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REPORT ON THE OPERATION OF DIRECTIVE 83/189/EEC IN 1988 AND 1989 (PREVENTION OF TECHNICAL BARRIERS TO TRADE)

(presented by the Commission)

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SUMMARY

1. Directive 83/189/EEC provides for an information procedure which is one of the main tools for preventing technical barriers to trade. It requires draft standards and technical regulations to be notified to European standards organizations, to the Commission and to the other Member States which are capable of suitable follow-up.
2. A significant increase in work at European level has been noted in the field of standardization. Nonetheless, statistics indicate that there is still a considerable amount of work carried out at national level.

In order to augment transparency the Commission is encouraging European standards bodies to set up a data bank of the information arising out of the procedure (ESD - European Standard Databanks).

In its "Green Paper on the development of European standardization", which was adopted on 3 October 1990, the Commission forwarded several recommendations designed to accelerate the preparation of European standards covered in the most varied of fields by way of better mobilization of European resources.

This objective together with greater efficiency in the operation of the information procedure calls for greater commitment from the members of the CEN and the CENELEC.

3. Technical regulations in 1988 and 1989 confirm the sustained increase in the number of notifications that have been recorded since 1984.

However, there has been no noticeable progress in the national drafts notified automatically incorporating Community law.

This worrying situation two years out from the completion of the internal market prompts the Commission to step up its information campaign towards the Member States. It is also looking at the prospect of a second amendment to Directive 83/189/EEC designed to strengthen the procedure.

CHAPTER I - Introduction

This report follows up report COM (88) 722 of 8 December 1988 on the operation of Directive 83/189/EEC⁽¹⁾ laying down a procedure for the provision of information in the field of technical regulations and standards (1984-1987).

It constitutes the instrument for reporting to Parliament provided for under Article 11 (2) of Directive 83/189/EEC, as amended by Article 1 (10) of Directive 88/182 EEC of 22 March 1988⁽²⁾ and for reporting to the Economic and Social Committee.

It is also an expression of the Commission's wish to draw up a report on the progress achieved at Community level in the field of technical standards and regulations thanks to the information procedure laid down by Directive 83/189/EEC.

In view of the considerable expansion of the field of application of the information procedure as a result of the amendment to Directive 83/189/EEC by Directive 88/182/EEC, it seemed preferable to combine an analysis of 1988 and 1989 to provide an initial report of this operation straightaway.

(1) (OJ N° L 109, 26.04.1983)

(2) (OJ N° L 81, 26.03.1988)

CHAPTER II - The information procedure for standards

1. Introduction

This chapter deals with the information procedure for standards as laid down in articles 2 to 8 of Directive 83/189/EEC.

After a brief recapitulation of the general workings of this procedure, this chapter describes the way in which it actually worked in 1988 and 1989 and analyses the statistics of the notifications received. A special section has been devoted to the quality of these notifications in view of the importance of this to all potential users. The next two sections describe this use and particularly the application of articles 3, 6 and 7 of the Directive which concern involvement with national standardization activities, standardization requests and the monitoring of the status quo respectively. This chapter then describes the improvements to the information procedure that are already under way and are planned, before drawing conclusions.

2. Concise description of the procedure

The information procedure for standards began in a practical way on 1 January 1985 following a period in which the human and data processing resources were put in place and the working methods defined in detail. Since that time, the members of the CEN and CENELEC (including those located in EFTA countries) have been notifying the necessary data to CEN/CENELEC's Central Unit (a unit that reports to the central CEN and CENELEC secretariats). The notifications concern the updating of national standardization program as well as new work that has been started (cf. Article 2 of Directive), any drafts for public inspection (cf. Article 4 of the Directive) and any national standard adopted (cf. Article 2 of the Directive). The data collected are periodically passed on to all CEN and CENELEC members who undertake adequate distribution to all interested parties in order to obtain appropriate reactions. These data are examined both by the competent bodies of CEN/CENELEC (central secretariats, programming committees etc.) and by the Commission's departments.

Participation of the ETSI in the procedure is being discussed.

It should be noted, however, that national technical specifications in the field of telecommunications have so far been drawn up mainly by way of regulations. They therefore come under the "technical regulations" notification procedure.

3. Operation of the information procedure in 1988 and 1989

Generally speaking there have been no major changes to the mode of operation of the information procedure for standards laid down in Directive 83/189/EEC since 1988, except for the addition of data from the ICONE (comparative index of standards in Europe) system for collecting information on published national standards which are related to an international or European standard.

A new contract was concluded for 1988 to 1990 between the Commission and CEN/CENELEC, chiefly covering the following tasks to be carried out by these bodies :

- seeing to the technical operation of the standards section of the information procedure laid down in the Directive (INFOPRO system) ;
- arranging for the collection, processing and distribution of the ICONE data ;
- carrying out the gradual technical integration of these two systems.

