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REPORT FROM THE COMMISSION

**TO THE COUNCIL, THE EUROPEAN PARLIAMENT
AND THE ECONOMIC AND SOCIAL COMMITTEE**

on the implementation of Decision 3052/95/CE in 1997 and 1998

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Executive summary

Among the instruments necessary for the management of the single market, Decision 3052/95/EC plays a pivotal role. In a single market, products that have been lawfully produced and marketed in one Member State can also be marketed in any other Member State. However, there may be situations where a Member States' authorities will have to restrict the circulation of a product, whether domestic or imported, on the market because the specific characteristics of that product present a danger to the consumer, the environment or public order in general. The single market therefore, whilst establishing the principle of free circulation of products, also charges Member States with the task of effectively protecting the legitimate interests of its citizens.

The objective of Decision 3052/95/EC is to ensure that every decision by the authorities of a Member State which restricts the free circulation of goods legally marketed in other Member States is brought to the attention of the Commission and the other Member States as quickly as possible, allowing the latter to take any appropriate steps. Such transparency is the prerequisite for efficient decentralised management of the single market. It may also serve to detect areas where obstacles continue to exist and where harmonisation at Community level might be called for.

Apart from Decision 3052/95/EC, a range of specific single market instruments provide for different forms of transparency: all New Approach Directives contain safeguard clauses which require Member States to signal temporary derogation to the rules of free circulation to the Commission and the Member States. Directive 92/59/EEC on product safety provides for a notification procedure whereby Member States notify the withdrawal from the market of a product that is unsafe. In contrast to these ex-post notifications, the information directive 98/34/EC provides for notification of all technical regulations prior to their adoption.

Decision 3052/95/EC applies in the absence of any other specific obligation of notification. It can therefore be considered as the **catch all provision** or the "safety-net" for ensuring transparency of single market management.

To date 102 measures have been notified under Decision 3052/95/EC. This seems low in comparison to the number of measures notified under specific instruments, such as the product safety directive or the information directive.

Several factors are having an impact. First of all, the novelty of the instrument requires a certain amount of familiarisation/training of national administrations. Linked to that national authorities have difficulties in identifying Decision 3052/95/EC as the appropriate notification procedure within a range of transparency instruments. Communication between the Commission – central government administrations and decentralised local authorities is

sometimes hampered. Finally, economic operators rarely invoke Decision 3052/95/EC as a “right” to obtain adequate information and justification concerning product restrictions.

This report concludes that information efforts on the working and the added value of Decision 3052/95/EC have to be stepped up at European, national and regional level. In addition, it raises the issue of a longer term reflection on “what kind of transparency” is required to manage the single market and how it can best be obtained.

INTRODUCTION

Decision No 3052/95/EC of the European Parliament and of the Council of 13 December 1995 establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community¹ (hereafter referred to as "the Decision"), has been in force in the Member States since 1 January 1997.

The Decision establishes an information procedure designed to ensure the transparency of measures adopted by the Member States by derogation from the principle of mutual recognition.

The principle of mutual recognition is a cornerstone of the completion and functioning of the single market. It provides for freedom of movement in all Member States of products legally manufactured or marketed in another Member State. Only in exceptional and duly justified cases do the authorities of a Member State have the right to derogate from the principle of free movement. In this way, the single market establishes free movement of products, while charging the authorities of Member States with ensuring that the said free movement does not jeopardise the legitimate interests of EU citizens.

There are two reasons why this Decision is an essential component of efficient management of the internal market.

- It ensures that **any decision made by a Member State which has the effect of restricting the free movement of goods is notifiable** and transparent. Although a number of sectoral directives and the Directive on product safety lay down notification procedures, this Decision is valuable because it covers all the cases where no specific notification procedure is provided for.
- The Decision's goal of transparency is a **corollary of the deliberately decentralised management practised by the authorities of the Member States**. If a Member State adopts measures which restrict the free circulation of goods from another Member State, this must be brought to the attention of the remaining Member States and the Commission so that a rapid and appropriate solution may be found at Community level to actions which may call into question the free movement of goods and the legitimate interests of consumers.

Article 11 of the Decision states that, within two years of its implementation, the Commission shall report to the European Parliament and the Council on its operation and shall propose any amendment it deems appropriate. The report is divided into three parts describing, firstly, the mechanics of the Decision, (1), then its implementation by Member States (2) and the Commission (3) during the first two years, in order to draw a number of conclusions (4).

¹ OJ L 321, 30.12.1995, p. 1.

1. THE PROCEDURE PROVIDED FOR BY THE DECISION

The Decision requires Member States to notify the Commission of all measures which restrict the free movement of goods or the marketing of a certain model or a certain type of product which is legally manufactured and sold in another Member State if the direct or indirect effect of the measure is a complete ban, a refusal to authorise its marketing, a requirement to modify the model or type of the product in question in order allow its (continued) marketing, or a withdrawal from the market.

