Article 7

National law and minimum protection

1. The rights resulting from this Directive shall be exercised without prejudice to other rights which the consumer may rely on under the national rules governing contractual or non-contractual liability.

2. Member States may adopt or maintain in force more stringent provisions, compatible with the Treaty, in the field covered by this Directive, to ensure a higher level of consumer protection.

Article 8

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ... (*). They shall immediately inform the Commission thereof.

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

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

Article 9

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities.*

Article 10

Addressees

This Directive is addressed to the Member States.

(*) Two years after its publication in the *Official Journal of the European Communities.*

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

(96/C 307/10)

(Text with EEA relevance)

COM(96) 392 final — 96/0220(COD)

(Submitted by the Commission on 30 August 1996)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

(1) Whereas, in order to promote the smooth functioning of the internal market, as much transparency as possible should be ensured as regards the future national rules and regulations that will apply to information society services by amending Directive 83/189/EEC;

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

(3) Whereas the area without internal frontiers of which the internal market consists enables the providers of such services to develop their cross-border activities with a view to increasing their competitiveness, and thus affords ordinary citizens new opportunities for transmitting and receiving information regardless of frontiers, and consumers new forms of access to goods or services;

(4) Whereas the various social, societal and cultural implications of the advent of the information society may require account to be taken of the specificity of the content of such services;

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

(6) Whereas the current national rules and regulations applicable to existing services will have to be adapted to take account of the new information society services, either with a view to ensuring that the general interest is better safeguarded or, on the contrary, with a view to simplifying them where their application is disproportionate to the objectives they pursue;

(7) Whereas, without coordination at Community level, this foreseeable regulatory activity at national level might result in restrictions to the free movement of services and the freedom of establishment, leading in turn to a refragmentation of the internal market, overregulation and regulatory inconsistencies;

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

(8a) Whereas there already exists Community harmonization for telecommunication services and that the existing Community legislation foresees adaptations to account for technological developments and the supply of new services;

(9) Whereas, for the other less well-known fields of the information society it would be premature, however, to coordinate such rules and regulations by means of an extensive or exhaustive harmonization at Community level of the substantive law, given, first, that neither the form the new services will take nor their nature is sufficiently well known, secondly, that there is as yet at national level no specific regulatory activity in this field, and, thirdly, that the need for and content of such harmonization in the light of the internal market cannot be defined at this stage;

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

(11) Whereas Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [1] pursues the same objectives; whereas this procedure is effective, being the most comprehensive one for attaining these objectives; whereas the experience that has been gained in implementing the Directive and the procedures provided for therein can be applied to draft rules on information society services; whereas the procedure it lays down is now well established among national authorities;

(12) Whereas, moreover, in accordance with Article 7a of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured; whereas Directive 83/189/EEC provides only for an administrative cooperation procedure and not for any harmonization of substantives rules;

[1] OJ No L 109, 26. 4. 1983, p. 8.

(13) Whereas, therefore, amendment of Directive 83/189/EEC with a view to applying it to draft rules and regulations on information society services is the approach best suited to meeting effectively the need for transparency in the internal market as far as the legal framework for information society services is concerned;

(14) Whereas, in view of the diversity of information society services and their future growth, notification should be provided for only in the case of rules which are likely to evolve in future; whereas the services which are likely to necessitate and generate the largest number of new rules and regulations are those which are provided at a distance, electronically, and on the individual request of a service receiver; whereas provision must accordingly be made for the notification of draft rules and regulations relating to such services;

(15) Whereas specific rules on the taking-up and pursuit of service activities which are capable of being carried on in the manner described above should thus be communicated even where they are included in a set of rules and regulations with a more general purpose; whereas, however, general rules which do not contain any specific provision concerning such services should not be notified;

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

(17) Whereas this Directive is without prejudice to the scope of Council Directive 89/552/EEC of 3 October 1989 [1] on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities such as modified by European Parliament and Council Directive 96/. . ./EC [2] or any future modification of that Directive;

(18) Whereas this Directive is without prejudice to the negotiations concerning and the content of the proposal for a European Parliament and Council Directive on a common framework for general authorizations and individual licences for telecommunications services [3];

(19) Whereas, at all events, this Directive does not cover the drafts of national provisions aimed at implementing the content of Community Directives in force or awaiting adoption inasmuch as they already form the subject-matter of a specific examination; whereas it accordingly does not cover either national rules and regulations implementing Council Directive 89/552/EEC as amended by Directive 96/. . ./EC or any future modification of that Directive or national rules and regulations implementing the future Directive on a common framework for general authorizations and individual licences for telecommunications services;

(20) Whereas definition of the framework for the provision of information and the holding of consultations at Community level as established by this Directive is a precondition for a coordinated and effective participation by the European Community in work involving matters relating to the regulatory aspects of information society services in the international context;

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 83/189/EEC is amended as follows:

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

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

[1] OJ No L 298, 17. 10. 1989, p. 23.

[2] Common position (EC) No 49/96 (OJ No C 264, 11. 9. 1996, p. 52).

[3] OJ No C 90, 27. 3. 1996, p. 5.

2. Article 1 is amended as follows:

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

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

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

(c) a new point 5 is added:

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

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

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

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

De facto technical regulations include:

— laws, regulations or administrative provisions of a Member State which refer either to technical specifications or other requirements or rules on services, or to professional codes or codes of practice which in turn refer to technical specifications or other requirements or rules on services and compliance with which confers a presumption of conformity with the obligations imposed by the above-mentioned laws, regulations or administrative provisions,

— voluntary agreements to which a public authority is a contracting party and which provide, in the general interest, for compliance with technical specifications or other requirements or rules on services, excluding public procurement tender specifications,

— technical specifications or other requirements which are linked to fiscal or financial measures affecting the consumption of products or services by encouraging compliance with such technical specifications or other requirements or rules on services; technical specifications or other requirements or rules on services linked to national social-security systems are not included;'

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

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

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

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

4. Article 9 is modified as follows

(a) The first paragraph of point 2 is replaced by the following:

'Member States shall postpone:

— for four months the adoption of a draft technical regulation in the form of a voluntary agreement within the meaning of the second indent of the second paragraph of point 11 of Article 1,

— without prejudice to paragraphs 3, 4 and 5, for six months the adoption of any other draft technical regulation,

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

(b) point 7 is replaced with the following text:

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

5. Article 10 is amended as follows:

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

'— comply with binding Community acts which result in the adoption of technical specifications or rules on services,

— fulfil the obligations arising out of international agreements which result in the adoption of common technical specifications or rules on services in the Community.';

(b) the sixth indent of paragraph 1 is replaced by the following:

'— restrict themselves to amending a technical regulation within the meaning of point 11 of Article 1 of this Directive, in accordance with a Commission request, with a view to removing an obstacle to trade or the free movement of services.';

(c) in paragraphs 3 and 4 the reference to Article 1 (9) is replaced by: 'point 11 of Article 1.';

(d) paragraph 4 is amended as follows:

'4. Article 9 shall not apply to the technical specifications or other requirements or the rules on services referred to in the third indent of the second paragraph of point 11 of Article 1.'.

Article 2

1. Member States shall bring into force the regulations and administrative provisions necessary to comply with this Directive by 31 December 1997 at the latest. They shall forthwith inform the Commission thereof.

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

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

Article 3

This Directive is addressed to the Member States.