The statistics prepared by CEN/CENELEC in their annual report give a general picture of the new standardization activities notified in 1988 and 1989 to the CEN/CENELEC Central Unit.

The statistics relating to new work⁽¹⁾ begun over a given period reflect the latest trends in these activities. The latest statistics can be examined from three additional angles :

(1) New work means each new standardization activity in the standardization programme and notified on the basis of article 2 of Directive 83/189/EEC.

- the breakdown by section (national, European and international work) and progress in each section ;
- the breakdown by country ;
- the breakdown by sector and sub-sector of activity.

However, a more detailed analysis carried out by the Commission's departments has shown that it is necessary to regard CEN/CENELEC's statistics with some caution for the following reasons :

- these statistics do not take account of the number of new projects notified directly at the stage of public inspection.
Approximately one third of the notifications (i.e. 1200) received at the public inspection stage in 1989 had not been notified previously. The number of new projects indicated must therefore be regarded as a gross under-estimate ;
- a new activity started at European level may cover a much larger field than an activity at national level ;
- the point at which a new standardization project has to be notified is not the same for all CEN/CENELEC members.

Despite this lack of precision, the following statements may be made on the basis of tables I, II and III a and b for 1988 and 1989 (see annexes).

- (a) At national level, the number of new projects started dropped sharply compared with previous years. The ratio of this number to all new projects (international, European and national level) dropped from 75 % in 1987 to 60 % in 1988 and 43 % in 1989.

However, among these new national projects, the predominance of new specific projects over ones related to European and/or international standards continued (ratio of about 9 to 1 in 1989).

- (b) At European level, the number of activities increased considerably over the last few years.

The number of new projects stated at European level doubled in 1988 compared with 1987. Furthermore, on top of the new projects started in 1988 comes a proportion (estimated at 60 %) of the 416 plans for new projects from the AECMA (European Association of Aerospace Manufacturers) program. Following an agreement between the CEN and that body, the latter's standardization program has been incorporated into that of the CEN.

The increase in 1988 in the non-electrical field is chiefly due to the fact that ISO standards are now being used more regularly as a basis for European standards.

1989 clearly confirmed this development, moving from some 800 new European initiatives to approx. 1800. It was chiefly in the non-electrical field that there was veritable "explosion" of new activities started in 1989.

New European standardization projects as a proportion of all new work doubled from year to year (from 8 % in 1987 to 16 % in 1988 and approx. 34 % in 1989).

- (c) At international level, the number of new projects started in 1988 and 1989 increased dramatically (+ 45 % year on year) due to the sharp rise in IEC (International Electrotechnical Commission) Initiatives.
- (d) Comparing the number of new specific projects with the number of new European projects the ratio of 9 to 1 (1987, and mentioned in the previous report on the operation of Directive 83/189/EEC) has now dropped to approx. 1 to 1. It should however be noted that the improvement in this ratio is largely due to the considerable increase in new European projects.
- (e) As far as the breakdown of new national projects by Community country is concerned tables II a and II b show a tendency towards some levelling-off between the major countries. The number of new projects in Germany is declining, in France and Italy it is stabilizing and in the UK it increased in 1989 after a drop in 1988. An analysis by field (electrical and non-electrical) reveals the same trends. In the electrical field, Germany has declined by half per year.

(f) In five out of ten cases, the sub-sectors with the highest number of new activities were the same in 1989 as in 1988 (see tables III a and III b). It is difficult to compare with 1987 because the statistics for these last two years refer to the number of new projects started and not to the number of notifications received any more.⁽¹⁾ This comparison nonetheless shows the continuing dominance of the aerospace, concrete, building and textiles sub-sectors.

4. Quality of the notifications received from the national standardization institutions

In December 1989 the Central Unit of the CEN/CENELEC prepared a report on the quality of the notifications received from the national standardization institutions.

The following may be singled out from the range of general comments :

- the absence of notifications for specific sectors (including the foodstuffs sector) ;
- no systematic notification of standards being adopted (i.e. no updating of standardization programmes) ;
- late notifications, including notification on drafts for public inspection after the closing date for inspection ;
- poor classification by sector and/or sub-sector ;
- incomplete or erroneous data ;
- translations into the CEN/CENELEC working languages that are incomplete or of poor quality.

According to this report, approx. 15 % of national notifications require correspondence between the CEN/CENELEC Central Unit and the institution involved, which imposes a considerable burden of work on the CEN/CENELEC Central Unit.

(1) Notifications received relate to both new projects started, drafts for public inspection and standards adopted.

As mentioned above (para.1), an analysis of the notifications received in 1989 has shown that approximately one third of the national drafts for public inspection had not been notified previously. In the fifth year of operation of the system established by the Directive one ought to have been able to expect that all drafts that reached the public inspection stage would have been notified previously, so that this figure of one third is unacceptable.

