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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT  
AND THE COUNCIL**

**EVALUATION OF THE APPLICATION OF DIRECTIVE 98/34/EC  
IN THE FIELD OF INFORMATION SOCIETY SERVICES**

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## **1. SUMMARY OF THE REPORT**

The notification procedure introduced by Directive 98/34/EC has been implemented in the Information Society services sector since August 1999. This report sets out to take stock of the application of the Directive's provisions in relation to those services.

The report provides an overview of that procedure as an aid to gauging its contribution in the field of the services newly covered.

Overall, the functioning of the procedure is assessed in a positive light, confirming the actual value of this Directive as an effective internal-market tool in this new economic field. It has made it possible to develop a genuine dialogue between the Commission and the Member States and to create greater transparency concerning ongoing regulatory initiatives, which are brought to the attention of all the authorities and parties concerned. Moreover, by dint of prior analysis of draft texts enabling numerous obstacles to be avoided before they can have any negative impact, the Directive has made a practical contribution towards achieving the objective, set by the Lisbon European Council, of "better law-making" and of defining a regulatory framework geared to reinforcing the competitiveness of the European economy in such a dynamic and innovative field as Information Society services.

The report starts off with a presentation of the notification procedure in the field of Information Society services. This is followed by a detailed analysis of the Commission's and Member States' responses to drafts notified so far and to major problems of Community law raised therein. Specific (urgency, confidentiality and "blocking") procedures are analysed in detail. The report also takes stock of breaches of the notification procedure. Finally, it sets out new (national and international) developments in the procedure and concludes with an assessment of its deficiencies and strong points so as to convey an accurate picture of the situation.

## **2. INTRODUCTION**

### **2.1. Extension of the scope of Directive 98/34/EC<sup>1</sup> to include Information Society services**

Directive 98/34/EC is an important instrument of transparency policy within the internal market. Over practically 20 years, it has enabled over 7 000 draft national regulatory texts to be analysed. This instrument obliges Member States to notify, at the draft stage, any national provisions containing technical regulations. Once a draft text has been notified, the other Member States and/or the Commission are able to comment on it. The "notification" Directive is thus conducive to dialogue and helps to avoid litigation that can drag on for several years.

In the wake of this success, the scope of the Directive has been gradually broadened to cover all industrial, agricultural and fishery products. Directive 98/48/EC<sup>2</sup> extended the system to include Information Society services.

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<sup>1</sup> Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ L 204, 21.07.1998, pp. 37-48.

The reason for choosing this sector is linked to the need to find a mechanism for supervising this new and rapidly evolving field, while still leaving economic operators and Member States alike as much freedom as possible so as not to block technological developments in this sector. To be sure, Member States often find themselves having to legislate in order to keep up with the ever-increasing pace of developments. Without co-ordination at Community level, a proliferation of new regulatory provisions would risk creating obstacles to the free movement of services and freedom of establishment. This in turn would lead to a fragmentation of the internal market, setbacks for investment, a slowing-down of economic growth and additional costs for companies and users.

Consequently, the challenge of providing a guiding framework for the development of national legislation while at the same time retaining a flexible, rapid-response system has been met by putting in place a notification procedure in this field.

## **2.2. The transposition of Directive 98/48/EC**

All EU Member States have transposed Directive 98/48/EC, mostly in the form of a law or decree, although some have given preference to administrative circulars<sup>3</sup>.

The system was put in place very quickly<sup>4</sup>, the first notifications being received by the Commission in late September 1999. This was because Member States were already familiar with the notification system, and used the same "National Contact Points" structure as for the "products" procedure in this new sector.

## **2.3. Presentation of the report**

This report is intended to provide an overview of the implementation of the provisions of Directive 98/34/CE in the field of Information Society services and to take stock of their application, as required by Article 3 of Directive 98/48/EC<sup>5</sup>.

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<sup>2</sup> 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, OJ L 217, 5.08.1998, pp. 18-26. The provisions of Directive 98/34/EC cited in this report relate to the version of that Directive as amended by Directive 98/48/EC and entitled "Directive 98/34/EC 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>3</sup> See the annexed list of acts transposing Directive 98/48/EC in all Member States (point 10.1).

<sup>4</sup> Directive 98/48/EC entered into force in August 1999.

<sup>5</sup> Article 3 of Directive 98/48/EC: *"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. [...]"*.

### 3. DESCRIPTION OF THE PROCEDURE<sup>6</sup>

#### 3.1. Scope of Directive 98/34/EC in the field of Information Society services

In seeking to identify national regulations which relate to Information Society services and are covered by the notification procedure, the first point of reference should be the definitions given in Article 1 of Directive 98/34/EC.

That Article provides all the definitions needed to grasp its scope. In order to determine whether a draft regulation needs to be notified to the Commission, the draft text must be analysed in the light of these definitions.

Analysis is conducted in several stages.

To begin with, it has to be verified that the "rule" concerned is applicable to services, then whether the service in question is an "Information Society" service and, finally, whether the rule concerned relates "specifically" to Information Society services.

It must first be established whether the rule in question concerns services. Article 1(5) defines a "rule on services" as *"a requirement of a general nature relating to the taking-up and pursuit of service activities [...], in particular provisions concerning the service provider, the services and the recipient of services [...]"*.

A service is defined in recital 19 of Directive 98/48/EC as follows: *"[...], under Article 60 of the Treaty as interpreted by the case-law of the Court of Justice, "services" means those normally provided for remuneration"*. In its Wirth judgement<sup>7</sup> of 7 December 1992, the Court held that the *"essential characteristic of remuneration lies in the fact that it constitutes consideration for the service in question"*. This definition has to be complemented in the light of the Bond van adverteerders judgement<sup>8</sup>, which specifies that Article 60 of the Treaty *"does not require the service to be paid for by all its recipients"*.

The draft text then has to be analysed to determine whether it concerns an Information Society service. To fall within this category, the service must fulfil three conditions<sup>9</sup>: it must be provided at a distance, electronically and at the individual request of a recipient.

"At a distance" means that the national measure must relate to a service provided without the provider and the recipient being simultaneously present.

The second condition, that the service be provided "electronically", refers to the use of electronic data processing and storage equipment to send the service to its recipient.

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<sup>6</sup> For more details on the scope and implementing provisions of this Directive, reference should be made to the "VADE-MECUM to Directive 98/48/EC which introduces a mechanism for the transparency of regulations on Information Society services" (document S-42/98 (final) of the Standards and Technical Regulations Committee, accessible at the following Internet address: [http://europa.eu.int/comm/enterprise/tris/vade9848/index\\_en.pdf](http://europa.eu.int/comm/enterprise/tris/vade9848/index_en.pdf)).

<sup>7</sup> Judgement of 7 December 1993, C-109/92, ECR p. I-6447, recital 15.

<sup>8</sup> Judgement of 26 April 1988, 352/85, ECR p. 2085.

<sup>9</sup> An indicative list of services not meeting these conditions is given in Annex V to the Directive.

The third condition, that the service be provided "at the individual request of a recipient of services" means that data transmissions, which have not been requested by the recipient (point - multi-point), cannot be regarded as falling within the scope of the Directive. For instance, the Directive specifically states that it applies neither to radio broadcasting services nor to television broadcasting services covered by Article 1(a) of Directive 89/552/EEC<sup>10</sup>.

Finally, if the draft national text is to fall under the scope of the Directive, it must relate "specifically" to Information Society services. This avoids the notification of a large number of legislative texts regulating general economic activities and applying *inter alia* to on-line services. In this connection, reference should be made to the fifth subparagraph of Article 1(5) of Directive 98/34/EC, which states that:

- on the one hand, "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";
- On the other hand, "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".

It is, therefore, also necessary to check the statement of reasons and content of a draft text in order to establish its aim. For instance, even if only one paragraph of a law deals with Information Society services, that law must be notified (although the procedure and associated deadlines would then apply only to the paragraph in question). If, by contrast, the legislation concerned was designed to regulate the law of evidence in general, without for example containing any specific provisions concerning on-line arrangements, this would certainly have an impact on the electronic signature issue but the law would not be notifiable under Directive 98/34/EC.

Once this analysis has been carried out, it has to be established whether a rule specifically relating to an Information Society service constitutes a "technical regulation" within the meaning of Article 1(11) of Directive 98/34/EC. Such is the case if observance thereof is compulsory, *de jure* or *de facto*, in the case of marketing, provision of a service, establishment as a service operator or use in a Member State or a major part thereof. Also covered, subject to Article 10 of the Directive, are Member States' legislative, regulatory and administrative provisions banning the provision or use of a service or prohibiting establishment as a service provider. The case law of the European Court of Justice relating to products provides numerous elements of interpretation regarding Article 1(11), which can be transposed into this context<sup>11</sup>.

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<sup>10</sup> OJ L 298, 17.10.1989, pp.23-30.

<sup>11</sup> For a description of the notification procedure provided for in Directive 98/34/EC in respect of products see, in particular, the Report from the Commission to the Council, the European Parliament and the Economic and Social Committee - The operation of Directive 98/34/EC from 1995 to 1998, COM(2000) 429 final of 7.07.2000, point 4.2.

All these definitions highlight the targeted nature of the Directive. Member States have repeatedly indicated that it is difficult to apply criteria defined in this way. The Commission has said that, in such cases, they can always contact its competent departments to examine whether the drafts in question require notification. In numerous cases, particularly during the first few months of the Directive's operation, these informal contacts made it possible to alert national authorities to their obligation to submit a formal notification, thereby avoiding subsequent complications and problems.

### **3.2. Specific features of the notification procedure in the field of Information Society services**

The procedure provided for in Directive 98/34/EC in respect of rules on Information Society services is practically identical to that applicable to products, apart from some specific features: the standstill period, the Commission's scope for action and the fact that the notification obligation does not apply to some sectors of Information Society services.

In the three months following notification of a draft national text, the Commission and/or one or more Member States can issue a detailed opinion. Under the procedure to be followed in respect of rules on products, the adoption of the draft text is thus postponed by three months (making a total of six months during which Member States cannot adopt their draft regulation). In the case of Information Society services, postponement can be by one additional month only. This particular feature was incorporated specifically in order to limit the waiting period for the Member State in question. The downside of this arrangement is that the time remaining after submission of the detailed opinion is not sufficient for a discussion of the "conceivable" solutions. However, as we have already seen, the objective of the "notification" Directive is to establish a dialogue between the Commission and the Member States.

Another specific feature lies in the room for manoeuvre available to the Commission when a Member State notifies a draft text. Under the 98/34/EC procedure, the Commission and the Member States have the option of submitting observations (chiefly general comments) or a detailed opinion (this is the most coercive procedural instrument under the procedure; it identifies possible obstacles to the proper functioning of the internal market, and requires the Member State concerned to respond and indicate what action it intends to take). However, specific powers exist which are available to the Commission alone, such as the power to require postponement of a particular national measure in certain circumstances.

As far as draft technical regulations in respect of products are concerned, three options are open to the Commission and these are set out in Article 9(3),(4) and (5) of Directive 98/34/EC.

First scenario: Member States postpone the adoption of a draft technical regulation for twelve months from the date of notification to the Commission if, within three months of that date, the Commission announces its intention to propose or adopt a Directive, Regulation or Decision on this subject in accordance with Article 249 (ex-Article 189) of the Treaty.

Second scenario: Member States postpone the adoption of a draft technical regulation for twelve months if, within three months of the date of notification to the Commission, the latter concludes that the text concerns a matter which is covered by a proposal for a Directive, Regulation or Decision submitted to the Council in accordance with Article 249 (ex-Article 189) of the Treaty.

Finally, if the Council adopts a common position during the above-mentioned standstill periods, the twelve-month period is extended to eighteen months, subject to compliance with Article 9(6) of the Directive.

In the field of Information Society services, the Commission cannot require postponement of the adoption of a draft simply by stating its intention to propose or adopt a binding Community act relating to the subject of the text. The fact that the Commission is in the process of drawing up a draft Community act is thus not sufficient to justify a waiting period of twelve months for the Member State concerned.

Finally, it should be stressed that, in addition to the general exceptions contained in Directive 98/34/EC, certain specific exceptions to the notification obligation have been added in respect of Information Society services.

These relate firstly to rules governing matters covered by Community legislation in the field of telecommunications services<sup>12</sup>. The Directive uses the definition of this term given in Directive 90/387/EC<sup>13</sup>.

The Directive does not apply to rules relating to matters covered by Community legislation in the field of financial services, as listed non-exhaustively in Annex VI<sup>14</sup>.

By contrast, the Directive does not apply to rules enacted by or for regulated markets (stock markets) or by or for other markets or bodies carrying out clearing or settlement functions for those markets, except as regards the communication of definitive texts to the Commission<sup>15</sup>. While Member States are thus not obliged to notify their draft texts in this field to the Commission, they must submit details of adopted measures.

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<sup>12</sup> Article 1(5), second paragraph, of Directive 98/34/EC.

<sup>13</sup> OJ L 192, 24.07.1990, pp. 1-9.

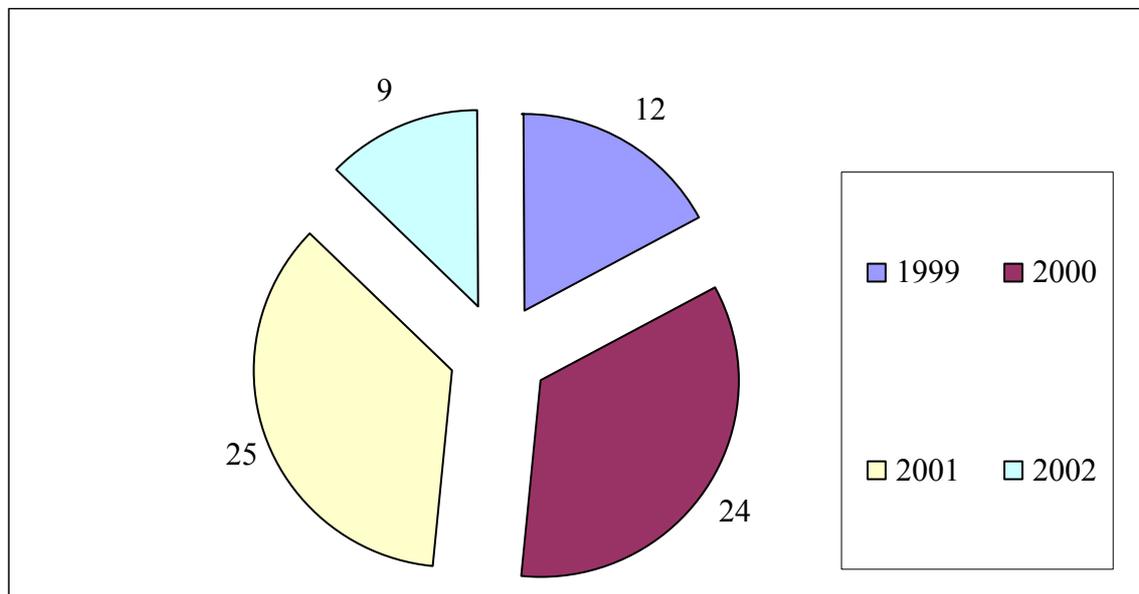
<sup>14</sup> Article 1(5), third paragraph, of Directive 98/34/EC.

