



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.05.1998
COM(1998) 349 final

96/0220 (COD)

OPINION OF THE COMMISSION

pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the

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

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189 a (2) of the EC Treaty

1. Background

- On 24 July 1996 the Commission adopted a proposal for a Directive (together with a communication) designed to introduce a mechanism for the transparency of rules applying to information society services by amending Directive 83/189/EEC for a third time.¹
- On 20 March 1997 the Economic and Social Committee endorsed the proposal.
- On 16 May 1997 Parliament adopted, at first reading and in accordance with the codecision procedure (Article 189b of the EC Treaty), a legislative resolution endorsing, subject to amendments contained in the resolution, the Commission's proposal and calling on the Commission to amend its proposal accordingly.
- On 17 November 1997 the Commission adopted, pursuant to Article 189b(2) of the EC Treaty, an amended proposal incorporating, in letter or in spirit, most of the amendments voted by Parliament at first reading.
- On 26 January 1998 the Council, acting pursuant to Article 189b(2) of the EC Treaty, adopted a common position on the proposal for a Directive.
- On 28 January 1998 the Commission adopted its communication on the Council common position and forwarded it to Parliament.
- On 14 May 1998 Parliament adopted, at second reading, five amendments to the Council's common position.

2. Aim of the Commission proposal

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

These services are defined as services provided at a distance, by electronic means and at the individual request of a recipient of services.

Preservation of the area without internal frontiers constituted by the internal market is an essential precondition for safeguarding and promoting the development of on-line interactive services, which offer great potential for investment, the growth and competitiveness of European industry, job creation and consumers.

In extending to future draft national legislation on information society services the rules governing prior notification (with adoption of the national legislation initially postponed for three months) and consultation that currently apply to products under Directive 83/189/EEC, this Directive is specifically designed to ensure a stable, transparent and cohesive framework for stimulating the development of these "new"

¹ COM(96) 392 final and OJ C 307, 16.10.1996.

services, based in particular on the internal market principles of free movement of services and freedom of establishment.

3. Opinion of the Commission on the amendments proposed by Parliament

In its communication on the common position, the Commission stated that it could accept the common position despite certain restrictions introduced by the Council on the scope and operation of its proposal (without, however, altering the basic substance), in view of the need for rapid definitive adoption and implementation of the information and consultation procedure proposed.

The amendments to the common position which have been voted by Parliament at second reading have the effect of clarifying and reinforcing some provisions of the Directive, while confirming the substance of the text approved by the Council.

For this reason, and in the light of its amended proposal, which had already incorporated a number of amendments adopted by Parliament at first reading and presented again at second reading, the Commission can support all of Parliament's amendments to the common position.

Amendment 1

A general consideration of this nature, which is consistent with the aims and objectives of the Directive and with the requirement that the Commission present, in due course, an evaluation report and, if necessary, proposals for a revision of the Directive (Article 3), highlights the importance of keeping the development of information society services under constant review and, if need be, of taking future initiatives to promote their development.

It reproduces amendment 18 adopted at first reading, which was incorporated into the amended proposal.

Amendment 2

This amendment, which makes it possible to call upon the expertise of persons from the industrial or academic world and, if possible, from representative bodies regarding rules on new services, fits neatly into the operational framework of Directive 83/189/EEC as it currently stands, which already provides for the possibility of consulting experts from the private sector (Article 6(7)).

This possibility reproduces in a different form the substance of amendment 14 adopted at first reading, which was partly incorporated into the amended proposal.

Amendments 3 and 5

There are already several references to obstacles to the freedom of establishment in the common position: in Article 1(2)(c) (concerning Article 1(11) of Directive 83/189/EEC), Article 1(5)(a) (concerning the third indent of Article 9(2) of Directive 83/189/EEC) and a number of recitals (Nos 8, 12 and 18).

These two amendments, therefore, merely supplement the references to obstacles to the freedom of establishment in two specific provisions of the Directive and they are consequently useful and relevant in terms of the legal consistency and precision of the Directive's substantive provisions.

They correspond in full to amendments 15 and 17 adopted at first reading, which were incorporated into the amended proposal.

Amendment 4

This amendment, which is confined to rules on services, provides that a Member State which receives a detailed opinion must give reasons in cases where it has not been able to take account of that opinion.

This amendment must be seen as a positive development since it confirms and spells out the general obligation on each Member State to report on the detailed opinions it receives in order to intensify the dialogue and enhance transparency between Member States and the Commission: it underlines the spirit of cooperation that should be displayed by the Member State directly concerned where there is a risk of a problem arising in connection with the operation of the internal market.

Amended proposal

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

(Amendment 1)

Recital 27

27. Whereas the Commission will at regular intervals investigate developments in the market for new services in the field of the information society, especially in the framework of the convergence between telecommunications, information technology and media and, where necessary, take initiatives in order to adapt rules promptly in order to encourage the European development of new services;

(Amendment 2)**Article 1(3a) (new)****Article 6(7a) (new) (Directive 83/189/EEC)**

3a

3a. The following new paragraph 7a shall be added to Article 6:

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

(Amendment 3)

Article 1(4)

Article 8(1), sixth subparagraph (Directive 83/189/EEC)

4. The sixth subparagraph of Article 8(1) shall be replaced by the following:
4. The sixth subparagraph of Article 8(1) shall be replaced by the following:

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

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

(Amendment 4)

Article 1(5(a)a)

Article 9(2) (Directive 83/189/EEC)

(a)a

(a)a: The following sentence is added at the end of point (a):

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

(Amendment 5)

Article 1(6)(b)

Article 10(1), sixth indent (Directive 83/189/EEC)

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

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

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

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

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