In 1988/89 a study was carried out, at the request of and with financial aid from the Commission, by an outside consultant on the operating of the notification procedure and on the ways of publishing the information produced by this procedure. The second report by this consultant also notes that the poor quality of the notifications is one of the major obstacles to the use of the data from the information procedure. CEN/CENELEC has proposed several measures on the basis of this report, but these have not yet been implemented. These include the preparation of a guide, the organization of a seminar for the providers of data, and a feasibility study on the establishment of a quality assurance system.

It is the Commission's view that these measures are necessary but inadequate : responsibility for the quality of notifications rests with the national standardization institutions . In the first instance, it is for these institutions to take short-term action to improve the quality of the data communicated. On the basis of the ideas in the outside consultant's report, the Commission is examining the need to amend Directive 83/189/EEC if this situation does not improve as a result of these measures or in the absence of effective ones.

5. Exploitation of information from the procedure

At first sight, the situation in 1988 and 1989 was no better than in previous years. The outside consultant's report confirms that in several countries there has been no development in the distribution of the information received under the procedure at national level and that no action is planned by these countries to improve the situation.

Involvement in national activities and requests for the drawing-up of European standards

The utilization of the provisions of article 3 of the Directive, with a view to ensuring greater convergence in standardization activities, is still marginal.

Table IV shows that :

- the number of comments made by some standards institutions on the projects started by others seems to have increased over previous years but remains small compared with the number of specific projects notified (52 comments out of 2321 notifications in 1989) ;
- the number of requests for involvement in other members' projects remains low (15 in 1989) ;
- the opportunity to request the drawing up of a European standard has hardly been used (one request in 1989).

In 1988 the General Assemblies of the CEN and CENELEC did, however, adopt the implementing rules of Article 3 of the Directive on the participation of one institution in the activities planned by another national institution (CEN/CENELEC memorandum N° 7 issued in April 1989).

A further more positive development is the decision of the CENELEC General Assembly in May 1988 to set up a stricter notification procedure in order to increase the clarity of electrical engineering standardization. This procedure, which is known as "Vilamoura", specifically provides for an automatic three-months status quo period in the event that another institution requests involvement in the project notified and the systematic examination of national drafts with a view to changing them into draft European standards through the respective CENELEC procedures.

After an initial period it is now possible to see initial benefits of this procedure : up to the end of 1989 the CENELEC Technical Office dealt with 124 national notifications : 68 were transferred to European level whilst 36 other standardization activities are currently being carried on in close collaboration with one or more other members.

The Commission recently asked CEN to consider adopting a similar procedure. Failure by the European standardization bodies to take the initiative in this area could prompt the Commission to tighten up the procedures laid down in Directive 83/189/EEC.

Use of Information at European level

Under the contracts concluded between the Commission and CEN and CENELEC, the latter are required systematically to process the data provided under the information procedure, so as to programme standardization activity at European level more effectively.

There is clear evidence that the programming committees set up in previous years are making increasing use of the data provided under the information procedure and also that they are becoming increasingly active, as demonstrated by the frequency of meetings, for example.

As indicated above, CENELEC has introduced a procedure called "Villamora" based on the information procedure laid down in the Directive under which completed drafts which have been drawn up in collaboration with other CENELEC members can be subjected to the adoption procedures as finalized draft European standards.

6. Standardization mandates and monitoring of the standstill arrangements

In 1988 the 83/189 Committee, acting under Article 6(3) of the Directive, delivered favourable opinions on 53 mandates, of which 37 concerned information technology; in 1989 the numbers were 67 and 58 respectively. Tables V a and b in annex give a general overview of the mandates issued to CEN and CENELEC in 1988 and 1989, particularly for the purposes of implementing the 'new approach' Directives (construction products, machinery, electromagnetic compatibility) and the public contracts Directives (preparation of standardization programmes for water supply).

It should be pointed out that while a mandate in the field of information technology usually involves the production of a single standard the average number of standards per mandate in the other fields is 18. Mandates relating to the information technology sector are based on the annual programmes of CEN and CENELEC, whereas mandates issued in other areas are generally based on Community harmonization policy. The mandates are for the preparation of the European standards necessary for the implementation of the 'new approach' Directives and the Directive on public contracts.

... and Directive 90/269/EEC has not been used in a systematic way to monitor compliance with the standstill arrangements during the preparation of a European standard, as stipulated in Article 7 of this Directive. It is now essential to set up within the central unit of CEN/CENELEC an effective mechanism for monitoring compliance with the standstill arrangements, in view of the growing importance of European standardization activity.

7. Improvement of the information procedure for standardization activities

In its last report the Commission recommended to CEN/CENELEC several measures which were to be taken in order to make the information procedure for standardization activities more efficient. Some progress was made in the course of 1988 and 1989 even though the Commission cannot yet say that it is satisfied.