This notification must take place within 45 days of the date the measure was taken. The only formal condition is that an information sheet containing the particulars listed in the annex must be used.

The Decision also provides for a number of exceptions to the notification requirement. In particular, notification is not required for judicial decisions, measures taken solely in pursuance of Community harmonisation measures, measures notified to the Commission under specific provisions, measures notified as drafts, or measures relating to the protection of public morality or public order.

Finally, as required under Article 9 of the Decision, the Commission is required to provide Community-wide information on national measures notified pursuant to this procedure. The Commission is required to respect the principle of confidentiality, which includes professional secrecy, as referred to in Article 6 of the Decision. Also, without prejudice to unresolved cases, the Commission is required to provide information on any follow-up action decided on.

The procedure laid down in the decision is described in a *vade mecum* that the Commission has sent to the Member States.

2. IMPLEMENTATION BY MEMBER STATES

2.1 Implementation of the decision by Member States

As required by the second sentence of Article 11 of the Decision, the relevant Commission department wrote to the Member States on 24 November 1998, asking them to pass on any relevant information on how they implement the Decision. A reminder was sent on 22 January 1999 to the Member States which had not replied by the deadline.

Summaries of the information supplied by the Member States are provided below.

Belgium

In a letter dated 12 February 1999, the Belgian authorities informed the Commission that an inter-ministerial meeting specifically on preparing to implement the Decision had been held on 29 November 1996 in order to remind the relevant authorities of how to apply the Decision. At this meeting, CIBELNOR, a Belgian centre under the authority of the Belgian standards institute was designated as the Belgian contact point for the Decision. A further inter-ministerial meeting was held on 11 June 1998. The finality of the decision, the need for authorities to have contact points available, and the possibility of sanctions when the Decision was not applied were emphasised. A bilateral meeting between the Commission and the Belgian authorities took place on 23 September 1998. An effort is being made to have a

network of contact points in the relevant administrations follow up on the problematic point that there have not yet been any notifications from Belgium.

Denmark

In a letter dated 10 December 1998, the Danish authorities stated that the Danish Industrial Development Board's circular No 145 of 11 September 1996 informed their departments of the procedure laid down in the Decision. Moreover, yearly information meetings are held to keep the departments informed. The Danish authorities forward the notifications from other Member States sent on by the Commission to the relevant departments and to certain professional organisations for their information and to learn of their opinion.

Germany

The German authorities, in a letter of 29 December 1998, stated that (as the Commission had been informed in a letter dated 17 December 1996) all Federal and regional authorities subject to the notification requirement under the Decision had been informed of this requirement. The German authorities pointed out that, during the period under consideration, 21 measures affecting health protection (food sector) had been notified by the national contact authority designated in accordance with Article 7 of the Decision.

Spain

In a note dated 26 February 1999, the Spanish authorities informed the Commission that a central contact point had been set up in the *Secretaría de Estado de Política Exterior y para la Unión Europea*. Contact points had also been established in every ministry affected by the Decision and all the Autonomous Communities. All the contact points are the same as those set up under Directive 98/34. The central contact point has prepared several notes concerning information on or interpretations of how the Decision is to be applied. The notes, the Decision and the *vade mecum* have all been sent to the contact points.

For their part, the contact points of the various ministries and the Autonomous Communities prepared recommendations and information notes on the Decision which were then distributed to the authorities. The central contact point distributes the Spanish version of the notification sheet to the other contact points which are responsible for distributing them. An article on the Decision written for economic and social operators has been published in the *Revista de Comercio Española*.

France

In their note of 4 December 1998, the French authorities stated that the Decision had been the subject of a circular from the Prime Minister, dated 26 July 1996, relating to the reciprocal procedure on national measures derogating from the principle of the free movement of goods within the Community². The circular defines the procedures which must be adhered to by the national authorities with regard to French notifications, and the treatment of notifications from other Member States. The annexes to the circular contain the *vade mecum* on the Decision and the notification sheet.

² Prime Minister's circular of 26 July 1996 establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community, published in the Official Journal of the French Republic of 31 July 1996, p. 11592.

Ireland

In a letter dated 19 January 1999, the Irish authorities informed the Commission that the Decision had been implemented through an administrative procedure identical to the one used to apply Directive 83/189. It enables the authority responsible for implementing the Decision to formally notify all government departments and the public authorities concerned of their obligations under the Decision.

Italy

In a letter dated 30 December 1998, the Italian authorities confirmed that implementation of the Decision had been the subject of a Communication from the Ministry of Industry, Trade and the Craft Trades on 14 January 1997³. It was addressed to all Italian administrations.

Luxembourg

The Luxembourg authorities indicated in their note of 21 December 1998 that the Ministry of Energy, which is responsible for this sector, had not issued a single notification of measures derogating from the principle of the free movement of goods since the Directive entered into force.