<sup>15</sup> Article 1(5), fourth paragraph, of Directive 98/34/CE.

**4. PRESENTATION OF ALL NOTIFICATIONS TRANSMITTED BETWEEN AUGUST 1999 AND FEBRUARY 2002**

**4.1. Graphic presentation of notified drafts<sup>16</sup>**

*4.1.1. Annual breakdown*

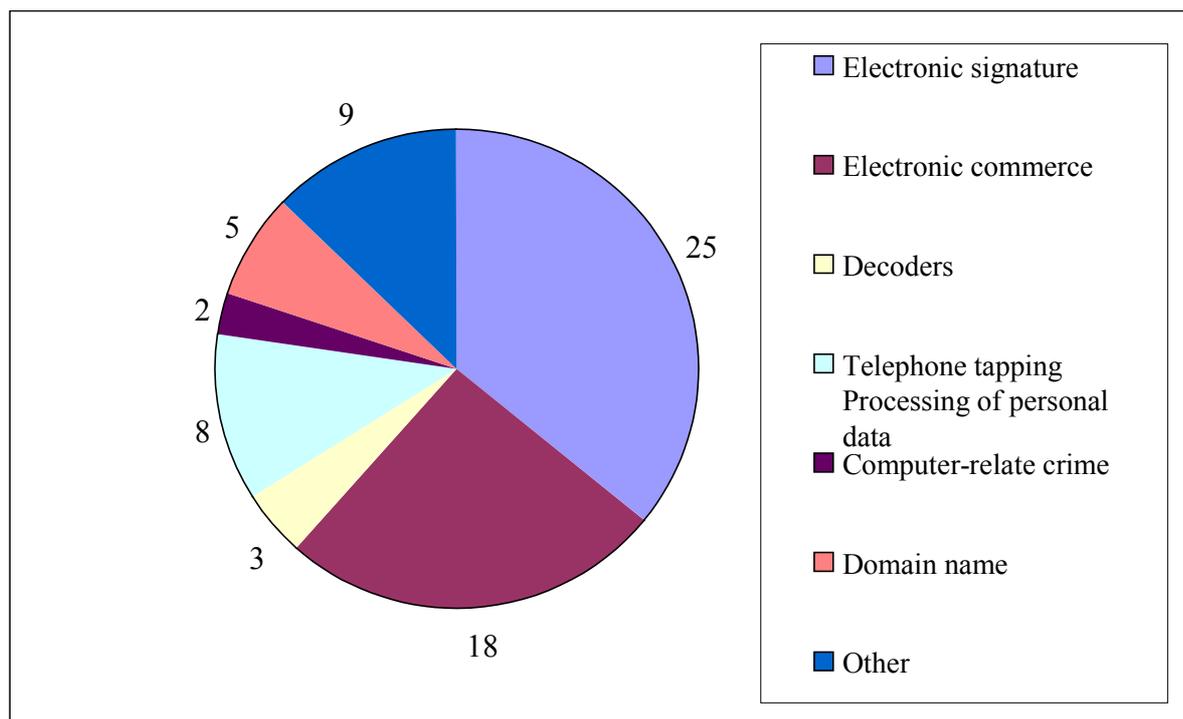


Figures established in February 2002

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<sup>16</sup> The figures presented in this report are based on notifications submitted before February 2002.

#### 4.1.2. Subject breakdown



#### 4.2. Recurrent themes

Up to February 2002, the Commission had received a total of 70 notifications relating to Information Society services. Whilst this is not a very high number because of the limits imposed on the scope of the procedure by the definitions cited above, it is nevertheless significant.

Notifications can essentially be classified under five main headings: electronic signature, electronic commerce, data protection, digital television and decoders, and domain names.<sup>17</sup>

##### 4.2.1. Electronic signature

The Directive on a Community framework for electronic signatures<sup>18</sup> (referred to hereinafter as the "electronic signature Directive") had to be transposed before 18 July 2001. Prior to that date, therefore, Member States were obliged to adopt national measures in order to comply with that Directive.

Under Article 10 of Directive 98/34/EC, Member States are not required to inform the Commission of national measures by means of which they comply with binding Community acts.

<sup>17</sup> For details of the 70 notifications, reference should be made to the annexed table, which summarises the content of each (point 10.6).

<sup>18</sup> Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13, 19.01.2000, pp. 12-20.

In the case of Directives concerning the Information Society, it should be borne in mind that the Community legislator's aim has been to develop a stable legal framework designed to promote legal security in this sector, for example by limiting and clearly defining exceptions. So as not to "freeze" the law in such a rapidly evolving domain, however, the Community legislator has adopted acts which, by requiring a minimum degree of harmonisation, now prohibit any obstacle to the free cross-border movement of on-line services. "A minimum degree of harmonisation" means that the Directives "merely" lay down certain fundamental rules which must be observed in order to ensure free movement whilst allowing Member States to impose more stringent requirements on their own operators. Where national authorities avail themselves of this option, they take measures that go beyond mere compliance with the Directive within the meaning of Article 10 above. Such measures have to be notified and may lead to a response from the Commission and the other Member States.

The dividing-line is not always easy to draw, and Member States have often complained about the difficulty of distinguishing between a straightforward transposition measure under the terms of Article 10 of Directive 98/34/EC and more stringent provisions. In response, the Commission has repeatedly pointed out at meetings of the Committee set up under the Directive<sup>19</sup> that it is always prepared to assist them in finding an answer to this sometimes-difficult problem.

Where there is any doubt, Member States should notify their drafts; on examination, the Commission can always inform the originating Member State that the procedure should be terminated as being subject to the exception provided for under Article 10 of the Directive. By contrast, Member States which fail to notify their draft national regulations in cases of doubt run the risk that articles that should have been notified will be considered inapplicable to private individuals - pursuant to the CIA Security case law<sup>20</sup>. Moreover, this is liable to create a harmful situation of legal uncertainty and could lead to other complications such as an obligation to commence a new national decision-making procedure and the initiation of infringement proceedings by the Commission. In its recent Canal Satellite Digital judgement<sup>21</sup>, the Court of Justice explicitly defined the scope of the exception to the notification obligation, provided for under the first indent of Article 10(1) of the Directive. The Court's strict interpretation of the exception in question enormously reduces both the margin of discretion allowed to Member States and the possibility of avoiding the notification obligation.

The fact that the deadline for transposition of the "electronic signature" Directive was 18 July 2001 explains why communications relating to electronic signatures account for a large proportion of the notifications received to date: indeed, of the 70 notifications received, 20 relate directly, and five indirectly, to electronic signatures.

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<sup>19</sup> Article 5 of Directive 98/34/EC.

<sup>20</sup> CIA Security judgement of 30 April 1996, C-194/94, ECR p. 2201.

<sup>21</sup> Canal Satellite Digital judgement of 22 January 2002, C-390/99, ECR p. I-607.

#### 4.2.2. *Electronic commerce*

Another area in which numerous notifications have been received is electronic commerce.

The remarks made above in respect of the "electronic signature" Directive can also be made concerning the transposition of Directive 2000/31/EC on certain legal aspects of Information Society services, in particular electronic commerce, in the internal market (referred to hereinafter as the "electronic commerce" Directive<sup>22</sup>). The transposition period for this Directive expired on 16 January 2002.

The Commission has received a total of 13 notifications directly linked to electronic commerce and seven others that relate indirectly to this topic.

#### 4.2.3. *Protection of personal data*

The protection of personal data is also a recurrent theme. A number of notified drafts concerning on-line services relate to the protection of personal data in information services, insofar as Member States have to take into account requirements deriving from Directives 95/46/EC<sup>23</sup> of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and 97/66/EC<sup>24</sup> of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector.

#### 4.2.4. *Digital television and decoders*

Notifications have also been received in the field of digital television and decoders. While these are highly technical fields, they are very important as they have a defining impact on future audio-visual policy. One of the texts received in this area was a draft law adopting supplementary provisions on the application of television signals standards. This was aimed at imposing a particular decoder system to the detriment of other systems available on the market.

Member States are expected to submit numerous notifications in this sector over the next few years in line with future developments in the field of digital television.

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<sup>22</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000, OJ L 178, 17.07.2000, pp. 1-16.

<sup>23</sup> OJ L 281, 23.11.1995, pp. 31-50.

<sup>24</sup> OJ L 24, 30.01.1998, pp. 1-8.

#### 4.2.5. *Domain names*

Domain names are to be regarded as a special category, but a particularly important one given that no European legislation currently exists in this area. It is thus desirable that Member States show a minimum degree of consistency in the management of their domain names, so as to avoid fragmentation of the internal market. For its part, the Community is currently developing a European domain name ".eu" and has adopted a Regulation<sup>25</sup> on this subject. It is therefore necessary to check draft national legislative texts relating to domain names in order to avoid problems when the ".eu" domain name comes into effect and to facilitate the free movement of Information Society services.

Some Member States tend not to notify draft legislation in this sector, while others have regularly notified draft texts on this subject. As they are intrinsically linked to the provision of Information Society services, domain names are a key element in the development of these services.

## **5. ANALYSIS OF THE COMMISSION'S AND MEMBER STATES' RESPONSES**

### **5.1. General presentation**

The Commission has frequently commented on national texts relating to Information Society services. Indeed, out of a total of 70 notifications, the Commission has responded in 50 %<sup>26</sup> of cases with detailed opinions or observations<sup>27</sup>. By comparison it has responded to only 30% of cases in the field of products over the same period.

This situation can be explained in several ways.

Firstly, Information Society services have only recently come under the notification obligation, whereas in the products sector the educational effects of the procedure have already borne fruit in terms of national legislation.

Secondly, this sector is experiencing burgeoning developments, bringing in their wake a different regulatory response from each Member State. The Commission is therefore obliged to react more often in order to mark out a general approach making for consistency within the internal market.

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<sup>25</sup> Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain , OJ L 113, 30.04.2002, pp. 1-5

<sup>26</sup> It should be noted that in the case of 12 notifications the response deadline had not expired at the time this report was drawn up.

<sup>27</sup> Plus one case of "blockage" for twelve months.

By contrast, there have been practically no reactions from the Member States, which have submitted observations in only nine cases. But above all, no Member State has submitted a detailed opinion. In the product's field, by comparison, Member States submitted more than 60 detailed opinions over the same period. This result appears to be deceptive. The lack of participation can probably be explained by the fact that government departments in charge of technical dossiers in Member States are not used to exploiting the potential offered by the notification procedure in the field of services and have not yet drawn up well-defined positions on a rapidly evolving new field such as that of Information Society services.

## 5.2. Commission reaction

### 5.2.1. Analysis of detailed opinions

#### 5.2.1.1. General considerations

In the field of Information Society services, Directive 98/34/EC provides the Commission and Member States with scope for delivering detailed opinions<sup>28</sup>, the effect of which is to extend the three-month standstill period to four months from the date of receipt of the drafts concerned. A detailed opinion is one "*to the effect that the measure envisaged may create obstacles to the free movement of services or the freedom of establishment of service operators within the internal market*" provided for by Articles 49 and 43 respectively of the EC Treaty.

Member States must respond on receipt of detailed opinions. As regards the 15 detailed opinions sent by the Commission over the reference period covered by this report, Member States responded or withdrew their notifications in 95 % of cases.

According to the case-law of the European Court of Justice, Articles 49 and 43 of the Treaty require the elimination of restrictions, i.e. of all "*measures which prohibit, impede or render less attractive the exercise of such freedoms*" (freedom of establishment and freedom to provide services)<sup>29</sup>.

To be admissible as an exception to the fundamental freedoms of the internal market in a non-harmonised area, a national restriction must, on the basis of this case law, fulfil four conditions, i.e. it must:

- (1) apply without discrimination,
- (2) pursue a legitimate objective in the public interest,
- (3) be appropriate for the attainment of the objective pursued and
- (4) Not be disproportionate to the objective pursued<sup>30</sup> or go beyond what is necessary for its attainment in that, for example, the same result could not be achieved by less restrictive rules<sup>31</sup>.

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<sup>28</sup> Article 9(2), 3rd indent of Directive 98/34/EC.

<sup>29</sup> See "trade fairs" judgement of 15 January 2002, C-439/99, ECR p. I-305.

<sup>30</sup> See Dennemeyer judgement of 25 July 1991, C-76/90, ECR. p. I-4221.

In other words, any national measure must comply with the principles of non-discrimination (1), necessity (2) and proportionality (3 and 4).

As regards freedom to provide services, in particular, this means that a restriction is liable to prove disproportionate and therefore inadmissible under Community law where the service in question is provided, as in the case of Information Society services, without the provider having to enter the territory of the Member State in which the service is received<sup>32</sup> and where national regulations make no allowance for requirements already met by an operator in his Member State of establishment, from which he offers his services<sup>33</sup>.

In the light of the foregoing, the Commission issued a total of 15 detailed opinions on draft national regulations concerning Information Society services during the reference period covered by this report, on account of problems of compatibility with freedom of establishment and the freedom to provide services pursuant to the Treaty and certain Directives, such as those governing the protection of personal data and electronic signatures<sup>34</sup>.