- (a) During 1988 CEN and CENELEC were able to prepare a single notification form for draft standards and for standards adopted, which has enabled the information received to be processed more quickly.
- (b) In 1988 the Commission entered into a contract with the CEN and CENELEC in order to set up an integrated system which contains both national standards adopted (from drafts already notified) and draft standards. The ISIS (Integrated Standardization Information System) system, which merges the ICONE and INFOPRO systems, was implemented in 1989 with financial backing from the Commission.
Having been notified in August 1989 by the CEN/CENELEC Central Unit of the fact that additional data on national adopted standards had not been provided the Commission appealed to CEN/CENELEC members to respect their contractual obligations.
- (c) As already mentioned in section 4 above, in 1988/1989 the Commission financed a major study by an outside consultant (chosen via the CEN/CENELEC) to examine the potential market for the information on standardization activities. A further aim of this study was to propose ways and means of improving the dissemination and use of the information on standardization activities. The study was carried out in four stages, each of which has figured in a separate report :

- technical assessment of the current INFOPRO and ICONE system ;
- assessment of current use of the data obtained from these two systems ;
- preparation of potential dissemination scenarios from the technical, economic and organizational points of view ;
- formulation of overall conclusions and recommendations.

These reports were distributed to the members of the 83/189/EEC Directive Committee and the members of the CEN and CENELEC.

The assessments and potential scenarios were the subject of an exchange of views within the 83/189/EEC Directive committee, with representatives of the standardization institutions being present. These same subjects were also discussed in the CEN/CENELEC working group entrusted with monitoring the operation of the information procedure, which was attended by Commission representatives.

The conclusions reached at these various meetings led the CEN/CENELEC working group to recommend the following :

- short-term measures to improve the quality of the data : preparation of a guide, organization of a seminar for data providers, study on the establishment of a quality control unit within the CEN/CENELEC Central Unit ;
- adoption of data processing resources at the CEN/CENELEC Central Unit in 1990 in order to improve the clarity of the information to be disseminated by introducing a multi-sector classification and issuing monthly records containing only those notifications received in the past month (whilst retaining the complete program of the standardization institutions at the CEN/CENELEC Central Unit) ;
- creation of a bibliographical data base on standardization activities (ESD - European Standards Databank) at the CEN/CENELEC Central Unit, covering the data on draft standards and standards adopted among other things.

This CEN/CENELEC working group worked out guidelines so that its sub-group (ESD task Force) can specify the basic component parts of this ESD databank in conjunction with the CEN/CENELEC Central Unit.

The CEN/CENELEC Chairmen's group has recently adopted the recommendation to set up ESD databank and, among other things, has invited the preparation of an action plan and the continuation of work on this subject.

8. Conclusion

Analysis of standards notifications reveals both positive and negative aspects.

On the positive side, the Commission regards the considerable growth in European activities and the general reduction of national activities as a sign of the likely trend in the years to come, when standardization at European level will be replacing national standardization, in certain economic sectors at least.

On the negative side, this process of transition could nevertheless be slowed down, with economic repercussions for European industry, by a lack of commitment on the part of CEN and CENELEC members towards making the information procedure operate more efficiently. This is reflected by :

- the still mediocre quality of the information supplied by some standards institutions ;
- the lack of any reaction to most national notifications even when they concern economic sectors in which standardization at European level would be valuable ;
- the absence of any systematic monitoring of compliance with the status quo obligation pending the preparation of European standards.

On the basis of its own analysis and that in the outside consultants' report, the Commission is convinced that although the short-term improvement measures that have been decided on by CEN/CENELEC are necessary they are not sufficient. It invites CEN/CENELEC members to think of other measures that could improve the efficiency of the system. The Commission is in favour, in principle, of the general introduction of a compulsory "status quo" system for every new activity pending the reactions of other countries, as already exists in the procedure introduced by CENELEC. It does not rule out the possibility of proposing to the Council a new revision of at least this part of Directive 83/189/EEC in the future.

The Commission gives its full backing to the setting up of a bibliographical databank on standardization activities (ESD - European Standard Databank) which would serve all participants as the basis for the preparation of other standards information products intended for the various national markets. The Commission urges the preparation of a general, realistic action plan covering all the aspects of this project as quickly as possible. The standards institutions should be aware that the integration of national data at European level is the only way of satisfying market needs.

CHAPTER III - Information procedure in the field of technical regulations

1. General

1988 and 1989 should have represented a decisive stage in the development of the information procedure in the field of technical regulations. In fact, an evaluation of these two years reveals many important innovations.