The Netherlands

In a letter dated 1 February 1999, the Dutch authorities reiterated that the *Centrale Dienst voor In- en Uitvoer* (CDIU) had been designated as the contact point pursuant to Article 7 of the Decision. They added that they had made the authorities responsible for implementing the Decision aware of the requirements set out in it and of the Commission's *vade mecum*. Moreover, as part of the *Interdepartementale Werkgroep Notificatie*, a manual had been prepared to assist the services concerned with implementing the Decision. A copy of this manual was enclosed with the letter from the Dutch authorities. The Dutch authorities emphasised how useful the meeting with the Commission held on 27 April 1998 had been in preparing this manual, as the practical aspects of implementation had been addressed. They also suggested that discussion on these matters should continue, for example, at a future meeting of the Committee set up under Directive 98/34/EC. Moreover, a meeting of the national authorities was to be held in 1999 to compare experiences and restate the requirements laid down in the Decision.

Austria

On 30 December 1998, the Austrian authorities sent a fax containing detailed information on how they had implemented the Decision. Several meetings were organised by the Federal Ministry of Economic Affairs in 1996, during which the Decision, the *vade mecum* and the note were distributed. On 17 December 1996, the Council of Ministers adopted a circular on implementation of the Decision, which, together with the *vade mecum* and the note, was sent to the regional authorities, among others.

³ Communication of the Ministry of Trade and Industry No 16185 of 14 January 1997. Not published.

Portugal

In a note dated 19 February 1999, the Portuguese authorities reiterated that their Decision 30/97 of 11 November 1997 had set up the *Instituto Português da Qualidade* as the national contact point responsible for the notification procedure instituted by the Decision. The Portuguese authorities stressed the efforts they had made to inform economic operators of the information collected under the Decision, most notably by setting up an Internet site. They also noted that, up to now, the majority of notifications concerned foodstuffs, medicines or chemicals.

Finland

In a letter of 12 January 1999, the Finnish authorities informed the Commission that the responsible departments had implemented the Decision by means of administrative cooperation between the authorities and administrative agreements. In this context, the departments took the following action: informing the other ministries and authorities of the content of the decision and that it had come into force, describing the sectors which were not subject to harmonisation and holding meetings and seminars on the application of the Decision. In addition, during a package meeting which took place on 9 October 1998, the relevant departments, in cooperation with the Internal Market DG, held a conference on the application of the decision.

Sweden

In a letter dated 23 December 1998, the Swedish authorities pointed out that regulation 1996:830 requires both national administrations and local authorities to provide the information relevant to the Decision. The national contact point has also laid down rules for its implementation⁴. In spite of the efforts already made, the relevant services recognise that additional action must be taken to ensure that the Decision is applied at all administrative levels, particularly locally and regionally, where the need for information is most strongly felt. Moreover, the Swedish authorities have raised several problems concerning the implementation of the Decision: the division between the different information procedures is unclear; the Decision does not cover the measures taken by certain private bodies; nor does it cover certain types de measures such as preliminary contacts, which may nonetheless affect the free movement of goods; obtaining information from other Member States is difficult; and lastly, they have some doubts concerning notifications of measures taken in fields that are in the process of harmonisation.

United Kingdom

In a letter dated 27 January 1999, the British authorities stated that they had not yet notified any measures up to that time. Their explanation for this is that the measures which require notification under this Decision have often already been notified under other notification procedures. The Decision was implemented in the United Kingdom via an administrative circular of 11 December 1996. Nonetheless, having recently examined how the Decision was being applied, the British authorities stated that new guidelines would soon be sent to the departments along with a reminder of their obligations under the Decision. The national authorities also stressed that they were eager to be kept informed of the conclusions that the

⁴ KFS 1996:3 : National Board of Trade rules for providing information on national measures derogating from the principle of the free movement of goods within the Community.

Commission drew from the notifications it received. Lastly, they emphasised that they were experiencing difficulty identifying the country of production of certain products, and thus in deciding whether measures affecting them were notifiable.

As for the national authorities competent under Article 7 of the Decision, the Member States provided the Commission with the details of those which had been appointed to transmit or receive the information referred to in the Decision. The complete list of them is given in Annex I.

2.2 Breakdown of notifications

2.2.1 Member States

During 1997, the year in which the Decision came into force as set out in Article 12, the Commission received a total of 33 notifications from the following Member States (see Annex 2):

- the French Republic (26 notifications);
- the Federal Republic of Germany (four notifications);
- the Republic of Finland (three notifications).

In 1998 (see Annex 2), the number of notifications increased to 69. They were issued by just four Member States:

- the Hellenic Republic (43 notifications);
- the Federal Republic of Germany (18 notifications);
- the French Republic (five notifications);
- the Kingdom of Denmark (three notifications).