The draft national texts on which the Commission delivered detailed opinions related to the following subjects: the investigation, interception, decoding, processing transmission, protection, recording, storage, etc. of call data and/or information on telecommunications networks (6); electronic signatures (4); media (3); domain names (2).

The various detailed opinions made it possible to identify common legal problems within the notified draft texts, which can be classified according to the following typology:

- extraterritorial applicability of the planned national regulations (point 5.2.1.2.);
- imprecise nature of new obligations imposed on operators (point 5.2.1.3.);
- inadmissibility of justifications put forward (point 5.2.1.4.);
- non-verification of obligations already met by service providers in their Member State of establishment (point 5.2.1.5.);
- disproportionate nature of the planned restrictions (point 5.2.1.6.);
- incompatibility with certain Directives on Information Society services (point 5.2.1.7.).

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<sup>31</sup> See Arblade judgement of 23 November 1999, C-369/96, ECR p. I-8453, and Gebhard judgement of 30 November 1995, C-55/94, ECR p. I- 4165.

<sup>32</sup> See Dennemeyer judgement cited above, footnote 30.

<sup>33</sup> See Arblade judgement cited above, footnote 31.

<sup>34</sup> Directives cited respectively in points 4.2.3. and 4.2.1.

One general remark should be made in this regard, namely that extraterritorial applicability (referred to under 5.2.1.2), the duplication of requirements (under 5.2.1.5) and the disproportionate nature of a draft national text (under 5.2.1.6) represent various facets of the same problem, which the Commission considers to be absolutely crucial in the context of Directive 98/34/CE. This Directive is an instrument geared to prevention and co-operation: it is designed to prevent projected national rules from imposing inappropriate or excessive legal or administrative burdens on operators and possibly on users; to this end, it is intended to contribute to the development of a legal culture in respect of the internal market among legislators. In other words, it is a question of eliciting from competent bodies (at all levels: state, regional, technical, etc.) a reflex reaction whereby, at the time of initial drafting, a new regulatory text is discussed and adopted so as to take account of possible consequences for the operation of our common area without internal frontiers.

An examination of the cases submitted and the attendant circumstances has led the Commission to point out that providing in a draft regulatory text for the application of a single legal system making no distinction between, on the one hand, operators who are established in the notifying Member State and, on the other, service providers who wish to supply services in that country without being established there but from their Member State of establishment would, according to the case law of the Court<sup>35</sup> undermines effective compliance with and application of the free movement of services. While this is particularly obvious in the case of such activities as Information Society services, which by their very nature rarely make it necessary for the supplier to travel, there is a more general need to make suitable provision for all economic activities involved in cross-border services, as underlined by the Commission in its new Strategy for Services<sup>36</sup>.

#### 5.2.1.2. Extraterritorial applicability of planned national regulations

The Commission expressed reservations about draft national texts containing requirements, which might be generally applicable to all operators, including those based in other Member States, irrespective of their place of establishment.

It drew attention to the problems of compatibility that such an across-the-board, indistinct and unlimited application of national requirements would raise for the free movement of services.

If the territorial scope of legislative requirements is not precisely specified, providers of Information Society services, including network-access and telecommunications services providers risk being automatically subject to different pieces of legislation (fifteen at present and more after enlargement). This would have serious consequences, not only in terms of legal insecurity and a possible accumulation of economic burdens and forms of responsibility, but also in terms of prospects for investment in and the development and dissemination of on-line services, particularly as far as SMEs are concerned<sup>37</sup>.

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<sup>35</sup> See, in particular, the Denmeyer judgement cited above, footnote 30.

<sup>36</sup> Communication from the Commission to the Council and the European Parliament - An Internal Market Strategy for Services, COM(2000)888 final of 29 December 2000.

<sup>37</sup> For this reason, the Commission contested, in relation to various notifications: the imposition of a systematic obligation on all operators, including - explicitly or implicitly - those established in other Member States, to record and store data; the general possibility of extending data searches to computer

Moreover, in several detailed opinions, the Commission warned Member States about the risk they would be taking if Directive 2000/31/EC on electronic commerce were to be poorly transposed. This Directive is intended to ensure effectively the free movement of Information Society services precisely by laying down that the Member States cannot, for reasons deriving from the co-ordinated field, restrict the free movement of information society services originating in another Member State<sup>38</sup>.

This reaffirms the importance of Directive 98/34/EC as an effective legal instrument for preventing infringements not only of the Treaty but also of Directives, including cases where the deadline for transposition has not yet expired.

Finally the Commission pointed out that, where the intention of a national legislator is to rule out the applicability of draft provisions to operators not established in its territory, this must be specified unambiguously in the text.

#### 5.2.1.3. Imprecise nature of new obligations imposed on operators

In some detailed opinions, the Commission emphasised the necessity of the operators concerned being able to recognise with sufficient clarity and precision the extent of the obligations imposed on them under draft new national legislation<sup>39</sup>.

This highlights an aspect with a vital bearing on the effective exercise of both freedom of establishment and freedom to provide services in conditions of security, foreseeability and proportionality imposed by Community law and by the objective of promoting the development of on-line services. As underlined by the Court of Justice: on the one hand, a provision which imposes a restriction on an activity involving the exercise of a fundamental freedom must express that restriction in clear

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systems located abroad; the application of a duty to co-operate and to provide (decoded) access to contents, without precisely specified limitation; the across-the-board imposition, on all operators, of restrictive requirements regarding certification; the applicability of national rules to Community citizens and companies established in other Member States who have registered foreign domain names, etc.

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Although the deadline for the final implementation of Directive 2000/31/EC was 17 January 2002, the Commission, likewise on the basis of Articles 43 and 49 of the Treaty, issued a reminder prior to that date that, in accordance with the case-law of the European Court of Justice (judgement of 18 December 1997, C-129/96), while Member States were not obliged to adopt transposition measures before the expiry of the period concerned, they had at all events to refrain from making any arrangements that could seriously jeopardise the attainment of the desired result, i.e. that were incompatible with the Directive's content and objective. In particular, the Commission gave a reminder in those detailed opinions that, under Article 3(2) ("internal market" clause) of Directive 2000/31/EC, *"Member States may not, for reasons falling within the co-ordinated field, restrict the freedom to provide Information Society services from another Member State"*.

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In the case of a draft text relating to the recording and interception of electronically transmitted data, it pointed out that the lack of a sufficiently clear and precise definition of the objective criteria, circumstances and scope of the investigative powers of the competent authorities vis-à-vis operators can give rise to situations of legal uncertainty whose exact consequences are difficult to gauge. The Commission further noted the lack of clarity surrounding a general obligation to record and store for at least 12 months call data and identification data of users of telecommunications services: indeed, without precise specifications to the contrary, such an obligation could have extremely broad scope, and could even cover the content of messages. What is more, the setting of a minimum period for storage of the recorded data means that they could be stored for considerably longer, which does not guarantee adequate legal foreseeability either. As part of this same approach, the Commission took issue over another draft text providing for the possibility of imposing on telecommunications operators an obligation to supply information to authorities, but without specifying the period and maximum duration.

terms<sup>40</sup> while, on the other hand, the exercise of a fundamental freedom should not be subject to the discretion of the administrative authorities, lest it be thereby rendered illusory<sup>41</sup>.

#### 5.2.1.4. Inadmissibility of justifications put forward

The Commission has taken pains to ensure that restrictions provided for in a draft national text with regard to freedom of establishment and freedom to provide services are justified exclusively and clearly by the objectives provided for under Articles 46 and 55 of the EC Treaty (public policy, public security or public health) or by imperative requirements in the general interest specified by the Court of Justice (e.g. consumer protection)<sup>42</sup>.

Moreover, the Commission stressed that the objectives pursued by a national draft must be clearly stated<sup>43</sup>, in common with obligations.

What is more, the fact that a draft may relate to a legal field falling within the national sphere of competence does not make it exempt from such a requirement<sup>44</sup>.

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<sup>40</sup> See ARD judgement of 28 October 1999, C-6/98.

<sup>41</sup> See *Luisi and Carbone* judgement of 31 January 1984, C-286/82 and C-26/83, ECR. p. 377, and *Canal Satellite* judgement of 22 January 2002, cited above, footnote 21.

<sup>42</sup> For this reason, the Commission opposed national provisions which, with the aim of safeguarding purely economic national interests, would have authorised the competent bodies of the Member State concerned to impose on persons and companies providing on-line services via telecommunications networks a whole series of constraints and obligations relating to data investigation, interception, decoding and processing, etc. This would raise problems of compatibility both with their freedom of establishment and with the free circulation of services. Quite apart from the fact that any exception to a fundamental freedom under the Treaty has to be interpreted restrictively, it should be noted that, although grounds of public policy and public security are expressly allowed under Articles 46 and 55 of the EC Treaty, the protection of economic interests (even if they are described as vital or promote national economic well-being) is not, by contrast, liable as such to be regarded as constituting an imperative requirement in the general interest that justifies a barrier to a fundamental freedom (see judgements of 28 April 1998, C-158/96, ECR. p. I-1931, and of 10 July 1984, 72/83, ECR p. 2727). Nor can economic interests constitute grounds of public policy within the meaning of Article 46 (ex Article 56) of the EC Treaty (judgement of 4 May 1993, C-17/92, ECR p. I-2239). The Commission also issued a reminder that the exception of public policy, to be interpreted restrictively, can be cited only in the event of a genuine and sufficiently serious threat affecting one of the fundamental interests of society (judgement of 19 January 1999, C-348/96, ECR p. I-11).

<sup>43</sup> For example, it pointed out, in a detailed opinion relating to a draft law introducing new criminal offences and legal procedures in the informatics field and laying down, in particular, an obligation for telecommunications network operators and service providers to record and store for a certain period users' call and identification data, that the draft did not give an explicit indication of the objectives pursued.

<sup>44</sup> For example, the Commission noted with regard to some notifications that, according to consistent case-law of the Court of Justice (see *Calfa* judgement of 19 January 1999, C-348/96, ECR p. I-11), Community law sets certain limits on the exercise of Member States' powers in criminal matters, with national legislation not being able, simply by virtue of its being concerned with criminal activity, to justify any type of restriction on the fundamental freedoms of the internal market.

#### 5.2.1.5. Non-verification of obligations already met by service providers

The Commission systematically checked whether notified drafts took due account of requirements already met in other Member States.

Restrictions with regard to operators established in another Member State can be regarded as compatible with Article 49 of the EC Treaty only if it is demonstrated that, *inter alia*, imperative requirements in the general interest have not already been met under the rules of that Member State. A measure which essentially duplicates checks made in the context of other procedures could not be considered to be imperative for the attainment of the objective pursued<sup>45</sup>.

Where a Member State intends to take restrictive measures, therefore, its rules must provide that, before it can impose certain national requirements, where appropriate, it must first check, on a case by case basis, which obligations have already been met by each operator in another Member State<sup>46</sup>.

#### 5.2.1.6. Disproportionate nature of planned restrictions

With regard to notifications in respect of Information Society services, the Commission has been constantly preoccupied with monitoring the emergence of new obligations liable to hinder and severely encumber operators' activities and their future investment and innovation capabilities - even with regard to operators established in the notifying Member State (in the light, therefore, not only of Article 49 but also of Article 43 of the EC Treaty)<sup>47</sup>.

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<sup>45</sup> Irrespective, moreover, of whether in the same or another Member State (see Canal Satellite judgement of 22 January 2002, C-390/99, cited above, footnote 21, and judgement of 4 December 1986, 205/84, ECR p. 3755).

<sup>46</sup> Pursuing this approach, the Commission contested a draft national law which, in relation to interception capabilities and activities, dispensed with such checks and laid down a single system applicable to all operators without distinction, irrespective of their place of establishment. However, it criticised a systematic obligation to record and keep data, as well as criminal liability rules imposing on anyone presumed to have specific knowledge specific obligations regarding collaboration, confidentiality, access to content, etc. under pain of criminal prosecution.

<sup>47</sup> For instance, the Commission stated that a requirement to maintain certain minimum capacities for recording and intercepting electronic data (in terms of duration, quantity or typology of the data to be supplied) may subject communications providers to considerable additional burdens which are liable, moreover, to be passed on in user charges. Even supposing that the scope of these data is to be interpreted in a very limited way (without, for example, covering the contents of call messages), the obligation to record and store a considerable quantity of data in all cases and without distinction over a minimum period of twelve months, given in particular the rapid rise in the volume network traffic, produces considerable consequences and costs for operators. In particular, the rate of increase in data traffic on telecommunications networks proves to be markedly higher than the increase in operators' storage capacity, which over the long term appreciably adds to the burden of the obligations imposed on them, in both absolute and relative terms (in relation to traffic). Similarly, operators will be required to store these data for the duration of the period stipulated, applying technical arrangements which ensure adequate protection and security against any illegal access or use: this serves only to make these obligations even more burdensome.

The Commission also underlined the serious impact which the mandatory use of a common interface for receivers, to the exclusion of any equivalent system, may have on scope for the provision of pay-TV services and, as a result, on the development of digital television in Europe, as well as on the dissemination of Information Society services accessible via decoders.

In the same context, it issued a detailed opinion against draft legislation under which it was planned to require national service providers issuing approved certificates to the public to pay an annual tax proportional to the number of approved certificates issued, subject to a ceiling corresponding to 5 000

When examining these various dossiers, the Commission generally underlined the serious restrictive effects that the application of all the above-mentioned national provisions would have had. It also stressed that the scope and duration of obligations must not be excessive and must be justified by objective criteria and better adapted to actual requirements on a case-by-case basis.

In particular, it stressed the need for national regulations to distinguish clearly between the legal provisions applicable to individuals and situations in the context of (a) the freedom to provide services and (b) the freedom of establishment<sup>48</sup>. The very fact that Information Society services do not normally involve the physical movement of the provider to the recipient's country underlines the importance of subjecting new national restrictions to a rigorous examination of their proportionality.

For a Member State to make the exercise of these activities by any operator, regardless of his place of establishment, subject to authorisation and national registration would totally negate the freedom to provide services, insofar as it implies that every operator must be established in the State in question<sup>49</sup>.

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certificates but with no minimum amount being fixed.