First of all there was the adoption and implementation of Directive 88/182/EEC which extends the scope of the information procedure to draft technical regulations on agricultural products, foodstuffs, medicinal products and cosmetics and makes some modifications to the procedure that the experience gained in the first four years had shown to be desirable.

Secondly, talks with EFTA began in 1988, and culminated on 19 December 1989 in the signing of a cross-over agreement between the Community's information system and that of this international organization pending ratification; this agreement entered into force on 1 November 1990.

Finally, the contract between the Commission and a service provider for cataloguing all texts comprising technical regulations adopted by member States without prior notification to the competent Community authorities at the draft stage in breach of Directive 83/189/EEC, came into force in 1989.

In the field of management proper, it is appropriate to record the availability in 1989 of the new guide on the operation of the information procedure arising from Directive 83/189/EEC. This document details the full operation of the information procedure in exhaustive fashion: new telex nomenclature (in view, in particular, of the coming into force of Directive 88/182/EEC), compilation of the various Standing Committee decisions governing the various stages of the procedure (such as the criteria for urgency).

Similarly, since 1989 the translation of the texts of notified national drafts into all the official Community languages has been assured pursuant to contracts concluded between the Commission and two private translation companies.

2. Notifications from a Member State

(a) Number of notifications and breakdown by Member State

Whilst the number of notifications received in 1988 (157) represented a decline compared with the total for 1987 (200), it doubled in spectacular fashion in 1989 (319).

This big increase can largely be explained by the coming into force of Directive 88/182/EEC (see below). In effect, if we subtract the notification recorded in this connection, the result is a total of 225 notifications, slightly up on the 1987 figure.

Developments between 1988 and 1989 are also notable as regards the breakdown by Member State.

In 1988, like previous years, half the notifications received came from Germany (33 %) and France (20%). The Netherlands were third place (10 %). In comparison, the notifications received from the UK (6 %), Spain and Italy seem low.

In 1989, on the other hand, the breakdown by Member State shows less contrast.

Germany (27 %) and France (16 %) remained in the lead but their share of the total is now less than half.

Similarly, the UK (12.5%) and Spain (10.5%)'s shares improved. However, despite an increase over 1988 (21 compared with six), the number of Italian notifications, which was lower than those from Belgium and the Netherlands (24 in each case), is still low.

Finally, 1989 is the first year Luxembourg served notice of drafts (three Benelux decisions on foodstuffs).

(b) Breakdown of notifications by sector

In 1988, half the notifications were spread over three sectors : chemicals (27 notifications), transport (24 notifications) and mechanical engineering (20 notifications).

In 1989 (excluding the notifications made in pursuance of Directive 88/182/EEC) the telecommunications sector took first place (45 notifications, or three times as many as in 1988), which clearly reflects the sustained expansion of this sector of activity and also, no doubt, Directive 88/301/EEC which repeats the obligation to notify draft technical specifications and approval procedures according to Directive 83/189/EEC.

Whilst transport retained second place with 42 notifications, it was building which reached third place (30 notifications), outstripping mechanical engineering (25 notifications).

There were no major changes in the breakdown by Member State. In 1988 the decrease in notifications in the mechanical engineering sector in Germany was particularly noticeable (38 notifications in 1987, 11 in 1988). In 1989 there were more telecommunications notifications from Spain (17 in 1989, 0 in 1988) and, to a lesser extent, building ones from the UK (eight in 1989, one in 1988).

c) Notifications received pursuant to Directive 88/182/EEC

The 94 notifications received represent 30 % of all notifications in 1989.

Two thirds of these notifications come from France (26 or 28 %), Germany (19 or 20 %) and the UK (16 or 17 %).

Food products were the number one category by far : 87 notifications relate to the composition, quality, processing and labelling of foodstuffs, additives and other agricultural products not intended for human consumption. For the rest, eight notifications covered medical products (based on substances with curative or preventative properties in the meaning of Directive 65/65/EEC). In the latter case the results at the end of a year seem more modest.

3. Urgency clause

In 1988 nine notifications (6 % of the total) were accompanied by a claim for urgent grounds which the Commission considered justified in five cases.

In 1989 most of the Member States requested the application of the immediate adoption procedure on urgent grounds. Of the 24 requests submitted (i.e. less than 7 % of all notifications), only eight met the conditions required.

The Commission considers that some Member States are continuing to claim urgent grounds when they have already adopted their technical regulation. This constitutes a breach of Directive 83/189/EEC and leads to legal proceedings.

4. The Commission's reaction to notified draft technical regulations

(a) Statistical data

In 1988 as 1989, two notifications in ten were the subject of comments whilst approximately three notifications in ten caused the Commission to issue a detailed opinion.

This is evidence of definite stability, therefore, even though the relative number of detailed opinions increased slightly between 1988 and 1989 (44/157 in 1988 and 99/318 in 1989).

