply to national rules relating to fundamental rights, such as constitutional provisions concerning freedom of expression and, more particularly, freedom of the press; whereas it is not intended to apply to the general criminal law either; whereas, furthermore, it does not apply to agreements governed by private law between credit institutions, in particular, to agreements on the execution of payments between credit institutions;
- (6) 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 development of such services;
- (7) Whereas it should be possible to adapt the existing national rules and regulations applicable to services available at the present so as to take account of new Information Society services, either with a view to ensuring that the general interest is better protected or, on the other hand, with a view to simplifying such rules and regulations where their application is disproportionate to the objectives they pursue;
- (8) Whereas, without coordination at Community level, this foreseeable regulatory activity at national level might give rise to restrictions on the free movement of services and the freedom of establishment, leading in turn to a refragmentation of the internal market, over-regulation and regulatory inconsistencies;
- (9) Whereas, in order to ensure real and effective protection of the general-interest objectives involved in the development of the Information Society, there is a

<sup>(1)</sup> OJ C 307, 16. 10. 1996, p. 11, and OJ C 65, 28. 2. 1998, p. 12.

<sup>(2)</sup> OJ C 158, 26. 5. 1997, p. 1.

<sup>(3)</sup> Opinion of the European Parliament of 16 May 1997 (OJ C 167, 2. 6. 1997, p. 238), Council Common Position of 26 January 1998 (OJ C 62, 26. 2. 1998, p. 48) and Decision of the European Parliament of 14 May 1998 (OJ C 167, 1. 6. 1998). Council Decision of 29 June 1998.

<sup>(4)</sup> OJ L 204, 21. 7. 1998, p. 37.

need for a coordinated approach at Community level when questions relating to activities with such highly transnational connotations as those of the new services are dealt with;

- (10) Whereas, in the case of telecommunications services, there is already harmonisation at Community level or, in some cases, arrangements for mutual recognition, and whereas the existing Community legislation provides for adaptations to take account of technological developments and the supply of new services and, as a result, the majority of national regulations concerning telecommunications services will not be subject to notification under this Directive since they will come under the exemptions set out in Article 10(1) or Article 1 point 5 of Directive 98/34/EC; whereas, nevertheless, certain national provisions specifically aimed at matters which are not subject to Community legislation may affect the free movement of Information Society services and to that extent they must be notified;
- (11) Whereas, for the other still little known fields of the Information Society, it would, however, be premature to coordinate national rules and regulations by means of extensive or exhaustive harmonisation at Community level of the substantive law, given that enough is not yet known about the form the new services will take or their nature, that there is as yet at national level no specific regulatory activity in this field, and that the need for, and content of, such harmonisation in the light of the internal market cannot be defined at this stage;
- (12) Whereas it is therefore necessary to preserve the smooth functioning of the internal market and to avert the risks of refragmentation by providing for a procedure for the provision of information, the holding of consultations, and administrative cooperation in respect of new draft rules and regulations; whereas such a procedure will help, *inter alia*, to ensure that the Treaty, in particular Articles 52 and 59 thereof, is effectively applied and, where necessary, to detect any need to protect 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 what is strictly necessary and proportional in the light of the internal market and the protection of general-interest objectives; whereas, lastly, such a procedure will enable businesses to exploit the advantages of the internal market more effectively;
- (13) Whereas Directive 98/34/EC pursues the same objectives and whereas this procedure is effective, being the most comprehensive one for attaining these objectives; whereas the experience that has been gained in implementing that 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;
- (14) 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 and whereas Directive 98/34/EC provides only for an administrative cooperation procedure and not for any harmonisation of substantive rules;
- (15) Whereas, therefore, amendment of Directive 98/34/EC with a view to applying it to draft rules and regulations on Information Society services is the approach best suited, with regard to the legal framework of the said services, to meeting effectively the need for transparency in the internal market;
- (16) Whereas notification should be provided for notably in the case of rules which are likely to evolve in future; whereas services which are provided at a distance, electronically, and at the individual request of a recipient of services (Information Society services) are likely, in view of their diversity and their future growth, to necessitate and generate the largest number of new rules and regulations; whereas provision must accordingly be made for the notification of draft rules and regulations relating to such services;
- (17) 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 rules and regulations with a more general purpose; whereas, however, general regulations which do not contain any provision specifically aimed at such services need not be notified;
- (18) Whereas 'rules on the taking-up and pursuit of service activities' means rules laying down requirements concerning Information Society services, such as those relating to service providers, services and recipients of services and to economic activities capable of being provided electronically, at a distance and at the individual request of the recipient of the services; whereas, for example, rules on the establishment of service providers, in particular those on authorisation or licensing arrangements, are accordingly covered; whereas a provision specifically aimed at Information Society services must be con-

sidered as being such a rule even if part of a more general regulation; whereas, on the other hand, measures of direct and individual concern to certain specific recipients (such as, for example, telecommunications licences) would not be covered;