The Commission also took issue with the disproportionate nature of provisions contained in draft legislation introducing a number of restrictions and prohibitions regarding the transmission, content and advertising of messages and information. While emphasising that it fully shares objectives such as the protection of minors vis-à-vis both radio and television broadcasting and the Internet, it pointed out that a ban on manipulating any image not recognisable by the viewer was formulated in absolute terms, without any reference or specific link either to the objective referred to above or to a particular context or recipients: this would also have affected, for example, manipulations carried out for technical reasons or in the context of an educational, artistic or light-hearted presentation or which, although requested by the recipient, would not be recognised by the latter.

Similarly, the ban on any sale, including on-line, of video material, except for expressly authorised commercial sales activities, was laid down without any direct link to the objective pursued and was designed to be applied across the board, without any particular distinction between different activities and possible contents. Moreover, the ban, formulated in an absolute and extremely generic manner, on the telematic transmission of messages of any nature liable, in any way whatsoever, adversely to affect the rights of individuals or harm the psychological or moral development of minors was of such potentially vast scope that it could have prohibited an indefinite and unlimited number of electronically transmitted messages, including those inaccessible to minors.

Finally, the obligation for service providers and network operators to classify and, where appropriate, prevent the dissemination of (and access to) prohibited material would have imposed disproportionate burdens on them in terms of having systematically to monitor all the material they made available, and would at all events have run counter to the "Electronic commerce Directive". Article 15 of Directive 2000/31/EC, "*No general obligation to monitor*" explicitly states that Member States shall not impose on providers of "mere conduit", "caching" and "hosting" services, covered by Articles 12, 13 and 14 of the Directive, "*a general obligation to monitor the information which they transmit or store, or a general obligation actively to seek facts or circumstances indicating illegal activity*".

<sup>48</sup> The Court held that, "[...] In particular, a Member State may not make the provision of services in its territory subject to compliance with all the conditions required for establishment and thereby deprive of all practical effectiveness the provisions of the Treaty whose object is, precisely, to guarantee the freedom to provide services. Such a restriction is all the less permissible where, unlike the situation governed by the third paragraph of Article 60 of the Treaty (re-numbered Article 50), the service is supplied without its being necessary for the person providing it to visit the territory of the Member State where it is provided" (see *Dennemeyer* judgement of 25 July 1991, cited above, footnote 30).

<sup>49</sup> See *Parodi* judgement of 9 July 1997, C-222/95, ECR. p. I-3899.

Lastly, the Commission pointed out that national rules likely to impede the exercise of any freedom enshrined in the Treaty are to be interpreted with reference to such basic rights as the protection of privacy and freedom of speech, which are guaranteed by Articles 8 and 10 respectively of the European Convention for the Protection of Human Rights<sup>50</sup>. It therefore stressed that national measures relating, for example, to crime or data interception may override the principle of the freedom to provide services only if they do not infringe these basic rights.

#### 5.2.1.7. Incompatibility with certain Directives relating to Information Society services

The delivery of detailed opinions in response to certain notifications was justified not only on grounds of incompatibility with the general principles of the Treaty - from the different standpoints referred to - but also in the light of three Community Directives covering particularly sensitive aspects of Information Society services, namely Directives 95/46/EC and 97/66/EC on the protection of personal data and Directive 99/93/EC on electronic signatures<sup>51</sup>.

##### – Protection of personal data

The Commission expressed some concern in this context with regard to national notifications which, proposing to use the activities of telecommunication operators – including Internet service providers – as a means of accessing personal data (communications content or associated traffic) do not, as required by the data protection Directives, limit the grounds on which the competent authorities may require data storage by operators<sup>52</sup>.

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<sup>50</sup> See judgement of 18 June 1991, C-260/89, ECR p. I-2925.

<sup>51</sup> Directives already mentioned in points 4.2.3. and 4.2.1.

<sup>52</sup> The Commission paid particular attention to compliance with the following operator obligations in those Directives: the prohibition on the processing of traffic data relating to telecommunications service subscribers and users beyond the limits laid down by Directive 97/66/EC (especially, the establishment of communications and, if necessary, billing); erasure or anonymisation of traffic data; guaranteeing the confidentiality of communications, and notification of the individual concerned of the purpose of processing and the processor, except in the specific cases required for the prevention, investigation, detection and prosecution of criminal offences or other interests listed in Articles 13 of Directive 95/46/EC and 14 of Directive 97/66/EC.

– Electronic signature

In this field, the Commission has attached particular importance to compliance with certain of the basic principles of Directive 1999/93/EC, such as the legal recognition and equivalence of electronic and hand-written signatures (based on objective criteria rather than authorisation by the service providers concerned); the freedom to provide signature-certification services (together with other verification and confidentiality services) and their mutual cross-border recognition; the establishment of effective, voluntary (*de jure* and *de facto*) accreditation schemes for the issue of "qualified" certificates; and personal data protection, including the issue of pseudonymous certificates.

5.2.2. *Analysis of comments*

Pursuant to Article 8(2), the Commission and Member States may communicate to a Member State which has notified a draft regulation on Information Society services comments that should be taken into account, as far as possible, in its finalisation.

The Commission availed itself of this option on 32 occasions to alert both the notifying Member State and the other Member States to, for example, the appropriate interpretation and application of certain national provisions in the light of the principles of the Treaty and relevant Directives and the need for more transparent and precise definitions.

Thus, in several cases the Commission felt impelled to point out that draft provisions must be interpreted as applicable only to operators established in the notifying Member State. In the event of their application to operators established elsewhere, due account must be taken of any checks already carried out and obligations already discharged by such operators in relation to their own authorities.

In addition, it emphasised the need for national provisions to ensure adequate legal predictability and for the obligations imposed to be limited in scope, justified by objective criteria and individually tailored to the requirements in question. These conditions also applied to the implementation of legal provisions at the time, where relevant, of the adoption of regulatory or administrative implementing measures.

It reiterated these principles with reference to several proposals imposing obligations on telecommunications network/service providers, including Internet access providers<sup>53</sup>.

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<sup>53</sup> These relate, for example, to data processing and consultation, the monitoring and processing of complaints in respect of intelligence and security services; the organisation of networks or services to allow the immediate execution of specific acoustic surveillance orders by the competent authority and satisfy the technical requirements governing communication to the authorities; the immediate, obligatory execution of specific acoustic surveillance orders; the authorisation of competent national bodies to adopt a series of information requisitioning measures and restrict and regulate public telecommunications network/service suppliers; an obligation for telephone operators to supply information on private subscriptions to transmission centres and, under certain conditions, to provide complete information on both subscriber identity and subscription, together with daily updates (including amendments and any new information). The obligations which may be officially imposed on an operator include: the communication of data to the public prosecutor concerning users and associated telecommunications traffic; the duration of a requisition (maximum three months), its content (name, address, postcode, domicile number - including e-mail or IP address) and purpose (fixed or mobile

Lastly, the Commission took the opportunity offered by notifications to comment on certain provisions which, whilst not specifically concerned with Information Society services, warranted more clarification both from the standpoint of the freedom to provide services. In this connection, the Commission examined and commented on draft national legislation covering, *inter alia*, the authorisation of lotteries<sup>54</sup>, construction, including the use of satellite dishes<sup>55</sup> and the allocation of cable programmes by order of priority<sup>56</sup>.

In addition to the above-mentioned considerations designed to ensure compliance with the provisions of the Treaty, the Commission has frequently used the comments procedure to alert national authorities to the need to expand or correct their proposals with a view, in particular, to securing the appropriate transposition of Directives 99/93/EC on electronic signatures and 2000/31/EC on electronic commerce by the stipulated deadlines of 19 July 2001 and 17 January 2002 respectively<sup>57</sup>.

In the case of the "electronic commerce" Directive, the Commission drew the attention of the Member States concerned both to the provisions that had not yet been transposed and to several points which, on the basis of the notified national drafts, could have given rise to unsatisfactory transposition. In this connection, the Commission particularly stressed the need to observe the country-of-establishment principle (enshrined in Article 3, "Internal market clause") and the liability arrangements (Articles 12-15).

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telephone, Internet access, e-mail, etc.); supplier tracing of unknown data in the interests of an investigation; sanctions on non-compliance with these obligations; types of indemnification for administrative and staff costs incurred by operators as a result of the requisition obligations.

<sup>54</sup> Whilst acknowledging the legitimacy of certain goals for the maintenance of public order recognised by the Court (see Schindler judgement of 24 March 1994, C-275/92, ECR. p. I-1039 and Familiapress judgement of 26 June 1997, C-368/95, ECR. p. I-3689) and the broad latitude enjoyed by national authorities with regard to the highly specific nature of games of chance and the particular socio-cultural practices of each Member State in this area, the Commission was anxious to stress that any restriction of lottery activities must not entail discrimination.

<sup>55</sup> In this context, the Commission recalled that, in accordance with its Communication on satellite dishes (COM(2001) 351 of 27 June 2001), the right to use this cross-border services reception equipment could not be limited by excessive restrictions of a technical, administrative, architectural, fiscal or other nature and, in particular, by a general prior authorisation requirement.

<sup>56</sup> To preclude any infringement of Article 49 of the EC Treaty, the Commission informed the national authorities that criteria relating to cable-access priority should not, in particular, result in (overt or concealed) discrimination between different operators on the basis of nationality or place of establishment.

<sup>57</sup> Thus, in commenting on a draft decree laying down rules for the formation, transmission, storage, duplication, reproduction and validation of computerised documents, the Commission pointed out that Article 4(1) of Directive 1999/93/EC denies Member States the right to restrict the provision of certification-services originating in another Member State. The Commission also sought to draw the attention of the relevant national authorities to the fact that a decree on the evaluation and certification of Information Society products and systems could have limited the freedom of evaluation and certification bodies to provide services in other Member States. In particular, it highlighted the absence from this text of any reference to the Community legal framework, especially Article 49 of the EC Treaty, Directives 99/93/EC and 2000/31/EC and Decision 2000/709/EC concerning the mutual recognition of national bodies which, being duly established in another Member State (even in the absence of a national certificate), should not be subject to certification or approval requirements in the notifying Member State.

### **5.3. Analysis of Member State's reactions**

As was emphasised in the general introduction (point 5.1.), the Member States have played very little part in the notification procedure for Information Society services by comparison with their active involvement in the products sector procedure. This tendency has, however, recently become less marked, with the Member States now showing increasing responsiveness. Against the background of 70 notifications relating to Information Society services, nine comments were delivered in respect of six notifications, although no detailed opinion has yet been issued. Compared with the results obtained in respect of products, these figures are again not particularly encouraging.

The Member States must therefore make a real analytical effort in order to allow genuine dialogue and *ex-ante* monitoring of national measures.

## **6. SPECIFIC PROCEDURES**

### **6.1. Urgency**

Article 9(7) of Directive 98/34/EC allows Member States to notify draft national texts under the urgency procedure.

During the period covered by this report, the Commission received five requests for the initiation of this procedure in respect of Information Society services, of which three were rejected and one approved. The fifth was withdrawn, since the text in question did not contain technical regulations.

The successful application concerned a German text. By way of justification, Germany cited the attacks of 11 September 2001, as a result of which the Federal Government had to be able without delay to require, *inter alia*, the operators concerned to make the technical equipment necessary for network monitoring available on demand. This argument, put forward in the aftermath of the aforementioned events, was considered to fall within the scope of Article 9(7) which makes urgency dependent on serious and unforeseeable circumstances.

On the other hand, the Commission refused to accept the transmission of a preliminary infringement notice highlighting a Member State's failure to transpose a Directive as a justification of urgency. The country in question thought it could invoke the urgency procedure, since it was obliged to adopt a text transposing the "electronic signature" Directive. This should already have been transposed, since the implementing deadline had expired several months earlier. For the reasons already indicated, it was necessary to notify the text because it covered measures going beyond simple transposition. The Commission rejected the urgency application on the ground that the unforeseeability requirement was not satisfied: the Member State concerned knew of its obligation to transpose the "electronic signature" Directive and had participated in its preparation and the definition of the transposition period in the Council.

## **6.2. Confidentiality**

Article 8(4) of the Directive establishes the possibility of treating a notification as confidential, thereby limiting disclosure of the draft text to the Member States and the Commission. The draft is not made available to the public or published on the TRIS Internet site and the Commission refuses any requests for copies from private individuals.

On the two occasions on which this procedure was invoked, the Commission acceded to the requests of the two Member States concerned.

## **6.3. Blocking**

The Commission has used the blocking power provided for by Article 9(4) of the Directive only once in two-and-a-half years. Its aim was to await the adoption of the "electronic commerce" Directive. The notification in question, relating to computer crime and, more particularly, the responsibility of Internet access providers, had been received on 13 August 1999, with the postponement running until 14 August 2000 and the Directive being adopted on 17 July 2000. This confirmed the value of the postponement, since it enabled the Community to prevent the formulation of national measures that might conflict with the Directive prior to its adoption.

## **7. INFRINGEMENT OF THE NOTIFICATION PROCEDURE**

### **7.1. Infringements**

Whilst the Member States have regularly communicated their draft texts under the products notification procedure, they have adopted a considerable number of texts on Information Society services without prior notification. This discrepancy is even more marked if the number of non-notification infringements is compared with the number of texts notified since the introduction of the procedure.

Between 2000 and 2001, the Commission initiated eight procedures for the infringement of Directive 98/34/EC in the services sector, relating specifically to failure to notify or the adoption of texts before the end of the standstill period. These procedures were launched as a matter of course. The Commission has not yet received any objections from economic operators, probably because of ignorance of the extension of the scope of Directive 98/34/EC to include Information Society services

### **7.2. Sectors concerned**

The texts adopted by Member States without notification can be grouped in the following two categories:

- texts regulating topics covered by Community Directives;
- texts regulating other topics.