(b) Detailed opinions

The most frequent objection given in the Commission's detailed opinions (half of them) arose from a misunderstanding of the principle of recognition of equivalent technical specifications.

In second place (a third of detailed Opinions) and often linked with the previous objection is the violation of the principle of non-repetition of equivalent tests and checks already carried out in another Member State.

It is worrying to note that two years away from the completion of the internal market, Member States are still not managing systematically to translate this principle of mutual recognition, which is one of the cornerstones of the Community's structure, into statutory and regulatory terms.

Of the other objections given, we may quote the violation of Community acts, most frequently Directives relating to a wide range of fields and various types of discrimination or restrictions affecting products from other Member States either as regards their mode of importation (e.g. importer obliged to be resident in the Member State into which the product is imported) or their marketing (compulsory declaration of the Member State of origin or the manufacturer's name).

Particular mention should be made of legal security which is often insufficiently taken into account in national drafts which explicitly mention certain principles, such as the recognition of the equivalence of technical specifications or tests but do not provide procedures by which to obtain the benefit or leave the authorities with powers of assessment that are vague, or discretionary powers that are likely to cause administrative disputes from the Community point of view.

The Commission takes the view this situation calls for an escalation of measures already taken to inform the Member States (cf. communications : parallel imports of pharmaceutical products (6 May 1982), procedures for the approval and registration of vehicles registered in another Member State (4 November 1988), food products (24 October 1989). A general campaign should help to make the authorities of the other Member States more aware of the extra effort they have to make to ensure the success of completing the international market.

c) Comments

The Commission issues comments in order to communicate a wide range of types a message to the Member State that submitted the notification.

An analysis of them is of particular interest insofar as they do not have the coercive force of the detailed opinion or the "Directive block", they are of a suppletive nature which reveals the limits, not to say inadequacies of the information procedure instrument in the field of technical regulations on the one hand and on the other hand reflects the fact that the information gathered in the context of that procedure is not restricted simply to the free circulation of goods, but is likely to extend to many other fields.

The first aspect, viz. the limits of the information procedure as an instrument, is illustrated by recourse to the issue of comments in the following cases :

- discovery by the Commission that the draft technical regulation notified is covered by a European standard or by a "common telecommunications specification" ification" course of preparation ;
- discovery by the Commission that a proposal for a Community act was submitted to the Council more than twelve months previously ;
- announcement of the Commission's intention to propose or decree a Community act covering the field which the notified draft relates within a period that is not specified or is in excess of 12 months ;
- discovery by the Commission that an adopted Directive whose transposition period has not yet expired harmonizes the field to which the notified draft relates.
In this case the Commission draws the Member State's attention to the usefulness and efficacy of the draft taking immediate account of the said Directive.

The second aspect, the diversity of information gathered under the information procedure, is confirmed by the issue of comments which envisage not only the free circulation of goods but also the free provisions of services, competition, safety at work etc.

(d) Community law and harmonization

The Commission made use of the possibility, provided for in Article 9.2 of Directive 83/189/EEC, of deferring the adoption of a national draft for a year pending the preparation of a draft Community act 28 times in two years (six times in 1988, 22 in 1989).

To these figures should be added 10 occasions in 1989 when use was made of the new possibility, introduced by Directive 88/182/EEC, of having the adoption of a national draft deferred when the Commission considers that the said draft is covered by a proposed Directive or regulation submitted to the Council (the status quo period is 12 months fro the date of submission of said proposal).

In support of these recourses to Article 9.2 or Article 9.2 a) the Commission quoted the preparation of 23 Directives and regulations, including 13 Directives provided for in the white paper on the completion of the internal market.

Food	:	9 directives
Pharmacy/medicine	:	4 directives
Chemicals/environment	:	3 directives and regulations
Agriculture	:	3 directives and regulations
Transport	:	2 directives
Mechanical engineering	:	1 directive.

It should be added that the Commission has discovered that far from the announcement of a proposal for a Community act or the discovery that a proposal for a Community act has been passed to the Council appearing to restrict the legislative activity of the Member States in the fields covered it seems to encourage it.

It can even happen that drafts are notified by Member States when a common position has been obtained at the Council on the Community proposal covering the relevant field.

The Commission can only express its concern in the face of a practice that is all too frequent and which does not facilitate the harmonization of national laws, which is required to complete the internal market in particular.

(e) Prospects

The Commission is looking at new ways of designing the information procedure so that the problems set out under (c) and (d) above are solved.

5. Reactions by Member States to notified draft technical regulations

Between 1988 and 1989 there was a definite increase both in the number of comments and the number of detailed opinions from the Member States, the figures being as follows : 39 % of notifications were the subjects of detailed opinions from Member States in 1989 compared with 33 % in 1988 (as regards comments, the figures were 36 % in 1989 compared with 29 % in 1988).