However, the number of notifications remains unsatisfactory and must be increased, since it is apparent that numerous national measures which fall within the scope of the Decision have not been notified. As Annex 3 shows, the notified measures concern important sectors of the economy which are regularly the subject of national measures.

The following Member States have not notified any measures:

- Austria;
- Belgium;
- Spain;
- Ireland;
- Italy;
- Luxembourg;
- The Netherlands;

- Portugal;
- Sweden;
- United Kingdom.

2.2.2 *European Economic Area*

In accordance with Decision No 16/97 of 26 March 1997 of the Joint Committee of the European Economic Area (EEA)⁵, the Decision is also applicable in all Signatory States of the EEA as from 1 December 1998.

Consequently, pursuant to Article 109 of and Protocol 1 to the Agreement on the EEA, the Commission has, since 1 December 1998, been forwarding to the EFTA (European Free Trade Association) Surveillance Authority notifications which it receives pursuant to the Decision. The Surveillance Authority reciprocates by forwarding the notifications which it receives from the EEA member countries to the responsible Commission departments.

Within the framework of cooperation provided for by Article 109 of the EEA Agreement, however, the EFTA Surveillance Authority may also have access to notifications received by the Commission between 1 January 1997 and 30 November 1998, during which time the Decision was in force in the European Union but not in the EEA.

The fact that the EFTA Surveillance Authority has not forwarded notifications by the EEA countries to the Commission since 1 December 1998 is because the Decision only recently came into force in the EEA. This also explains why the Commission does not yet have any information on specific administrative arrangements.

3 IMPLEMENTATION BY THE COMMISSION

3.1 Internal procedures established by the Commission

The unit responsible for implementing the Decision at the Commission is the department of the Internal Market DG which handles complaints about obstacles to the free movement of goods.

When it receives the notification sheet, this department registers it and provides an acknowledgement of receipt. The notification sheet is then forwarded to the Commission departments which are responsible for the field affected by the notification.

The sheet is then translated into all the EU languages and sent to all the Member States for their information and any observations.

3.2 Action taken by the Commission to promote the implementation of the Decision

The Commission held information sessions as part of the package meetings on the free movement of goods which are held with the Member States (Articles 28 to 30 of the EC Treaty). Other bilateral meetings between some Member States and the Commission also took place in order to solve problems as they arose.

⁵ Decision of the EEA Joint Committee No 16/97 of 26 March 1997 amending Annexe II (Technical regulations, standards, testing and certification) to the EEA Agreement, OJ L 182, 10/12/1997, p. 49.

In addition, at the same time that Member States were adopting the Decision, the Commission adopted a *vade mecum* for it. It is designed to help the relevant national authorities determine which measures must be notified under the information procedure. The Commission distributed the *vade mecum*, in particular at the above-mentioned package meetings.

Also, in accordance with Article 10 of the Decision, the Standing Committee established by Directive 98/34/EC (ex Directive 83/189/EEC) was kept informed of how the procedure was working and, in particular, of how Member States were implementing it. This Committee, and the Chairpersons of the package meetings at their meeting on 6 February 1998 and 12 February 1999⁶, were also informed of certain practical issues and the difficulties of interpretation which had been encountered in the first two years of its implementation.

Moreover, in order to improve implementation of the Decision and promote the transparency of national measures for the benefit of economic operators, the Commission used its meetings with the various professional organisations to inform them of the entry into force of the Decision and the implementation procedures.

3.3 Coordination with other community instruments

Article 8 of the Decision ensures that the different notification procedures are coordinated. To a great extent, management of the single market is decentralised and handled by the authorities in the Member States. The principle of administrative cooperation between Member States is the foundation of this decentralised management. Transparency of the actions undertaken by these authorities is the essential ingredient of this cooperation. Several kinds of instruments help to ensure it.

3.3.1 Notifications under the New Approach Directives

The New Approach Directives lay down notification procedures which ensure that management measures, and in particular measures refusing mutual recognition of a product, remain transparent (e.g. directives on simple pressure vessels, toy safety, medical devices, gas appliances, personal protective equipment, electromagnetic compatibility, lifts, safety of machinery, etc.). Under these Directives, freedom of movement is ensured for all products which comply with their requirements. Only in very specific circumstances may the Member States invoke the safeguard clause provided in the Directives to withdraw a product from the Market. The Commission must be notified of the withdrawal and will examine it according to the procedure provided for in the safeguard clause of the New Approach Directives.

As a general indication, the 1997 and 1998 notification figures for some key directives are given in Annexes 4 and 5.

⁶ Meeting with representative of national authorities chairing the package meetings on the free movement of goods (Articles 28 to 30 of the EC Treaty) and on public procurement on 6 February 1998.