The former category essentially includes texts relating to electronic signatures and electronic commerce, which are covered by Directives 1999/93/EC and 2000/31/EC respectively. As already explained in points 4.2.1 and 4.2.2, Member States are

required to notify any technical regulations contained in these texts which go beyond the provisions of those Directives or which take advantage of the room for manoeuvre allowed by the Directives. The exemption from the notification obligation allowed by the first indent of Article 10(1) of Directive 98/34/EC could not be invoked in such cases, insofar as it does not relate to *"laws, regulations and administrative provisions of the Member States [...] by means of which Member States comply with binding Community acts which result in the adoption [...] of technical specifications."*

It should be noted that, pursuant to the case law of the Court of Justice, technical specifications adopted in infringement of the requirements of Directive 98/34/EC are not binding on third parties. Consequently, the provisions of the above-mentioned drafts which do not represent a simple transposition of Directives within the meaning of Article 10 of Directive 98/34/EC and which were adopted in infringement of its notification or standstill provisions are not applicable.

The second category relates, in particular, to texts dealing with electronic communication, the transmission of computerised documents and telecommunications services, with the exception of those covered by Directive 89/552/EEC. In this connection, it should be remembered that, pursuant to the second sub-paragraph of Article 1(2), Directive 98/34/EC does not apply to the radio and television services subject to Directive 89/552/EEC. On the other hand, it covers regulations specifically aimed at all the other audio-visual services defined as Information Society services, so that the prior notification requirement applies, for example, to rules governing video on demand or other interactive digital services.

This obligation also applies to texts on Internet domain names defining, in particular, certain conditions governing access to on-line activities, and their exercise, by on-line operators (professionals, businesses, commercial organisations, etc.) who are present and identified on the Internet by domain names. To the extent that the Internet activities directly and expressly covered by these texts fully satisfy the definition of "Information Society services" given in Article 1(2) of Directive 98/34/EC, the texts concerned fall within the scope of the Directive and are therefore subject to prior notification.

Instances of non-notification have also been identified in the case of national measures intended to create a legal framework for the use of electronic billing and allow checks to be made by the tax authorities. Some national measures are designed to extend obligatory compliance with technical specifications for electronic signatures to electronic billing. Since these provisions broaden the application of certain product and service regulations to include other Information Society products and services they, too, represent rules which should be notified under Directive 98/34/EC

### **7.3. Co-operation between the Commission and the Member States**

The need to clarify implementation and interpretation issues under the notification procedure for Information Society services prompted the Commission to establish a dialogue with the Member States. This took the form of bilateral meetings between the Member States and the Commission departments responsible for implementing the notification procedure and the Information Society services directives.

As a result of these meetings, the national authorities agreed to rescind contentious acts and notify new proposals.

Lastly, in an effort to co-operate with the Member States and anticipate infringements, the Commission reminded national authorities of their obligations under Directive 98/34/CE when it became aware of a government's intention to legislate on Information Society services. This led several Member States to notify the texts in question.

#### **7.4. Committee on Technical Standards and Regulations**

In the context of Information Society services, meetings of this Committee enabled the Commission to inform the Member States of draft regulations that it regarded as notifiable. This allowed the Directive contact points to alert the Ministries concerned to the need to notify the drafts in question, thereby avoiding a considerable number of infringement procedures. This dialogue is not intended to lead to permanent Commission monitoring but to draw the attention of the contact points to national texts being prepared by different Ministries.

These Committee meetings also provided a forum for discussions with national representatives of the legal and practical aspects of the implementation of the procedure and its development as set out below.

### **8. NEW DEVELOPMENTS: TERRITORIAL AND INTERNATIONAL EXTENSION**

#### **8.1. Territorial extension**

##### *8.1.1. European Economic Area*

The EFTA members of the European Economic Area (henceforth EEA) have participated in the notification procedure for Information Society services since 1 March 2001<sup>58</sup>. These countries are in the process of notifying their transposing measures to the EFTA Surveillance Authority.

The Commission has already received four texts (three from Norway and one from Iceland). It collaborates closely with the Surveillance Authority in analysing EFTA notifications.

##### *8.1.2. Candidate countries*

Since 1 January 2001, Turkey has been entitled to participate in the products' notification procedure. Nevertheless, this procedure confers only limited powers of intervention on the Commission and the other Member States and on Turkey itself as regards texts published by the Member States.

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<sup>58</sup> Decision No 16/2001 of the EEA Joint Committee of 28 February 2001 amending Annexes II (Technical regulations, standards, testing and certification) and XI (Telecommunications services) to the EEA Agreement (OJ L 117 of 26/4/2001, pp.16-20).

This system could be extended to other candidate countries to cover both Information Society products and services. In non-harmonised sectors, these countries would benefit from checks designed to establish the conformity of national measures with Community law, particularly Articles 28 *et seq.* of the Treaty. Such a procedure would have the advantage of creating a genuine dialogue between the candidate countries and Member States, enabling the former to prepare more effectively for accession. Clearly, the degree of intervention by the Commission, the Member States and the candidate countries should not remain the same as under the current procedure. It is virtually inconceivable that the Commission could take binding action in respect of candidate country legislation. Moreover, a candidate country seeking to influence a Member State's regulations would be in the same position. It would be worth monitoring the above-mentioned example of Turkey in this connection.

Negotiations are currently in progress with certain candidate countries with a view to the adoption of a special agreement providing for the introduction of a simplified notification procedure.

## **8.2. International extension: The Council of Europe**

Lastly, on 2 October 2001, the Council of Europe adopted a Convention broadly based on the notification procedure applicable to Information Society services. This Convention - No 180 on information and legal co-operation concerning "Information Society Services"<sup>59</sup> - was opened for signature at the 24th Conference of European Ministers of Justice, held in Moscow on 4-5 October 2001.

The implementation of such a system will give the Commission and Member States access to third-country drafts on Information Society services and enable them, in particular, to initiate discussion of these texts with a view to influencing their national formulation. At present, whilst Member State texts are accessible on the Directive 98/34/EC Webster, there are no reciprocal arrangements, so that existing Community instruments have to be transposed at international level.

Although the Convention does not, of course, incorporate the suspension provisions of the Community Directive, it seems likely to prove an excellent source of information and transparency with regard to draft regulations on Information Society services. It should also be noted that, whilst the Convention primarily concerns the Member States of the Council of Europe, it may, under certain conditions, be opened to non-member countries, thereby increasing its potential.

## **9. CONCLUSIONS**

By way of conclusion, this report considers some of the issues raised by the notification procedure after two years of implementation, before assessing its overall contribution to Information Society services and examining future developments.

The first problem concerns the difficulty identified by certain Member States of actually applying the Directive, owing to the complexity of its definitions.

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<sup>59</sup>

[www.coe.int/press](http://www.coe.int/press)

As an initial response to this problem, the Commission provided the Member States with a *vade-mecum* incorporating specific examples in an effort to delimit each definition more precisely<sup>60</sup>.

At meetings of the Technical Standards and Regulations Committee, the relevant Commission departments then offered assistance to any Member State having difficulties in deciding whether texts required notification. As a result, certain Member States initiated bilateral contacts with the departments in question.

It should also be stressed that, under the procedure, each Member State receives all the communications (comments, detailed opinions, discussions, etc.) sent to the others, which allows them to refer to earlier Commission analysis of a particular subject.

Lastly, this report will provide the Member States with an additional instrument for the identification of notifiable texts.

The potentially close link between services and products constitutes a second problem. In several cases, the Commission has issued comments and/or detailed opinions relating both to Information Society services and associated products. To take a specific example, the implications of national electronic signature regulations clearly influence the suppliers of the corresponding services and the products required for their provision, such as computers and electronic signature software.

Thirdly, the three-month standstill period is sometimes insufficient for the translation and analysis of complex technical measures involving a considerable number of Commission departments. Furthermore, as has already been pointed out, the Information Society services procedure provides for a postponement of only one month in response to a detailed opinion, by contrast with the three months allowed in the case of industrial, agricultural and fishery products. One month allows very little time either for the Member State concerned to reply or for the Commission to translate and comment on its response. This is contrary to the spirit of the Directive that seeks to establish a dialogue aimed at the smooth functioning of the Internal Market. At the same time, the Commission is fully aware of the need for the rapid analysis of issues regulated in the field of Information Society services. Even so, Directive 98/34/EC makes specific provision under the urgency procedure for cases requiring rapid treatment.

Fourthly, the Member States have also drawn attention to the difficulty of distinguishing between measures that are notifiable under Article 10 of the Directive and those that are not. On this point, the Commission would again stress that measures designed to ensure conformity must never be notified in the context of Directive 98/34/EC. Notification is required only for proposals (or particular draft articles) which do not involve the simple transposition of binding Community legislation into national law. In this connection, two recent Court of Justice judgements define this requirement more precisely<sup>61</sup>.

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<sup>60</sup> See note 6.

<sup>61</sup> Unilever judgement of 26 September 2000, C-443/98, ECR. p. I-7535  
Canal Satellite judgement of 22 January 2002, cited above, footnote 21.

The Commission would emphasise that it uses the notification of national drafts covering both basic transposing measures within the meaning of Article 10 of Directive 98/34/EC and more extensive measures to comment briefly on the transposing parts. From its knowledge of these drafts, it gives the Member States non-binding advice aimed at facilitating optimum transposition of the Directives in question.

The favourable impact of the notification procedure in the field of Information Society services can be summarised under six headings: dialogue on new topics, the withdrawal or amendment of draft regulations incompatible with Community law, the creation of a body of law on numerous topics, exchange of ideas, Commission examination of the need for legislation in certain areas and, lastly, the provision of information to undertakings and the public on draft national regulations in this sector.

First and foremost, the Commission took advantage of the dialogue established with the Member States to comment in its turn on their arguments. For example, discussions relating to domain names gave rise to an extremely informative exchange of views. This shows that, in new fields, which are constantly evolving and require national regulation, but on which the Community has no specific position, the notification procedure enables the Commission and Member State concerned to define appropriate legislative limits in the sector in question. This represents the first benefit - discussion of the correct approach to new legal problems. Furthermore, since the other Member States enjoy access to all the messages exchanged in this context, they can refer to the different positions adopted if they decide to introduce similar regulations in the future.

Discussions between the Commission and the Member States also made it possible to secure the withdrawal or amendment of draft regulations which were considered incompatible with Community law. This represents the second success of the Directive, since dialogue can make the Member States aware of the need for such action. Discussions between the participants in the notification procedure reach a culminating point in those cases in which a notifying Member State voluntarily withdraws its draft.

With every notification, the Commission refines its position on a given topic, thereby facilitating the resolution of problems arising from other notifications in the same field (electronic signature, electronic commerce, data protection, decoders, etc). This is the third benefit of the procedure, involving the gradual establishment of a body of law available to the Member States on a given subject. Moreover, the latter sometimes refer to positions adopted during previous procedures to justify, for example, the need for notification of draft national regulations.

A fourth benefit of the Directive is the establishment of a discussion forum between the Member States and the Commission following the communication of detailed opinions and comments by the latter. The Directive requires the Member States to respond to detailed opinions and the Commission to comment on their replies. Although Member States are not formally obliged to respond to those comments at Committee meetings, the Commission has certainly pressed for them to be taken into account and answered at the appropriate time. Moreover, the Member States have generally been willing to respond to the Commission's observations. This is an important factor, demonstrating their readiness for discussions with the Commission, even if the latter does not avail itself of its most coercive legal powers.

Fifthly, application of the notification procedure has made the Commission aware of the need to consider the advisability of Community action in certain sectors in view of contradictory draft national legislation.

Lastly, thanks to its publicly accessible Internet site<sup>62</sup>, the procedure gives undertakings and citizens access to draft regulations on which they can comment to the Commission or their national governments. It also informs them of regulations to be implemented by individual Member States

Thus, the foregoing makes clear that the notification procedure has a major part to play in the establishment of an internal market in Information Society services by avoiding the creation of barriers which would have adverse effects. It has also led to the establishment of a genuine discussion forum on these complex and constantly evolving issues.

In the particular case of Directive 2000/31/EC laying down a horizontal framework of Community law in the field of electronic commerce, the Directive 98/48/EC notification procedure made it possible both to conduct effective preventive monitoring in the transposition phase and to carry on a useful dialogue with the national authorities regarding factors not covered by the later Directive. This demonstrates the complementarity of these two regulatory instruments in the field of Information Society services.

The advantages of this procedure explain its adoption as a model for a Council of Europe Convention which is, moreover, even open to non-member Countries<sup>63</sup>. As the Convention closely follows the Community approach, the procedure can now be regarded as a solution that is also becoming internationally established.

Lastly, it can be said that, after a running-in period when the Commission faced certain questions concerning the interpretation and application of the Directive - which seems inevitable with the introduction of an operational mechanism in a new field like that of Information Society services - an efficient information and co-operation instrument has now been provided.

Whilst the involvement of the parties concerned remains inadequate (despite a rising trend compared with the early months of operation), the Directive has nonetheless contributed to the timely identification of specific obstacles to the internal market

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<sup>62</sup> <http://europa.eu.int/comm/enterprise/tris>

<sup>63</sup> Council of Europe Convention No 180 on information and legal co-operation with regard to information society services.

and, more generally, helped to make national legislators more aware of the principles of freedom of establishment and freedom to provide services, particularly in areas where these basic freedoms were not in any way taken into account.

The Directive also offers other possibilities, such as help in identifying new areas for Community harmonisation or the possible future revision of existing Directives on Information Society services.

In view of the proven benefits of Directive 98/34/EC as an instrument for the permanent monitoring of national regulatory frameworks, the Commission will shortly examine the possibility, where appropriate, of expanding its structured dialogue model to include other services in addition to those of the Information Society.

## 10. ANNEXES

### 10.1. Procedure for the provision of information in the field of technical standards and regulations and rules on services in the information society *List of national measures<sup>64</sup> implementing the directives on this subject<sup>65</sup>*

#### GERMANY

##### 83/189/EEC

Mitteilung der Regierung der Bundesrepublik Deutschland an die Kommission der Europäischen Gemeinschaften vom 19. März 1988: Verwaltungsmäßige Vorkehrungen

##### 88/182/EEC

Mitteilung der Regierung der Bundesrepublik Deutschland an die Kommission der Europäischen Gemeinschaften vom 22. Dezember 1988: Verwaltungsmäßige Vorkehrungen

##### 94/10/EC

Mitteilung der Regierung der Bundesrepublik Deutschland an die Kommission der Europäischen Gemeinschaften vom 16. Juni 1995: Verwaltungsmäßige Vorkehrungen

##### 98/48/EC

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<sup>64</sup> Following the consolidation of Directive 83/189/EEC by Directive 98/34/EC, amended by Directive 98/48/EC, some Member States have consolidated and repealed pre-existing national transposition measures. However, it may be important for individuals to know which version of the Directive and what national implementing measures were in force at the time of adoption of a national technical regulation. Indeed, in its judgement of 30 April 1996 *CIA Security International*, cited above, footnote 20, the Court of Justice held that technical regulations adopted in breach of the obligation to notify were inapplicable.