- (19) Whereas, under Article 60 of the Treaty as interpreted by the case-law of the Court of Justice, 'services' means those normally provided for remuneration; whereas that characteristic is absent in the case of activities which a State carries out without economic consideration in the context of its duties in particular in the social, cultural, educational and judicial fields; whereas national provisions concerning such activities are not covered by the definition given in Article 60 of the Treaty and therefore do not fall within the scope of this Directive;
- (20) Whereas this Directive is without prejudice to the scope of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities<sup>(1)</sup>, as amended by Directive 97/36/EC of the European Parliament and of the Council<sup>(2)</sup>, or any future amendments;
- (21) Whereas, in any event, this Directive does not cover draft national provisions aimed at transposing the content of Community directives in force or awaiting adoption inasmuch as they are already subject to specific examination; whereas it accordingly covers neither national rules and regulations transposing Directive 89/552/EEC, as amended by Directive 97/36/EC, or any future amendments, nor national rules and regulations transposing, or adopted subsequently within the context of, Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences for telecommunications services<sup>(3)</sup>;
- (22) Whereas, moreover, provision should be made for exceptional cases in which national rules and regulations concerning Information Society services might be adopted immediately and whereas it is also important to allow this possibility solely for urgent reasons linked to serious and unforeseeable circumstances, such as circumstances of which there was no previous knowledge and the origin of which is not attributable to any action on the part of the authorities of the Member State concerned, so as not to jeopardize the objective of prior consultation and administrative cooperation inherent in this Directive;
- (23) Whereas it is appropriate for a Member State to postpone for twelve months — or possibly eighteen months in the case of a common position of the Council — the adoption of a draft rule on services only where the draft rule relates to a matter which falls within the scope of a proposal for a directive, regulation or decision which the Commission has already submitted to the Council; whereas this stand-still obligation may be imposed by the Commission on the relevant Member State only if the draft national rule contains provisions which are not substantively consistent with the proposal submitted by the Commission;
- (24) 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 consistent and effective participation by the Community in work involving matters relating to the regulatory aspects of Information Society services in the international context;
- (25) Whereas it is appropriate that, in the context of the functioning of Directive 98/34/EC, the Committee provided for in Article 5 thereof should meet specifically to examine questions relating to Information Society services;
- (26) Whereas, by the same token, it should be noted that whenever a national measure is required also to be notified at the draft stage under another Community act, the Member State concerned may make a single communication under that other act, by indicating that that communication constitutes a communication also for the purpose of this Directive;
- (27) Whereas the Commission will at regular intervals investigate developments in the market for new services in the field of the Information Society, especially in the framework of the convergence between telecommunications, information technology and media and, where necessary, take initiatives in order to adapt rules promptly in order to encourage the European development of new services,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 98/34/EC is amended as follows:

1. the title shall be replaced by the following:

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

<sup>(1)</sup> OJ L 298, 17. 10. 1989, p. 23.

<sup>(2)</sup> OJ L 202, 30. 7. 1997, p. 1.

<sup>(3)</sup> OJ L 117, 7. 5. 1997, p. 15.

2. Article 1 is amended as follows:

(a) the following new point shall be inserted:

- ‘2. “service”, any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

For the purposes of this definition:

- “at a distance” means that the service is provided without the parties being simultaneously present,
- “by electronic means” means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means,
- “at the individual request of a recipient of services” means that the service is provided through the transmission of data on individual request.

An indicative list of services not covered by this definition is set out in Annex V.

This Directive shall not apply to:

- radio broadcasting services,
- television broadcasting services covered by point (a) of Article 1 of Directive 89/552/EEC (\*).

(\* ) OJ L 298, 17.10.1989, p. 23. Directive as last amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 1);

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

(c) the following new point shall be inserted:

- ‘5. “rule on services”, requirement of a general nature relating to the taking-up and pursuit of service activities within the meaning of point 2, in particular provisions concerning the service provider, the services and the recipient of services, excluding any rules which are not specifically aimed at the services defined in that point.

This Directive shall not apply to rules relating to matters which are covered by Community legislation in the field of telecommunications services, as defined by Directive 90/387/EEC (\*).