6. Standing Committee

About 30 notifications were examined in one of the 11 Committee meetings (five in 1988, six in 1989). The discussions which took place can be divided into two categories.

The first involved the communication of specific information such as :

- announcement of the institution of infringement procedures for adoption of a draft technical regulation before expiry of the status quo period.

The second were aimed directly at solving procedural or fundamental problems :

- methods of publishing the list of notifications received in the Official Journal of the Communities ;
- determination of the conditions in which it is necessary for a Member State to bring in a new notification when the text of a draft technical regulation has been amended by the said Member State's authorities in the course of the status quo period ;
- procedure to be followed to regularize the adoption of a text which had not been notified under the terms of Directive 83/189/EEC and which creates one or more obstacles to the free circulation of goods ;
- debate on the de facto technical regulation nature of draft fiscal incentives on "clean cars" ;
- preparation of studies (flammability of furniture, pollutant emissions from pleasure boats).

Examination of some notifications causes the delegations to support, within the Committee, the preparation of extension of fields of applications for Directives (e.g. preparation of a draft tenth Directive governing the use of cadmium in amendment of Directive 76/769/EEC, possible extension of the field of application of the draft Directive on pleasure boats).

7. Handling of Infringements

(a) Infringements

Between September 1988 and November 1989, 113 infringement procedures for notifications were started against 11 Member States.

103 of these produced a result, as a satisfactory solution was found with the Member States involved.

Finally, ten notifications require further examination.

(b) Contract to supply services

The efficacy of the instruments for checking Member States' compliance with their obligations under Directive 83/189/EEC as amended by Directive 88/182/EEC increased substantially in 1988 and 1989 as a result of two major initiatives.

The first was the conclusion on 1 September 1988 of a contract between the Commission and a private institute entrusted with the task of carrying out a systematic analysis of the official publications of all Member States (Official Journals, Ministerial bulletins etc.) via correspondents located in each Member State, in order to obtain a record of all the national technical regulations adopted in breach of Directive 83/189/EEC.

The texts discovered are collated in a monthly report sent to the Commission's departments which then analyze them.

The second was the Commission's decision of 25 January 1989 to facilitate the initiating of infringement proceedings against any Member State that has breached Directive 83/189/EEC either by failing to notify the Commission at the draft stage about a technical regulation it has adopted or by failings to wait for the status quo period to expire before adopting a technical regulation.

(c) Package meetings

These bilateral meetings between the Commission's departments and those of a Member State owe their name of "package" to the fact that an attempt is made solve the different types of barriers to trade brought to the Commission's attention in various ways (complaints, cases detected spontaneously, notifications).

Nine of these meetings took place between 1988 and 1989 (two in France, Italy and Portugal, one in Germany, Spain and Greece).

Besides examining a large number of infringements, routine matters and complaints, they were the subject of fruitful exchanges of information on 25 notifications (five Greek, six Italian, two Portuguese, six French, five Spanish and one German) which had been the subject of detailed opinions or comments.

In fact, at the end of these meetings, the problems caused by 18 of these notifications have been resolved, as the authorities of the Member States involved had undertaken to amend their draft technical regulations so as to make them compatible with Community law.

Generally speaking, the package meeting formula has been an undeniable success among those Member States in which they were held. In addition, most of these States have expressed the wish for these meetings to take place periodically from now on.

8. Conclusion

As far as technical regulations are concerned an analysis of the situation over 1988 and 1989 shows an appreciable increase in notifications received and a large proportion now represented by the agricultural and food sector. Nevertheless, these two years represent continuity compared with the previous years as they basically deal with draft technical regulations received.

The proportion of draft technical regulations that were the subject of a detailed opinion to the total of notifications received remains unchanged as a whole from year to year. Similarly, the total number of detailed opinions issued by the Commission.

As regards objections raised by the Commission, violations of the principle of mutual recognition are still very largely predominant. They show that Member States' translation into legislative terms of this principle that has been repeatedly re-affirmed by the Court of Justice of the Communities is not yet as systematic as might be wished, with an eye to the completion of the single internal market in 1993.

This situation calls for a suitable reaction from the Commission, the two lines of action being to inform the Member States and strengthen the mechanisms of Directive 83/189/EEC.

STATISTICAL ANNEX

Table I - a Breakdown of the number of new standardization projects started in 1988
CEN/CENELEC members which also belong to the E.C.