<sup>65</sup> 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 (Official Journal L 109 of 26/04/1983, p. 8-12).

Council Directive 88/182/EEC of 22 March 1988 amending Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 081 of 26/03/1988, p. 75 – 76).

Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 materially amending for the second time Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 100 of 19/04/1994, p. 30 – 36).

Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204 of 21/07/1998, p. 37 – 48).

N.B. This Directive consolidates and repeals Directive 83/189/EEC and successive amendments to it. It does not necessarily require the adoption of national implementing measures.

Directive 98/48/EC of the European Parliament and 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 (OJ L 217 of 05/08/1998, p. 18 – 26).

Mitteilung der Regierung der Bundesrepublik Deutschland an die Kommission der Europäischen Gemeinschaften vom 27. Oktober 1998: Verwaltungsmäßige Vorkehrungen

## **AUSTRIA**

83/189/EEC, 88/182/EEC and 94/10/EC

Bundesgesetz zur Durchführung eines Informationsverfahrens auf dem Gebiet der technischen Vorschriften und Normen (Notifikationsgesetz-NotifG), BGBl. Nr. 180/1996

Landesverfassungsgesetz vom 11. Juni 1996, mit dem die Verfassung für das Land Kärnten erlassen wird (Kärntner Landesverfassung), LGBl. Nr. 85/1996, Art. 32

Nö Landesverfassung 1979 – Nö LV 1979, LG Bl.0001-6

Landesverfassungsgesetz, mit dem das O.ö. Landes-Verfassungsgesetz 1991 geändert wird (Oö. Landes-Verfassungsgesetz-Novelle 1998), LGBl. Nr. 17/1998

Landesgesetz über internationale Informationsverfahren und Mitteilungen auf dem Gebiet technischer Vorschriften (Oö. Notifikationsgesetz – Oö NotifG), LGBl. Nr. 19/1998

Landesgesetz über das Landesgesetzblatt, die Amtliche Linzer Zeitung und andere Formen der Kundmachung in Oberösterreich (Oö. Kundmachungsgesetz – Oö. KMG), LGBl. Nr. 55/1998

Gesetz vom 23. September 1997 über die Durchführung des Informationsverfahrens auf dem Gebiet der technischen Vorschriften (Steiermärkisches Notifikationsgesetz – StNotifG)

Gesetz über internationale Informationsverfahren und Notifizierungen auf dem Gebiet technischer Vorschriften (Wiener Notifizierungsgesetz – WNotifG), LGBl. für Wien Nr. 28/1996

Gesetz über die Durchführung eines Informationsverfahrens auf dem Gebiet der technischen Vorschriften (Notifikationsgesetz), LGBl. Nr. 36/1998 (Vorarlberg)

Landtagsbeschluß über eine Änderung der Geschäftsordnung für den Vorarlberger Landtag, LGBl. Nr. 37/1998 (Vorarlberg)

98/34/EC

Landesverfassungsgesetz, mit dem das Oö. Landes-Verfassungsgesetz 1991 geändert wird (Oö. Landes-Verfassungsgesetz-Novelle 1998), LGBl. Nr. 17/1998

Landesgesetz über internationale Informationsverfahren und Mitteilungen auf dem Gebiet technischer Vorschriften (Oö. Notifikationsgesetz – Oö. NotifG), LGBl. Nr. 19/1998

Landesgesetz über das Landesgesetzblatt, die Amtliche Linzer Zeitung und andere Formen der Kundmachung in Oberösterreich (Oö. Kundmachungsgesetz – Oö. KMG), LGBl. Nr. 55/1998

98/34/EC and 98/48/EC

Bundesgesetz zur Durchführung eines Informationsverfahrens auf dem Gebiet der technischen Vorschriften, der Vorschriften für die Dienste der Informationsgesellschaft und der Normen (Notifikationsgesetz 1999 – NotifG 1999), BGBl. Nr. 183/1999

Verordnung des Bundesministers für wirtschaftliche Angelegenheiten über das Formblatt für Notifikationen (Notifikationsverordnung – NotifV), BGBl. Nr. 450/1999

Landesverfassungsgesetz, mit dem das Oö. Landes-Verfassungsgesetz geändert wird (Oö. Landes-Verfassungsgesetz-Novelle 1999), LGBl. Nr. 37/1999

**BELGIUM**

83/189/EEC and 88/182/EEC

Text of the Directive published in the *Moniteur belge* of 01.02.1989

94/10/EC

Official opinion published in the *Moniteur belge* of 29.04.1995

98/48/EC

Official opinion published in the *Moniteur belge* of 15.06.1999

**DENMARK**

83/189/EEC and 88/182/EEC

Industri- og Handelsstyrelsens cirkulære af 22. december 1988 : Cirkulære om gennemførelse i Danmark af Rådets direktiv 83/189/EØF om en informationsprocedure med hensyn til tekniske forskrifter som ændret ved direktiv 88/182/EØF

94/10/EC

Erhvervsfremme Styrelsens cirkulære nr. 86 af 16. juni 1995 : Cirkulære om gennemførelse i Danmark af Rådets direktiv om en informationsprocedure med hensyn til tekniske standarder og forskrifter

98/34/EC and 98/48/EC

Cirkulære nr. 118 af 9. juli 1999 om gennemførelse af Europa-Parlamentets og Rådets direktiver 98/34/EF og 98/48/EF om en informationsprocedure med hensyn til tekniske standarder og forskrifter samt forskrifter for informationssamfundets tjenester (Erhvervsmin., Erhvervsfremme Styrelsen, j. nr. 1998 – 224/14020-3)

Bekendtgørelse nr. 773 af 4. august 2000 om EU's informationsprocedure for tekniske standarder og forskrifter samt forskrifter for informationssamfundets tjenester (Erhvervsmin, Erhvervsfremme Styrelsen, j. nr. 2000-224/14020-15)

Bekendtgørelse nr. 190 af 20. marts 2001 om EU's informationsprocedure for tekniske standarder og forskrifter samt forskrifter for informationssamfundets tjenester (Erhvervsfremme Styrelsen, j. nr. 2000-224/14020-15)

## **SPAIN**

### 83/189/EEC and 88/182/EEC

Real decreto 568/1989, de 12 de mayo, por el que se regula la remisión de información en materia de normas y reglamentaciones técnicas (BOE núm. 125 de 26 mayo 1989)

### 94/10/EC

Real decreto 1168/1995, de 7 de julio, por el que se regula la remisión de información en materia de normas y reglamentaciones técnicas (BOE núm. 162 de 8 julio 1995)

Orden de 13 de junio de 1997 por la que se modifica la relación de organismos nacionales de normalización contenida en el Real Decreto 1168/1995, de 7 de julio, por el que se regula la remisión de información en materia de normas y reglamentaciones técnicas (BOE núm. 148 de 21 de junio 1997)

### 98/48/EC

Real decreto 1337/1999, de 31 de julio, por el que se regula la remisión de información en materia de normas y reglamentaciones técnicas y reglamentos relativos a los servicios de la sociedad de la información (BOE núm. 185 de 4 agosto 1999)

Corrección de errores del Real Decreto 1337/1999, de 31 de julio, por el que se regula la remisión de información en materia de normas y reglamentaciones técnicas y reglamentos relativos a los servicios de la sociedad de la información (BOE núm. 225 de 20 septiembre 1999)

## **FINLAND**

### 83/189/EEC, 88/182/EEC and 94/10/EC

N:o 884

Valtioneuvoston päätös

tekniisiä määräyksiä koskevien tietojen toimittamisessa noudatettavasta menettelystä

Annettu Helsingissä 15 päivänä kesäkuuta 1995

Nr 884

Statsrådets beslut

om informationsförfarandet i fråga om tekniska föreskrifter

Utfärdad i Helsingfors den 15 juni 1995

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Om tillämpning i landskapet Åland av riksförfattningar om produktsäkerhet (59/95)  
21.1.1988/8

98/48/EC

N :o 802

Valtioneuvoston päätös

teknisiä määräyksiä koskevien tietojen toimittamisessa noudatettavasta menettelystä

Annettu Helsingissä 15 päivänä heinäkuuta 1999

Suomen Säädöskokoelma 1999

Julkaistu Helsingissä 21 päivänä heinäkuuta 1999 N :o 797-802

Nr 802

Statsrådets beslut

om informationsförfarandet i fråga om tekniska föreskrifter

Utfärdad i Helsingfors den 15 juli 1999

Finlands Författningssamling 1999

Utgiven i Helsingfors den 21 juli 1999 Nr 797-802

## **FRANCE**

83/189/EEC

Circulaire No 3000/SG du 7 novembre 1985 du Premier ministre aux Ministres et Secrétaires d'Etat

88/182/EEC

Circulaire No 3421/SG du 30 décembre 1988 du Premier ministre aux Ministres et Secrétaires d'Etat

94/10/EC

Circulaire du 6 mai 1995 du Premier ministre relative à la procédure d'information dans le domaine des règles techniques et des normes (directive 83/189/CEE, modifiée par la directive 88/182/CEE et par la directive 94/10/CE) (Journal Officiel de la République française du 7 mai 1995)

Circulaire du 7 novembre 1994 du délégué interministériel aux Normes : directive relative à l'établissement des normes

98/48/EC

Circulaire du 9 décembre 1999 relative à la procédure d'information des autorités communautaires avant l'édiction de règles applicables aux services de la société de l'information (Journal Officiel de la République française du 15 décembre 1999)

## **GREECE**

83/189/EEC

ΠΡΟΕΔΡΙΚΟ ΔΙΑΤΑΓΜΑ ΥΠ'ΑΡΙΘ. 206

Καθιέρωση Διαδικασίας Πληροφόρησης στον τομέα των πρότυπων και τεχνικών κανονισμών σε συμμόρφωση προς την οδηγία 83/189/ΕΟΚ της 28.3.1983 του Συμβουλίου των Ε.Κ. (L 109/26.4.1983) (ΦΕΚ 94/Α/1987)

(Presidential Decree No 206 of 26 May 1987 published in the Official Journal No 94/A/1987)

88/182/EEC

ΠΡΟΕΔΡΙΚΟ ΔΙΑΤΑΓΜΑ ΥΠ'ΑΡΙΘ. 523

Τροποποίηση των Π.Δ. 206/87 (ΦΕΚ 94/Α/1987), καθιέρωση διαδικασίας πληροφόρησης στον τομέα των προτύπων των τεχνικών κανονισμών σε συμμόρφωση προς την Οδηγία 83/189/ΕΟΚ της 28.03.1983 του Συμβουλίου των Ε.Κ. (Ε.Ε.Λ. 109 της 26.04.1983) και 229/88 (ΦΕΚ 98/Α/1988) «καθιέρωση διαδικασίας πληροφόρησης στον τομέα των προτύπων, των τεχνικών κανονισμών και των συστημάτων πιστοποίησης», σύμφωνα με το Νόμο 1727/1987 «Κύρωση της Συμφωνίας Τεχνικών Εμποδίων στο Εμπόριο», σε συμμόρφωση προς την οδηγία 88/182/ΕΟΚ». (ΕΕ αριθ. L. 81 της 26.3.1988) (ΦΕΚ 236/Α/1988)

(Presidential Decree No 523 of 13 October 1988 published in the Official Journal No 236 of 24 October 1988)

94/10/EC

ΠΡΟΕΔΡΙΚΟ ΔΙΑΤΑΓΜΑ ΥΠ'ΑΡΙΘ. 48

Τροποποίηση και συμπλήρωση των διατάξεων του Π.Δ./τος 206/1987 (ΦΕΚ 94Α/18.6.1987) για την καθιέρωση μίας διαδικασίας πληροφόρησης στον τομέα των Προτύπων και των Τεχνικών Κανόνων, σε συμμόρφωση με την Οδηγία 94/10/ΕΚ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου (ΕΕΛ 100/19.4.94) (ΦΕΚ 44/Α/1996)

(Presidential Decree No 48 of 28 February 1996 published in the Official Journal No 44 of 7 March 1996)

98/34 and 98/48/EC

ΠΡΟΕΔΡΙΚΟ ΔΙΑΤΑΓΜΑ ΥΠ' ΑΡΙΘ. 39

Καθιέρωση μίας διαδικασίας πληροφόρησης στον τομέα των τεχνικών προτύπων και προδιαγραφών και των κανόνων σχετικά με τις υπηρεσίες της κοινωνίας των πληροφοριών σε συμμόρφωση προς τις Οδηγίες 98/34/ΕΚ και 98/48/ΕΚ. (ΦΕΚ 28/Α/2001)

(Presidential Decree No 39 of 6 February 2001 published in the Official Journal No 28 of 20 February 2001)

## **IRELAND**

83/189/EEC

Circular letter (no date available)

88/182/EEC

Letter dated 7 September 1988 of the Department of Industry and Commerce to all other Government Departments

94/10/EC

Letter dated June 1995 of the Department of Enterprise and Employment to all other Government Departments and the public authorities

98/48/EC

Letter dated 21 December 1999 sent by the Director of the Office of Science and Technology in the Department of Enterprise, Trade and Employment to the Secretary General of each Irish Government Department

## **ITALY**

83/189/EEC

Legge del 21 giugno 1986, n. 317 : Attuazione della direttiva n. 83/189/CEE relativa alla procedura d'informazione nel settore delle norme e delle regolamentazioni tecniche (G.U. n. 151 del 2 luglio 1986)

88/182/EEC

Legge del 29 dicembre 1990, n. 428 : Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee (Legge comunitaria per il 1990 - Art. 53 : procedura comunitaria d'informazione sulle regolamentazioni tecniche) (G.U. n. 10 del 12 gennaio 1991)