This Directive shall not apply to rules relating to matters which are covered by Community

legislation in the field of financial services, as listed non-exhaustively in Annex VI to this Directive.

With the exception of Article 8(3), this Directive shall not apply to rules enacted by or for regulated markets within the meaning of Directive 93/22/EEC or by or for other markets or bodies carrying out clearing or settlement functions for those markets.

For the purposes of this definition:

- a rule shall be considered to be specifically aimed at Information Society services where, having regard to its statement of reasons and its operative part, the specific aim and object of all or some of its individual provisions is to regulate such services in an explicit and targeted manner,
- a rule shall not be considered to be specifically aimed at Information Society services if it affects such services only in an implicit or incidental manner.

(\* ) OJ L 192, 24.7.1990, p. 1. Directive as amended by Directive 97/51/EC (OJ L 295, 29.10.1997, p. 23).<sup>2</sup>;

(d) points 4 to 8 shall become points 6 to 10;

(e) point 9 shall be renumbered 11 and shall read as follows:

- ‘11. “technical regulation”, technical specifications and other requirements or rules on services, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing, provision of a service, 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 to other requirements or to rules on services, or to professional codes or codes of practice which in turn refer to technical specifications or to other requirements or to rules on services, 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 or rules on services 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.

This comprises technical regulations imposed by the authorities designated by the Member States and appearing on a list to be drawn up by the Commission before 5 August 1999 (\*), in the framework of the Committee referred to in Article 5.

The same procedure shall be used for amending this list;

- (f) point 10 shall be renumbered 12 and the first subparagraph shall read as follows:

‘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. Article 6 shall be amended as follows:

- (a) the following subparagraph shall be added to paragraph 1:

‘The Committee shall meet in a specific composition to examine questions concerning Information Society services.’;

- (b) the following paragraph shall be added:

‘8. With respect to rules on services, the Commission and the Committee may consult natural or legal persons from industry or academia, and where possible representative bodies, capable of delivering an expert opinion on the social and societal aims and consequences of any draft rule on services, and take notice of their advice whenever requested to do so.’;

4. The sixth subparagraph of Article 8(1) shall be 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 subparagraph of point 11 of Article 1, the comments or detailed opinions of the Commission or Member States may concern only aspects which may hinder trade or, in respect of rules on services, the free movement of services or the freedom of establishment of service operators and not the fiscal or financial aspects of the measure.’;

5. Article 9 shall be amended as follows:

- (a) Paragraphs 2 and 3 shall be replaced by the following:

‘2. 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 subparagraph 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 (except for draft rules on services),

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 within the internal market;

- without prejudice to paragraphs 4 and 5, for four months the adoption of any draft rule on services, 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 services or to the freedom of establishment of service operators within the internal market.

With regard to draft rules on services, detailed opinions from the Commission or Member States may not affect any cultural policy measures, in particular in the audiovisual sphere, which Member States might adopt in accordance with Community law, taking account of their linguistic diversity, their specific national and regional characteristics and their cultural heritage.

The Member State concerned shall report to the Commission on the action it proposes to take on such detailed opinions. The Commission shall comment on this reaction.

With respect to rules on services, the Member State concerned shall indicate, where appropriate, the reasons why the detailed opinions cannot be taken into account.

3. With the exclusion of draft rules relating to services, Member States shall postpone the adoption of a draft technical regulation for twelve months from the date of receipt by the Commission of the communication referred to in Article 8(1) if, within three months of that date, the Commission announces its intention of proposing or adopting a directive, regulation or decision on the matter in accordance with Article 189 of the Treaty;

(b) Paragraph 7 shall be replaced by the following:

'7. Paragraphs 1 to 5 shall not apply in 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 on services, also for public policy, notably the protection of minors, 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 or
- for urgent reasons occasioned by serious circumstances relating to the protection of the security and the integrity of the financial system, notably the protection of depositors, investors and insured persons, a Member State is obliged to enact and implement rules on financial services immediately.

In the communication referred to in Article 8, the Member State shall give reasons for 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;

6. Article 10 shall be amended as follows:

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

— restrict themselves to amending a technical regulation within the meaning of point 11 of Article 1, in accordance with a Commission request, with a view to removing an obstacle to trade or, in the case of rules on services, to the free movement of services or the freedom of establishment of service operators;

(c) paragraphs 3 and 4 shall be replaced by the following:

'3. Paragraphs 3 to 6 of Article 9 shall not apply to the voluntary agreements referred to in the second indent of the second subparagraph of point 11 of Article 1.