3.3.2 Notifications under Directive 92/59.

Directive 92/59/CEE⁷ on product safety, like the Decision, may be considered to be a catch-all instrument. Directive 92/59/EC applies to all products intended for consumers or which may be used by them. It sets out a general requirement for safety which also covers risks which the specific Directives on technical harmonisation do not. Two notification procedures, one of which is an emergency procedure, are provided for. They concern measures adopted by Member States which restrict or block product's access to their market. These procedures apply when no specific EU legislation lays down the requirement to notify emergency measures.

The 1997 and 1998 notification figures for Directive 92/59 are given in Annexes 6 and 7. Sectoral analysis reveals toys and baby accessories made up a large part of notifications not related to foodstuffs in 1997 and 1998 (57% in 1997 and 17% in 1998). Cosmetic and hygiene products account for 17 % (1998) and 7% (1997) of these notifications. Lighters are also regularly notified (7% in 1997 and 26% in 1998).

3.3.3 Notification under Directive 98/34.

Thirdly, Directive 98/34/EC⁸ provides for the notification of draft versions of technical regulations and rules on the services of the information society. There are two main differences between this notification procedure and those mentioned above: rules to be notified must be general, not specific, and notification takes place prior to the rules being adopted. This procedure has enabled over 6300 national drafts to be examined since 1984, thus helping to eliminate obstacles to the proper functioning of the internal market. Recent trends show a slight drop in the number of notifications: in 1998 the Commission received 604 compared to 670 in 1997 (to which must be added the 230 texts notified *en bloc* by the Dutch authorities as part of the regularisation of infringements of the Directive). In 1998, the following sectors, in decreasing order, were the subject of the bulk of the notifications: machinery, agricultural products and foodstuffs, telecommunications, transport and construction. In 1997, the Commission issued 117 detailed opinions on drafts that were potentially contrary to Community law. In 1998, the number of detailed opinions dropped to 64.

3.3.4 The Decision as a safety-net

The Decision is designed to be a safety-net for the three kinds of transparency instruments mentioned above. When, in the context of managing the Internal Market, a national government withdraws from the market a product which was legally marketed in another Member State, they must notify this measure under the Decision **if** they are not already required to do so under another Community instrument (Article 8 of the Decision). The objective of the Decision is thus to ensure that the Commission and Member States are completely informed of the obstacles to trade in the internal market. In the absence of other relevant instruments, it should guarantee a quick and coordinated reaction of the Member

⁷ Council Directive No 92/59/EEC of 29 June 1992 on general product safety, OJ L 228, 11.08.1992, p.24.

⁸ Directive No 98/34 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, 21.7.1998, p. 37, as modified by Directive No 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, 5.8.1998, p. 18.

States managing the internal market, either to eliminate obstacles or to take efficient measures to protect consumers across Europe. Nonetheless, the statistics on notifications received in 1997 and 1998 (see below) must be borne in mind.

1997

Germany	France	Finland	Total
4	26	3	33

1998

Germany	France	Denmark	Greece	Total
18	5	3	43	69

3.4 Follow-up on notifications

Following up on notification is basically a two-step process: a prior appraisal process leads to a decision on the follow-up measures to be taken.

As part of the appraisal process, the Commission department responsible for managing the instrument in question receives the notification from the Member State. This department then forwards the notification to the other Member States and to the sectoral and general departments of the Commission.

When analysing the notification, the Commission may previously consult with a committee of experts or scientists if the notified measure is particularly technical and requires specific expertise. However, this has not yet been necessary.

In other cases, when the justification provided by the Member State seems insufficient to carry out such an analysis, the Member State may be asked to provide further information⁹.

Following this in-depth analysis, the Commission decides on how to follow-up on the notification. Essentially, one of the following two situations will occur:

- The notified measure is temporary and concerns a specific product. Generally, there is no particular follow-up to such cases, since they are isolated occurrences. The obstacle to the free movement of goods is not caused by differences between the regulations of the Member States of origin and of destination. Instead, the product's technical specifications (e.g. design flaws, inadequate information for consumers, etc.) are often the basis for the notified measure.
- The notified measure reveals significant differences, or even incompatibility, between the regulations of the Member States of origin and of destination. In such cases, products or sectors for which the principle of mutual recognition is not enough to ensure the free movement of goods can be updated. As an example, many of the notifications received by

⁹ See the case of notifications from France on obstacles to placing in vitro diagnostic devices on the market.

the Commission in the first two years after the Decision was implemented concerned obstacles to the marketing of enriched products (with vitamins and other nutrients). These notifications confirmed information which the Commission was already aware of and which indicated that Member States' approaches differed significantly on these matters. In such cases, the Commission may begin by submitting the problem to the Technical Regulations Committee, which, under the Decision, is responsible for monitoring how it is applied and hearing the Member State's points of view and, if necessary, come to a joint solution with them. On the other hand, when no solution can be found in this way, it may be necessary to undertake a harmonisation process. In this way, the notification procedure set up by the decision will have fulfilled its role of identifying fields where obstacles persist and lead to the adoption of the measures needed to eliminate them.