#### 94/10/EC

Legge del 6 febbraio 1996, n. 52 : Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee (Legge comunitaria 1994 – Art. 46 : attuazione della direttiva 94/10/CE relativa alla procedura d'informazione nel settore delle norme e delle regolamentazioni tecniche) (G.U. n. 34 del 10 febbraio 1996)

#### 98/34/EC and 98/48/EC

Decreto Legislativo 23 novembre 2000, n. 427 : Modifiche ed integrazioni alla legge 21 giugno 1986, n. 317, concernenti la procedura d'informazione nel settore delle norme e regolamentazioni tecniche e delle regole relative ai servizi della società dell'informazione, in attuazione delle direttive 98/34/CE e 98/48/CE (G.U. n. 19 del 24 gennaio 2001)

### **LUXEMBOURG**

#### 83/189/EEC and 88/182/EEC

Règlement grand-ducal du 8 juillet 1992 relatif aux normes et aux réglementations techniques (Mémorial A No 50 du 21 juillet 1992)

Règlement grand-ducal du 17 juin 1994 modifiant le règlement grand-ducal du 8 juillet 1992 relatif aux normes et réglementations techniques (Mémorial A No 61 du 11 juillet 1994)

#### 94/10/EC

Règlement grand-ducal du 18 août 1995 portant 2e modification du règlement grand-ducal du 8 juillet 1992 relatif aux normes et aux réglementations techniques (Mémorial A No70 du 25 août 1995)

#### 98/34/EC and 98/48/EC

Règlement grand-ducal du 17 juillet 2000 prévoyant une procédure d'information dans le domaine des normes et réglementations techniques et des règles relatives aux services de la société de l'information (Mémorial A No 75 du 14 août 2000)

### **NETHERLANDS**

#### 83/189/EEC and 88/182/EEC

Brief van 8 januari 1985 (ref. BEB/DI/EEG/IM/184/V/754796207) aan de betrokken departementen, waarmee de procedureregels van Richtlijn 83/189/EEG zijn bekend gemaakt

Aanbiedingsbrief van 16 november 1990 (ref. BEB/DEUR/90106627) aan de betrokken departementen, waarmee de herziene procedureregels zijn bekend gemaakt

Besluit van de Bestuurskamer van de Sociaal-economische Raad van 14 februari 1995 – Besluit beleidsregels toetsingsprocedure verordeningen en uitvoeringsbesluiten (PBO – Blad No 24, 24.03.95)

#### 94/10/EC

Brief van 28 juni 1995 (ref. BEB/DEUR/95040586) aan alle betrokkenen Ministeries betreffende de uitvoeringsverplichtingen met betrekking tot het onderdeel technische voorschriften

Brief van 3 juli 1995 (ref. ID/CBB/NB/95043155) aan alle betrokkenen Ministeries waarin wordt gewezen op de overeenkomst tussen de Minister van Economisch Zaken en het Nederlandse Normalisatie Instituut (NNI) en het Nederlands Elektrotechnisch Comité (NEC), welke is gesloten teneinde te voldoen aan de bepalingen van Richtlijn 94/10/EG, in het bijzonder de artikelen 2 tot en met 5

Besluit van de Bestuurskamer van de Sociaal-economische Raad van 15 juni 1995 tot wijziging van het Besluit beleidsregels, toetsingsprocedure verordeningen en uitvoeringsbesluiten  
(PBO-Blad No 45, 23 juni 1995)

#### 98/34/EC and 98/48/EC

Vaststelling door de Ministerraad op 25 juni 1999 van de « Handleiding notificatie van regels betreffende producten en elektronische diensten » (Staatscourant No 145 van 5 juli 1999)

### **PORTUGAL**

#### 83/189/EEC

Resolução do Conselho de Ministros No90/86 (Diário da República (Iº série) de 26 de Dezembro de 1986)

Despacho No148/86 (Diário da República (IIº série) de 24 de Janeiro de 1987)

#### 88/182/EEC

Resolução do Conselho de Ministros No41/90 (Diário da República (Iº série) de 13 de Outubro de 1990)

#### 94/10/EC

Resolução do Conselho de Ministros No95/95 (Diário da República (1º série-B) de 3 de Outubro de 1995)

#### 98/34/EC and 98/48/EC

Decreto-Lei n.º 58/2000 de 18 de Abril: Transpõe para o direito interno a Directiva n.º98/48/CE, do Parlamento Europeu e do Conselho, de 20 de Julho, relativa aos procedimentos de informação no domínio das normas et regulamentações técnicas e as regras relativas aos serviços da sociedade da informação (Diário da República (Iº-A) de 18 de Abril de 2000)

## **UNITED KINGDOM**

83/189/EEC

Administrative Circular of June 1984

88/182/EEC

Administrative Circular of 25 August 1988

94/10/EC

Administrative Circular of 24 May 1995 accompanied by an explanatory note (« Guidance for officials ») and the text of the Directive

98/48/EC

Administrative Circular of 30 July 1999 accompanied by a « Guidance for officials »

## **SWEDEN**

83/189/EEC, 88/182/EEC and 94/10/EC

Förordning om ändring i förordningen (1994 :2029) om tekniska regler ; utfärdad den 29 juni 1995

(Svensk författningssamling SFS 1995 :1022 den 18 juli 1995)

98/34/EC

Förordning om ändring i förordningen (1994 :2029) om tekniska regler ; utfärdad den 26 november 1998. (Svensk författningssamling SFS 1998 :1470 den 8 december 1998)

Förordning om ändring i författningssamlingsförordningen (1976 :725) ; utfärdad den 26 november 1998 (Svensk författningssamling SFS 1998 :1472 den 8 december 1998)

Kommerskollegiums föreskrifter om tekniska regler beslutade den 15 december 1998 (Kommerskollegiums författningssamling KFS 1998 :1 KK :1 den 30 december 1998)

98/48/EC

Förordning om ändring i förordningen (1994 :2029) om tekniska regler ; utfärdad den 17 juni 1999 (Svensk författningssamling SFS 1999 :652 den 30 juni 1999)

Förordning om ändring i författningssamlingsförordningen (1976 :725) ; utfärdad den 17 juni 1999 (Svensk författningssamling SFS 1999 :654 den 30 juni 1999)

Kommerskollegiums föreskrifter om ändring i föreskrifterna (1998 :1) om tekniska regler beslutade den 2 juli 1999 (Kommerskollegiums författningssamling KFS 1999 :1 KK :1 den 19 juli 1999)

**10.2. Number of notifications by year**

<b>Year</b>	<b>Number of notifications</b>
1999	12
2000	24
2001	25
2002 (February)	9

**10.3. Number of notifications by year and by Member State**

	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002 (February)</b>
<b>Germany</b>	1	4	5	-
<b>Austria</b>	1	1	1	-
<b>Belgium</b>	-	3	2	-
<b>Denmark</b>	1	1	1	-
<b>Spain</b>	3	-	2	-
<b>Finland</b>	-	1	6	2
<b>France</b>	-	1	2	-
<b>Greece</b>	1	-	-	-
<b>Ireland</b>	-	1	-	-
<b>Italy</b>	1	3	2	4
<b>Luxembourg</b>	-	3	-	-
<b>Netherlands</b>	3	4	1	1
<b>Portugal</b>	-	-	1	-
<b>United Kingdom</b>	1	1	1	-
<b>Sweden</b>	-	1	1	2
<b>Total : 70</b>	<b>12</b>	<b>24</b>	<b>25</b>	<b>9</b>

#### 10.4. Number of notifications by sector and by Member State

	Electronic signatures	Electronic commerce	Decoders	Telephone tapping Treatment of personal data	Computer criminality	Name of field	Other
Germany	4	3	0	1	0	0	2
Austria	1	1	1	0	0	0	0
Belgium	1	1	0	0	1	1	1
Denmark	1	1	1	0	0	0	0
Spain	3	1	0	0	0	0	1
Finland	4	2	0	1	0	1	1
France	2	1	0	0	0	0	0
Greece	1	0	0	0	0	0	0
Ireland	0	1	0	0	0	0	0
Italy	3	0	1	0	0	3	3
Luxembourg	0	3	0	0	0	0	0
Netherlands	2	1	0	4	1	0	1
Portugal	1	0	0	0	0	0	0
United Kingdom	1	1	0	1	0	0	0
Sweden	1	2	0	1	0	0	0
<b>Total MS (70)</b>	<b>25</b>	<b>18</b>	<b>3</b>	<b>8</b>	<b>2</b>	<b>5</b>	<b>9</b>
Norway	2	1	0	0	0	0	0
Iceland	0	1	0	0	0	0	0
<b>Total (74)</b>	<b>27</b>	<b>20</b>	<b>3</b>	<b>8</b>	<b>2</b>	<b>5</b>	<b>9</b>

### 10.5. List of notification references

Year	Country	Notification
<b>1999</b>	Germany	1999/0438/D
	Austria	1999/448/A
	Denmark	1999/535/DK
	Spain	1999/386/E
		1999/505/E
		1999/563/E
	Greece	1999/456/GR
	Italy	1999/420/I
	Netherlands	1999/390/NL
		1999/395/NL
		1999/396/NL
United Kingdom	1999/548/UK	

Year	Country	Notification
<b>2000</b>	Germany	2000/0003/D
		2000/0344/D
		2000/0470/D
		2000/0325/D
	Austria	2000/0394/A
	Belgium	2000/0050/B
		2000/0151/B
		2000/0742/B
	Denmark	2000/382/DK
	Finland	2000/0012/FIN
	France	2000/0007/F
	Ireland	2000/0163/IRL
	Italy	2000/0397/I
		2000/0539/I
		2000/682/I
	Luxembourg	2000/0130/L
		2000/0452/L
		2000/0498/L
	Netherlands	2000/0118/NL
		2000/0181/NL
		2000/0282/NL
		2000/0562/NL
	United Kingdom	2000/0069/UK
	Sweden	2000/0708/S

Year	Country	Notification
2001	Germany	2001/0118/D
		2001/0240/D
		2001/0241/D
		2001/0264/D
		2001/0480/D
	Austria	2001/0290/A
	Belgium	2001/0474/B
		2001/0514/B
	Denmark	2001/0316/DK
	Spain	2001/0218/E
		2001/0334/E
	Finland	2001/0125/FIN
		2001/0161/FIN
		2001/0162/FIN
		2001/0422/FIN
		2001/468/FIN
		2001/469/FIN
	France	2001/0272/F
		2001/448/F
	Italy	2001/0140/I
		2001/0236/I
	Netherlands	2001/0039/NL
	Portugal	2001/053/P
	United Kingdom	2001/0527/UK
	Sweden	2001/0052/S

Year	Country	Notification
2002 (February)	Finland	2002/0065/FIN
		2002/0100/FIN
	Italy	2002/0012/I
		2002/0019/I
		2002/0031/I
		2002/0032/I
	Netherlands	2002/0007/NL
	Sweden	2002/0074/S
		2002/0075/S

## 10.6. Notifications in the field of the Information Society<sup>66</sup> - Summary table

### Electronic signatures

Member State	No	Title – Sector	Reaction of the Commission/Member States*	Response by the Member State	Title/Content of draft
Spain	99/386/E	Draft law on electronic signatures	Completed		Adopted before expiry of the status quo – (Decree Law 14/1999 of 17/09/1999). Replaced by the draft covered by notification 99/505/E.
Spain	99/505/E	Draft law on electronic signatures	Comments Art. 8(2) Directive 98/34/EC		Products and services aspects – matters relating to compliance with Directive 99/93/EC.
Spain	99/563/E	Electronic signatures Draft regulation on the accreditation of service providers	Comments Art. 8(2) Directive 98/34/EC	Final text 17/09/2001	Products and services aspects – matters relating to the operating of the accreditation and certification systems.
Austria	99/448/A	Electronic signatures	Comments Art. 8(2) Directive 98/34/EC  (COM + D)	Response on 01/02/2000  Final text 23/03/2000	Products and services aspects – matters relating to compliance with Directive 99/93/EC and the monitoring and approval system.
Greece	99/456/GR	Electronic signatures	Comments Art. 8(2) Directive 98/34/EC		Products and services aspects – matters relating to compliance with Directive 99/93/EC and certification services.

<sup>66</sup> Document of 25/06/2002.

[Access Internet site: http://europa.eu.int/comm/enterprise/tris](http://europa.eu.int/comm/enterprise/tris)

\* Unless otherwise specified, reaction = Commission's reaction (COM).

Electronic signatures

Member State	No	Title – Sector	Reaction of the Commission/Member States*	Response by the Member State	Title/Content of draft
United Kingdom	99/548/UK	Draft Electronic Communications Bill – Electronic signatures	Comments Art. 8(2) Directive 98/34/EC (COM + SV)	Final text 27/07/2000	Products and services aspects — matters relating to telecom licences, compliance with Directive 99/93/EC, the voluntary accreditation system, the protection of personal data (Directive 95/46/EC) and the confidentiality of communications (Directive 97/66/EC).
Germany	00/003/D	Amendment of the Decree on digital signatures	Comments Art. 8(2) Directive 98/34/EC	Final text 28/03/2001	Products and services aspects – matters relating to compliance with Directive 99/93/EC and the monitoring and approval system.
France	00/007/F	Electronic signatures  Draft law adapting the law of evidence	Completed		Only the services aspects – refusal of urgency procedure - adopted before expiry of the status quo (Law No°2000-230 of 13/12/2000) – however, the wording does not include any technical rules, so there is no mandatory notification.
Belgium	00/050/B	Electronic signatures  Draft law	Detailed opinion and comments Arts. 9(2) and 8(2) Directive 98/34/EC (I+A+E)	Response 23/08/01 Final text 04/10/2001	Products and services aspects – matters relating to the consequences of the definitions used for "certificate" and "qualified certificate" on the freedom to provide services (Article 49 of the Treaty) and compliance with Directive 99/93/EC.