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 subparagraph of point 11 of Article 1;

7. Annexes V and VI, which appear in the Annex to this Directive, shall be added.

#### *Article 2*

1. Member States shall bring into force the regulations and administrative provisions necessary in order to comply with this Directive by 5 August 1999. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down 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 3*

Not later than two years from the date referred to in the first subparagraph of Article 2(1), the Commission shall submit to the European Parliament and the Council an evaluation of the application of Directive 98/34/EC in particular in the light of technological and market developments for the services referred to in point 2 of Article 1. Not later than three years from the date referred to in the first subparagraph of Article 2(1), the Commission shall, if necessary, make proposals to the European Parliament and to the Council for a revision of the said Directive.

To this end, the Commission shall take into account any observations that might be communicated to it by Member States.

*Article 4*

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

*Article 5*

This Directive is addressed to the Member States.

Done at Brussels, 20 July 1998.

*For the European Parliament*

*The President*

J.M. GIL-ROBLES

*For the Council*

*The President*

W. MOLTERER

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## ANNEX

## ANNEX V

**Indicative list of services not covered by the second subparagraph of point 2 of Article 1**1. *Services not provided "at a distance"*

Services provided in the physical presence of the provider and the recipient, even if they involve the use of electronic devices

- (a) medical examinations or treatment at a doctor's surgery using electronic equipment where the patient is physically present;
- (b) consultation of an electronic catalogue in a shop with the customer on site;
- (c) plane ticket reservation at a travel agency in the physical presence of the customer by means of a network of computers;
- (d) electronic games made available in a video-arcade where the customer is physically present.

2. *Services not provided "by electronic means"*

— Services having material content even though provided via electronic devices:

- (a) automatic cash or ticket dispensing machines (banknotes, rail tickets);
- (b) access to road networks, car parks, etc., charging for use, even if there are electronic devices at the entrance/exit controlling access and/or ensuring correct payment is made,

— Off-line services: distribution of CD roms or software on diskettes,

— Services which are not provided via electronic processing/inventory systems:

- (a) voice telephony services;
- (b) telefax/telex services;
- (c) services provided via voice telephony or fax;
- (d) telephone/telefax consultation of a doctor;
- (e) telephone/telefax consultation of a lawyer;
- (f) telephone/telefax direct marketing.

3. *Services not supplied "at the individual request of a recipient of services"*

Services provided by transmitting data without individual demand for simultaneous reception by an unlimited number of individual receivers (point to multipoint transmission):

- (a) television broadcasting services (including near-video on-demand services), covered by point (a) of Article 1 of Directive 89/552/EEC;
  - (b) radio broadcasting services;
  - (c) (televised) teletext.
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*ANNEX VI***Indicative list of the financial services covered by the third subparagraph of point 5 of Article 1**

- Investment services
- Insurance and reinsurance operations
- Banking services
- Operations relating to pension funds
- Services relating to dealings in futures or options

Such services include in particular:

- (a) investment services referred to in the Annex to Directive 93/22/EEC <sup>(1)</sup>; services of collective investment undertakings,
- (b) services covered by the activities subject to mutual recognition referred to in the Annex to Directive 89/646/EEC <sup>(2)</sup>,
- (c) operations covered by the insurance and reinsurance activities referred to in:
  - Article 1 of Directive 73/239/EEC <sup>(3)</sup>,
  - the Annex to Directive 79/267/EEC <sup>(4)</sup>,
  - Directive 64/225/EEC <sup>(5)</sup>,
  - Directives 92/49/EEC <sup>(6)</sup> and 92/96/EEC <sup>(7)</sup>.

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<sup>(1)</sup> OJ L 141, 11. 6. 1993, p. 27.

<sup>(2)</sup> OJ L 386, 30. 12. 1989, p. 1. Directive as amended by Directive 92/30/EEC (OJ L 110, 28. 4. 1992, p. 52).

<sup>(3)</sup> OJ L 228, 16. 8. 1973, p. 3. Directive as last amended by Directive 92/49/EEC (OJ L 228, 11. 8. 1992, p. 1).

<sup>(4)</sup> OJ L 63, 13. 3. 1979, p. 1. Directive as last amended by Directive 90/619/EEC (OJ L 330, 29. 11. 1990, p. 50).

<sup>(5)</sup> OJ 56, 4. 4. 1964, p. 878/64. Directive as amended by the 1973 Act of Accession.

<sup>(6)</sup> OJ L 228, 11. 8. 1992, p. 1.

<sup>(7)</sup> OJ L 360, 9. 12. 1992, p. 1.'