Follow-up on notifications under Decision 3052/95/EC proper must be distinguished from any incidental follow-up that the Commission may undertake if the notification brings factors that require separate treatment under a different procedure to its attention. This is particularly the case of **irrelevant notifications**. A measure may not need to be notified, or may need to be notified under another instrument. In such cases, the Commission department responsible for implementing the Decision will forward the notification to the relevant department.

A measure notified under Decision 3052/95/EC may also seem incompatible with Articles 28 and 30 of the EC Treaty which set out the principle of freedom of movement for goods. In such cases, the Commission, acting in its full capacity as the guardian of the Treaty, will examine in detail the justification for the measure (contacting Member States where necessary), and, if necessary, begin the infringement procedure set out in Article 226 EC. It should be emphasised that in the few cases where the Commission felt it was useful to begin the procedure, the notification was generally accompanied by or followed by a complaint.

4. ASSESSMENT AND CONCLUSIONS

During the first two years it was in force, the implementation of the decision did not provide the hoped for results. More specifically, the low number of notifications did not allow the Decision to fulfil its role, which is, above all, to be a special instrument providing information on how the internal market is functioning in practice in the field. As stated above, the implementation of the decision did not sufficiently enable the Commission to be better informed of the proper functioning of the principle of mutual recognition, nor to identify the sectors where it might be functioning poorly, which could justify a harmonisation proposal.

Nor had the Decision fulfilled its role of providing a quick resolution to certain problems of free movement. The 45-day deadline set in Article 4 of the Decision was supposed to allow the Commission to be quickly informed of any problems concerning free movement and to contact the concerned Member State to promptly come to a joint solution. The Decision is supposed to be part of the Commission's general policy aiming to speed up the processing of problems concerning free movement by preventing the procedures established by the Treaty from being triggered.

Given the statistical information *available* – as poorly representative as it may be – it seems clear that the difficult start-up is due to practical problems with implementation. In fact, it appears that the idea of decentralised management of the internal market which is at the heart of the Decision is coming up against problems caused by a lack of information on how to apply the Decision itself and on its role among all of the transparency instruments in the internal market.

Nonetheless, one factor must not be forgotten. It takes time to **break in** a system of cooperation between 15 governments and the Commission. The experience gained with the implementation of Directive 98/34/EC would seem to indicate that implementation of the Decision should substantially improve in the years ahead. It took several years for the systematic notification of standards and technical regulations required under Directive 98/34/EC to become genuinely effective.

Moreover, it should be noted that the efficiency of the transparency tools for managing the single market depends on applying them properly, which in turn requires the authorities in charge of applying it and the enterprises and citizens concerned to be well-informed. National governments, which are responsible for indicating a measure must be notified under the Decision, are poorly-informed of the mechanics of the Decision. Indeed, these measures are very often adopted by regional or decentralised authorities. Yet these authorities are not always in a position to fulfil their notification obligations under Community law. In part this is a challenge that must be met at national level, insofar as those who receive the information provided by the Commission or the departments of Member States' central governments are not necessarily the national civil servants who must apply the Decision.

The Commission will intensify its efforts to ensure effective implementation of the Decision by the Member States at local and national levels, as well as in economic sectors. To accomplish this, the following action will be taken:

- Stepping up the awareness programmes on the existence and implementation of the Decision is advisable, particularly among regional or decentralised authorities. Drafting an explanatory booklet and holding seminars will be effective ways of informing the authorities about their obligations under Community law.
- In order to support the measures provided for in point 1, and to encourage cooperation between Community, national and local authorities, the Commission will ask the Member States to submit annual reports as from 2000, listing the notifications issued and giving information on implementation of the Decision including any difficulties which have been encountered. In addition, the reports should include any relevant information forwarded by the regional or decentralised authorities. At the same time, the Commission encourages Member States to regularly provide the relevant authorities with training and information on the Decision.
- Given that non-governmental bodies are sometimes a useful channel of cooperation for implementing Community law and can exert an influence which bolsters the respect of Community law, the Commission, in collaboration with the Member States, plans to hold regular meetings with the professional associations concerned. These meetings will make it possible to make more information available to the associations so that, over the long term, they will be able to act as relays for detecting measures which have not been notified, while remaining faithful to the proposals made by the Commission in its 1999 communication on the principle of mutual recognition¹⁰.
- Though other channels which provide information exist, a system of disseminating the information affected by the Decision on an Internet site will be set up to keep economic

¹⁰ Communication from the Commission to the Council and the European Parliament of 16 June 1999 concerning mutual recognition in the context of the follow-up to the action plan for the single market.

operators and the relevant national authorities better informed of the existence and implementation of the procedure.