Electronic signatures

Member State	No	Title – Sector	Reaction of the Commission/Member States*	Response by the Member State	Title/Content of the draft
Denmark	00/382/DK	Electronic signatures	Comments Art. 8(2) Directive 98/34/CE	Response on 05/02/01 Final text 05/02/2001	Two public administration regulations on safety requirements and information summaries for the Telecommunications Directorate of encryption centres and systems inspectors.
Germany	00/470/D	Electronic signatures	Detailed opinion and comments Arts. 9(2) and 8(2) Directive 98/34/CE (COM +A)	Final text 05/07/2001	Bill on the framework conditions regarding electronic signatures and amending other regulations.
Netherlands	00/562/NL	Public land registers	Detailed opinion and comments Art. 9(2) et 8(2) Directive 98/34/CE	Dialogue	Bill aimed at regulating the use of electronic signatures for land registers.
Sweden	00/708/S	Taxation system for electronic signatures	Detailed opinion + Comments by France Arts. 9(2) and 8(2) Directive 98/34/EC	Response on 07/06/01 Final text 05/02/2002	Bill providing for a taxation system according to the number of electronic signatures filed.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Electronic signatures

Member State	No	Title – Sector	Reaction of the Commission/Member States*	Response by the Member State	Title/Content of bill
Finland	01/125/FIN	Law on electronic signatures	Comments Art. 8(2) Directive 98/34/CE (COM+S)	Completed 01/02/2002 (withdrawal of the text)	According to the bill, the provision of certification services is an unrestricted professional activity. Providers offering quality assurance certification should however declare their activity to the Finnish Communications Regulatory Authority, which monitors the supply of certification services.
Germany	01/264/D	Decree on electronic signatures	Do nothing	Final text 04/03/2002	The decree regulates in greater detail the requirements of the law on electronic signatures.
Norway	01/9016/N	Law on electronic signatures	Do nothing	Final text 07/12/2001	Draft legislation amending the legislation on fees invoiced by the Norwegian Post and Telecommunications authority.
Finland	01/468/FIN	Electronic signatures	Do nothing		Under the law, certifying bodies must declare their activity to the Communications Regulatory Authority before commencing activity.
Finland	01/469/FIN	Electronic signatures	Do nothing		The provision specifies the requirements laid down in the law on electronic signatures regarding the reliability and security of information in the activity of certifying bodies offering quality assurance certification to the public.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Electronic signatures

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of draft
Finland	01/422/FIN	Electronic signatures	Request for final text 17/04/2002		Law on electronic access to public authorities.
France	01/448/F	Electronic signatures	Comments Art 8 (2) Directive 98/34/EC	Response 16/04/2002 Final text 30/05/2002	Draft decree on the evaluation and certification of the security offered by information technology products and systems.
Portugal	01/530/P	Electronic signatures	Refusal of the request for the urgency procedure  Do nothing		Bill amending the legal system for electronic signatures and certification activities.
Netherlands	02/007/NL	Electronic signatures	Do nothing		Bill on e-mails exchanged between the public and administrative authorities and between administrative authorities themselves.
Italy	02/012/I	Electronic signatures	1) Comments France 2) Detailed opinion and comments Arts. 9(2) and 8(2) Directive 98/34/EC	Response 06/03/2002	Draft decree implementing Directive 1999/93/EC concerning electronic signatures.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Electronic signatures

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of draft
Italy	02/019/I	Electronic signatures	Completed	Response 06/03/2002	Bill transposing Directive 1999/93/EC.
Finland	02/065/FIN	Electronic signatures	Do nothing		Draft implementing Directive 1999/93/EC and regulating the certification services relating to electronic signatures.
Germany	02/177/D	Electronic signatures	Being analysed		Draft regulating the possibility of electronic procedures valid for all administrative procedures governed by federal law.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Electronic commerce

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Luxembourg	00/130/L	Electronic commerce	Comments Art. 8(2) Directive 98/34/EC	Response 18/09/2001 Final text 22/01/2002	Products and services aspects – far-reaching changes to civil and criminal law, civil procedure, and administration of criminal justice.
Ireland	00/163/IRL	Electronic commerce	Completed		Bill on the legal recognition of electronic contracts, electronic writing, electronic signatures and original information in electronic form in relation to commercial and non-commercial transactions and operations and other subjects, the admissibility of evidence in relation to these subjects, the supervision and liability of certification service providers and the registration of domain names, and related subjects.
Luxembourg	00/452/L	Electronic commerce	Comments Art. 8(2) Directive 98/34/EC	Final text 22/01/2002	Renotification of draft 00/130/L following amendments to the substance of the text previously notified.
Germany	01/118/D	Bill on the general legal conditions of e-commerce transactions	Comments Art. 8(2) Directive 98/34/EC	Final text 04/03/2002	Article 1 of the bill amends the current law on teleservices (TDG). It amends or supplements the existing provisions and adopts new ones.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Electronic commerce

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Finland	01/161/FIN	Law on the supply of information society services and other related laws	Comments Art. 8(2) Directive 98/34/EC	Final text 28/12/2001	The proposal includes provisions regarding the directive concerning procedures for combating illegal documents or the prevention of their receipt by storage services. The other bills regarding implementation are the law on the protection of privacy in the telecommunications sector and the amendment to the law on information security in the telecommunications sector, the law on the amendment to chapter 2 of the law on consumer protection and the law on the amendment to the law on inappropriate conduct in industrial activity.
Finland	01/162/FIN	Law on the protection of information society services and related laws	Do nothing		Encryption systems for the protection of pay-TV broadcasts, satellite broadcasts and cable broadcasts and various offers on the Internet and services requiring authorisation for use of the service offered.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Electronic commerce

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Germany	01/240/D	State agreement – Media I	Detailed opinion and comments Arts. 9(2) and 8(2) Directive 98/34/EC	Response 28/02/2002	Article 1 number 13 of the draft public contract amending the public contract on media services (public contract amendment concerning media services)
Germany	01/241/D	State Agreement – Media II	Detailed opinion and comments Arts. 9(2) and 8(2) Directive 98/34/EC	Response 28/02/2002	Article 1 numbers 1 to 12 and 14 to 17 of the draft public contract amending the public contract on media services (public contract amendment concerning media services).
France	01/272/F	Information Society	Comments Art. 8(2) Directive 98/34/EC (COM + NL).	Response 24/04/2002	Bill on the information society. Many points relating to the E-commerce Directive and data protection are developed in this text.
Austria	01/290/A	Electronic commerce	Comments Art. 8(2) Directive 98/34/EC	Response 21/12/2001 Final text 29/01/2002	Bill regulating various aspects of electronic, commercial and legal relations (E-commerce law - ECG).

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Electronic commerce

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Denmark	01/316/DK	Electronic commerce	Comments Art. 8(2) Directive 98/34/EC	Response 22/11/2001	The bill contains provisions on the field of application, definitions, monitoring by the authorities and mutual recognition, the obligation to provide information for identification of the service provider, information on prices, commercial communications, the obligation to provide information when an order is placed, the rules on indemnification and the establishment of contact points.
Spain	01/334/E	Electronic commerce	Comments Art. 8(2) Directive 98/34/EC	Response 03/12/2001	Preliminary draft law on information society services and e-commerce.
Iceland	01/9020/IS	Electronic commerce and other services	Do nothing		Bill on certain legal aspects of information society services, in particular e-commerce.
Norway	01/9022/N	Electronic commerce	Comments Art. 8(2) Directive 98/34/EC	Response 17/04/2002	Bill on certain legal aspects of information society services, in particular e-commerce.
Sweden	02/0074/S	Electronic commerce	Do nothing		Bill regulating the use of e-mail for prospecting.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Electronic commerce

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Sweden	02/075/S	Electronic commerce and services	Comments Art. 8(2) Directive 98/34/EC		Bill transposing Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Decoders

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Italy	99/420/I	Television decoders	Detailed opinion and comments Arts. 9(2) and 8(2) Directive 98/34/EC	Response 20/01/2000 Com. Reaction 16/03/2000 Final text 17/12/2001	Products and services aspects – matters relating to "television without frontiers" - definition problems regarding equipment, staff and decoder standards.
Denmark	99/535/DK	Television decoders	Comments Art. 8(2) Directive 98/34/EC	Final text 07/11/2001	Products and services aspects - matters relating to "television without frontiers" - concept of shared antenna systems
Austria	00/394/A	Transmission of television signals	Detailed opinion and comments Arts. 9(2) and 8(2) Directive 98/34/EC	Completed (Withdrawal of text)	Federal law adopting supplementary provisions on the use of television signal standards.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Telephone tapping – Treatment of personal data

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Netherlands	99/395/NL	Draft regulation concerning the dissemination of information on telecommunication	Comments Art 8(2) Directive 98/34/EC	Response 22/12/1999 Final text 06/03/2001	Impact on protection of personal data (Directive 95/46/EC)
Netherlands	99/396/NL	Draft Order: implementing the Regulation on the tapping of telecommunications networks	Comments Art. 8(2) Directive 98/34/EC	Response 22/12/1999 Final text 06/03/2001	Impact on the protection of personal data (Directive 95/46/EC)
Finland	00/012/FIN	Law amending the Law on the maintenance of secrecy in telecommunications	Do nothing	Final text 17/09/2001	Implications on the penal sector (Directives 97/66/EC and 95/46/EC)
United Kingdom	00/069/UK	Regulation of Investigatory Powers Bill	Request for final text	Final text 02/10/2001	This bill aims to regulate powers of investigation in three areas: interception of communications, intrusive investigation techniques and access to encrypted material.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Telephone tapping – Treatment of personal data

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Netherlands	00/181/NL	Land register data	Do nothing	Final text 23/10/2000	Computer processing of data relating to the land register.
Netherlands	00/282/NL	Intelligence and security services	Detailed opinion and comments Arts. 9(2) and 8(2) Directive 98/34/EC	Response 11/12/2000 Com. reaction on 29/06/2001 Final text 23/05/2002	The draft (new) law on intelligence and security services proposes an exhaustive regime concerning Dutch intelligence and security and also a regulation on the processing of intelligence.
Germany	00/344/D	Protection of teleservices data	Detailed opinion and comments Arts. 9(2) and 8(2) Directive 98/34/EC	Response 20/12/2000 Com. Reaction 28/05/2001 Dialogue 04/07/2001 Final text 04/03/2002	Amendment to the law on teleservice data protection.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Telephone tapping – Treatment of personal data

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Netherlands	00/733/NL	Telephone tapping – Amendment	Comments Art 8(2) Directive 98/34/EC	Response 04/05/2001	Decision amending the Regulation on the tapping of networks and public telecommunications networks and services.
Netherlands	00/734/NL	Telephone tapping	Comments Art 8(2) Directive 98/34/EC	Response 04/05/2001	Notification classified as confidential.
Netherlands	01/039/NL	Obligation to provide telecommunications data	Do nothing		Amendment to the criminal proceedings code and other laws following the change in jurisdiction regarding the requisition of telecommunications information.
Sweden	01/052/S	Rules of the Post and Telecommunications Agency	Detailed opinion Art. 9(2) Directive 98/34/EC	Response 05/07/2001 Com. Reaction 25/10/2001 Final text 29/01/2002	These rules concern the obligation for telephone operators to provide information on the telephone subscriptions of individuals for the purposes of the intelligence services.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Telephone tapping – Treatment of personal data

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Belgium	02/0139/B	Protection of privacy regarding telephone- and other forms of tapping	Refusal of urgency procedure Being analysed		Interception of telecommunications for judicial purposes.

Computer crime

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Netherlands	99/390/NL	Bill : computer crime II	Blocking procedure Art. 9(4) Directive 98/34/EC	Response 26/04/2000	Notification on a subject covered by a proposal submitted by the Council Directive published in the Official Journal on 17/07/2000.
Belgium	00/151/B	Bill on computer crime	Detailed opinion + Comments Art. 9(2) et 8(2) Directive 98/34/EC	Final text 11/05/2001	Aspects linked to the free movement of services and freedom of establishment.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

\* Unless otherwise specified, reaction = Commission's reaction (COM).

Domain name

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Italy	00/539/I	Internet site names	Detailed opinion + communication Art. 9(2) Directive 98/34/EC		Introduction of a system for recording Internet sites laying down precise, binding rules.
Belgium	00/742/B	Illicit registration of domain names	Detailed opinion Art. 9(2) Directive 98/34/EC	Meeting with the national authorities (26/04/2001) Written response 12/07/2001 Com response 12/07/2001 Dialogue 105/02/2002 and 14/05/2002	The system set up by the Belgian authorities aims to prevent the illicit registration of domain names and to provide a system to settle disputes quickly.
Italy	02/031/I	Internet site names	Detailed opinion Art. 9(2) Directive 98/34/EC		Regulation on the recording and use of domain names.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Domain name

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Finland	02/100/FIN	Domain names	Do nothing		Bill regulating the form of the network identifier and the restrictions on its use.
Italy	02/032/I	Internet site names	Detailed opinion Art. 9(2) Directive 98/34/EC		Rules on the registration and protection of domain names.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Other

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft
Netherlands	00/118/NL	Trade register – draft decree	Do nothing	Final text 21/01/2001	Products and services aspects.
Italy	00/397/I	Automatic computer systems	Do nothing		Computer system for public procurement.
Italy	00/682/I	Protection of minors covering all media	Detailed opinion and comments Art. 9(2) + 8(2) Directive 98/34/EC		Drawing up of a charter to protect minors as regards television, the Internet, CD-ROM, advertising, etc.
Italy	01/140/I	Bill on the provision of Internet access services	Do nothing		The bill notified aims to restore competitive conditions between Internet access suppliers and operators working in conjunction with the telecommunications licence-holding bodies
Spain	01/218/E	Draft royal decree on the development of Article 81 of Law 66/1997 of 30 December		Final text 21/01/2002	This draft covers fiscal, administrative and social measures regarding the provision of security services, by the royal mint - Real Casa de la Moneda - in electronic and computer communications with the public authorities.

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\* Unless otherwise specified, reaction = Commission's reaction (COM).

Other

Member State	No	Title – Sector	Reaction by the Commission/Member States*	Response by the Member State	Title/Content of the draft.
Belgium	01/474/B	Digital identity card	Detailed opinion + comments Art. 9(2) Directive 98/34/EC	Response	Classified confidential.
Netherlands	02/131/NL	Public land register	Do nothing		Draft introducing tariffs for electronic services (increase in cadastral incomes).

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\* Unless otherwise specified, reaction = Commission's reaction (COM).