- Given the effective advisory role played by the Standing Committee established by Directive 98/34/EC, the Commission will continue to keep the Committee regularly informed of the implementation of the Decision and will increase the role it plays in monitoring notifications and action taken under these operational measures.
- The objectives of transparency and flexibility which the Decision emphasises are difficult to reconcile with any coercive action which might be justified by effective non-implementation of the Decision. This explains the limited number of procedures instituted against Member States which have failed to notify certain measures. The Commission will intensify its vigilance and determination regarding non-notification by the Member States. For this reason, as part of the administrative cooperation, the Commission will inform Member States of the follow-up to package meetings on cases which were brought to its attention by complaints and which should have been notified. Its departments will cooperate with the relevant authorities in Member States in order to uncover and clear up any suspicious or problematic situations, and any other uncertainties as to whether a national measure should be notified.

In addition, an investigation into the transparency necessary for decentralised management of the single market could be undertaken.

An overview of statistics on total notifications and those concerning the single market reveal an imbalance between these two instruments with regard to notifications and follow-up. It could be time for the transparency mechanisms required for decentralised management of the single market to be reassessed in order to improve how they work. At the same time, this reassessment should address the follow-up tools (standstill periods, creating a single office within the Commission for all notifications regardless of their legal basis, interventions by Member States, the Commission or scientific committees, etc.). Its objective would be to provide national governments and the Community administration with ample, efficient means to manage the single market as efficiently as possible in the interests of enterprises and citizens.

ANNEX 1

Competent authorities under Decision 3052/95/EC

BELGIUM

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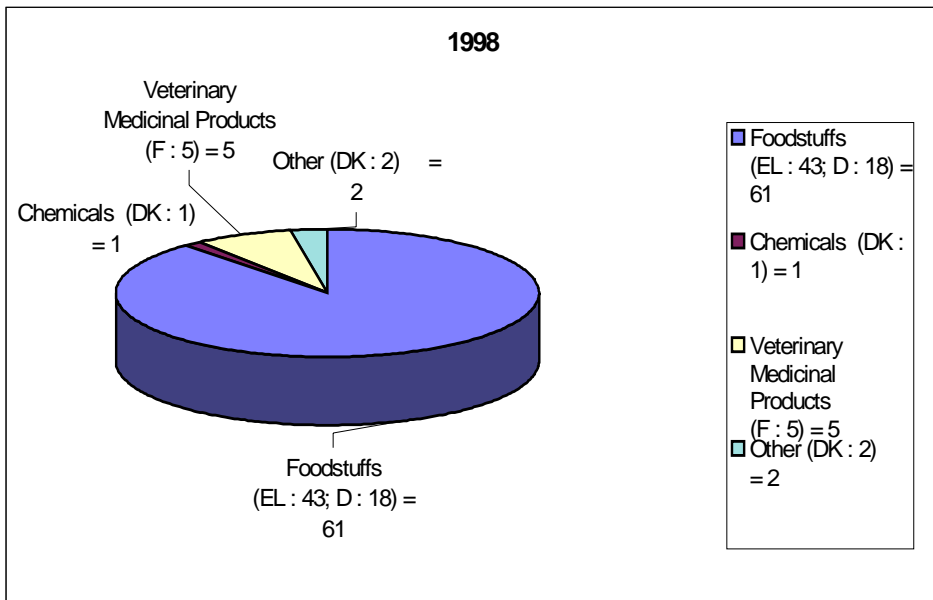
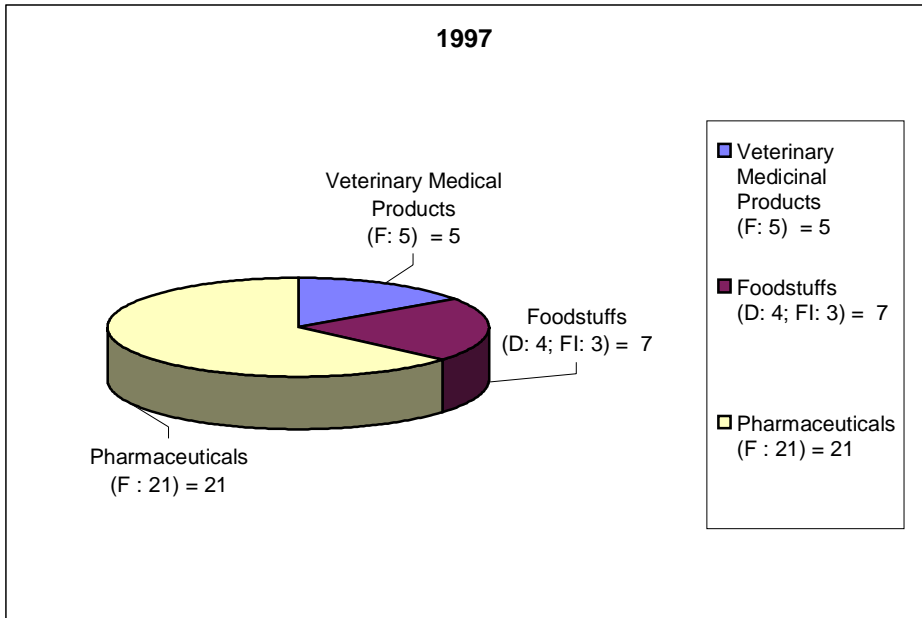
ANNEX 2

Statistical Information on Decision 3052/95/EC (Notifications per Member State)

Member States	1997	1998
FRANCE	26	5
GERMANY	4	18
FINLAND	3	
BELGIUM		
DENMARK		3
GREECE		43
SPAIN		
IRELAND		
ITALY		
LUXEMBOURG		
THE NETHERLANDS		
AUSTRIA		
PORTUGAL		
SWEDEN		
UNITED KINGDOM		

ANNEX 3

Notifications per sector



ANNEX 4

Notifications under certain New Approach Directives (1997)

Member State	LV	Mach	Toy	GA	EMC	PV	PPE	MD	Total
<i>Belgium</i>				8	5				13
<i>Denmark</i>	1								1
<i>Germany</i>	2	8	4						14
<i>Greece</i>									0
<i>Spain</i>	1								1
<i>France</i>		1						3	4
<i>Ireland</i>									0
<i>Italy</i>	1								1
<i>Luxembourg</i>									0
<i>The Netherlands</i>	3		2	2					7
<i>Austria</i>	4								4
<i>Portugal</i>									0
<i>Finland</i>	2		1					3	6
<i>Sweden</i>	2								2
<i>United Kingdom</i>	7		11					1	19
Total	23	9	18	10	5	0	0	7	72

Abbreviations : LV = "Low Voltage Directive", Mach = "Machinery Directive", Toy = "Toy Directive", GA = "Gas appliances Directive", EMC = "Electromagnetic Compatibility Directive", PV = "Pressure Vessels Directive", PPE = "Personal Protective Equipment Directive", MD = "Medical Devices Directive".

ANNEX 5

Notifications under certain New Approach Directives (1998)

Member State	LV	Mach	Toy	GA	EMC	PV	PPE	MD	Total
<i>Belgium</i>	2			6					8
<i>Denmark</i>	1		4						5
<i>Germany</i>	3	2	24		28				35
<i>Greece</i>									0
<i>Spain</i>	20	3			3		1		27
<i>France</i>		1							1
<i>Ireland</i>									0
<i>Italy</i>			2						2
<i>Luxembourg</i>									0
<i>The Netherlands</i>	15			2					17
<i>Austria</i>	13								13
<i>Portugal</i>									0
<i>Finland</i>	19				4		1		24
<i>Sweden</i>	50	2							52
<i>United Kingdom</i>	12		5						17
Total	135	8	13	8	35	0	2	0	201

Abbreviations : LV = “Low Voltage Directive”, Mach = “Machinery Directive”, Toy = “Toy Directive”, GA = “Gas appliances Directive”, EMC = “Electromagnetic Compatibility Directive”, PV = “Pressure Vessels Directive”, PPE = “Personal Protective Equipment Directive”, MD = “Medical Devices Directive”.

ANNEX 6**Notifications under Directive 92/59/EEC (1997)**

Member States	Notifications (foodstuffs)		Notifications (non-food products)	
	Information	Warning	Article 8	Information
<i>Belgium</i>		3	3	
<i>Denmark</i>		2	11	
<i>Germany</i>	1	10	6	3
<i>Greece</i>	1	2		
<i>Spain</i>	1	5	8	
<i>France</i>	2	19	6	3
<i>Ireland</i>				
<i>Italy</i>	5	16	1	
<i>Luxembourg</i>				
<i>The Netherlands</i>	1	1		1
<i>Austria</i>		1	2	1
<i>Portugal</i>			8	1
<i>Finland</i>		2		6
<i>Sweden</i>		2	3	2
<i>United Kingdom</i>	1	2	4	1
<i>EFTA</i>			2	
TOTAL	12	65	54	18

ANNEX 7

Notifications under Directive 92/59/EEC (1998)

Member States	Notifications (foodstuffs)		Notifications (non-food products)	
	Information	Warning	Article 8	Information
<i>Belgium</i>	6			
<i>Denmark</i>	3	8	3	1
<i>Germany</i>	32	6	5	4
<i>Greece</i>	6	2		
<i>Spain</i>	26	5	18	
<i>France</i>	18	18	2	
<i>Ireland</i>	1	1		
<i>Italy</i>	40	8	3	0
<i>Luxembourg</i>				
<i>The Netherlands</i>	1	2	2	1
<i>Austria</i>	7	11	1	
<i>Portugal</i>	4			
<i>Finland</i>	3	5		
<i>Sweden</i>	5	4	1	
<i>United Kingdom</i>	3	3	12	1
<i>EFTA</i>				
TOTAL	155	73	47	7