Field	Non-electrical		Electrical		Total		Non-electrical share (%)
Level	No (1)	%	No (2)	%	No (3)=(1) +(2)	%	$\frac{(1) \times 100}{(3)}$

a. National work							
a.1.related to European or international work	181	7,8	63	5,2	244	6,9	74,2
a.2. specific (I)	1638	70,7	238	19,9	1876	53,4	87,3

a.3. Total (a.1 + a.2)	1819	78,5	301	25,1	2120	60,3	85,8

b. European work (II)	208	9,0	348	29,1	556	15,8	37,4
c. International work	290	12,5	548	45,8	838	23,8	34,6

d. TOTAL (a+b+c)	2317	100	1197	100	3514	100	65,9

Source: Notifications to CEN/CENELEC

- (I) It should be noted that these figures might be exaggerated since some CEN/CENELEC members do not systematically notify the existence of a link with European or international work.
- (II) To the "non-electrical" figure of 208 should be added an unknown proportion of 416 "new" ABCMA projects. From 1988 onwards this institution's programme has been included in the information procedure.

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Table I - b

Table I - b Breakdown of the number of new standardization projects started in 1989
CEN/CENELEC members which also belong to the E.C.

Field	Non-electrical		Electrical		Total		Non-electrical share (%)
Level	No (1)	%	No (2)	%	No (3)=(1) +(2)	%	$\frac{(1) \times 100}{(3)}$ (3)

a. National work							
a.1.related to European or international work	183	5,0	42	2,5	225	4,2	81,3
a.2. specific (II)	1921	52,2	175	10,5	2096	39,2	91,7

a.3. Total (a.1 + a.2)	2104	57,2	217	13,0	2321	43,4	90,7

b. European work (II)	1288	35,0	528	31,6	1816	33,9	70,9
c. International work	291	7,9	924	55,4	1215	22,7	24,0

d. TOTAL (a+b+c)	3683	100	1669	100	5352	100	68,8

Source: Notifications to CEN/CENELEC

Note: It should be noted that these figures may be exaggerated since some CEN/CENELEC members do not systematically notify the existence of a link with European or international work.

Table II - a

Table II - a Breakdown by country of the new standardization projects started at national level in 1988

Country	Non-electrical		Electrical		Total	
	Number	%	Number	%	Number	%
a GERMANY	619	27,38	167	45,26	786	29,89
b FRANCE	496	21,94	49	13,28	545	20,72
c U.K.	183	8,09	44	11,92	227	8,63
d ITALY	261	11,54	17	4,61	278	10,57
e Other EEC countries	260	11,50	24	6,50	284	10,80
f Total CE	1819	80,45	301	81,57	2120	80,61
g EFTA countries	442	19,55	68	18,43	510	19,39
h General total (f+g)	2261	100	369	100	2630	100

Sources : notifications to CEN/CENELEC.

Note : the various countries should be compared with some caution : the point at which planned new work is required to be notified is not harmonized at the present time.

Table II - b

Table II - b Breakdown by country of the new standardization projects started at national level in 1989.

Countries	Non-electrical		Electrical		Total	
	Number	%	Number	%	Number	%
a GERMANY	527	22,2	65	24,5	592	22,4
b FRANCE	542	22,8	47	17,8	589	22,3
c U.K.	388	16,3	85	32,0	473	17,9
d ITALY	334	14,0	2	0,8	336	12,8
e SPAIN	259	10,9	8	3,0	267	10,1
f Other EEC countries	54	2,3	10	3,8	64	2,4
f Total EEC	2104	88,5	217	81,9	2321	87,9
g EFTA countries (of which Austria)	273	11,5	48	18,1	321	12,1
	(254)		(24)		(278)	
h General total (f+g)	2377	100	265	100	2642	100

Source : notifications to CEN/CENELEC.

Note : the various countries should be compared with caution : the point at which planned new work is required to be notified is not harmonized at the present time.

Table III - a

Table III - a The ten most important sub-sectors for national standardization in 1988

SUBSECTOR		Number of
Code	Description	new projects (EC+EFTA)
T02	Aerospace	138
N05	Textiles	95
H28	Hunting articles	81
I18	Mining	77
T03	Road vehicles	58
B03	Concrete	54
B02	Building	50
I03	Fittings	50
I09	Tools	46
N06	Rubber	46
Total	-	695

Source : notifications to CEN/CENELEC

Note 1 : the two most important electrical sub-sectors in 1988 cover :

- electric cables (code W08) : 46 new projects
- telecommunications cables (code V08) : 33 new projects.

Note 2 : in the absence of detailed figures, the numbers given relate to the EEC countries plus EFTA.

Note 3 : apart from one item, all these new projects come from Austria's national institution.

Table III - b

Table III - b The ten most important sub-sectors for national standardization in 1989

SUBSECTOR		Number of new projects (CEE + EFTA)
Code	Description	
T02	Aerospace	103
N05	Textiles	76
B01	Fire protection	58
N09	Plastics	56
N03	Petroleum products	53
B03	Concrete	52
I09	Tools	48
T03	Motor vehicles	48
I28	Pneumatic and hydraulic gears	43
C01	Food products	40
Total	-	577

Source : Notifications to CEN/CENELEC

Note 1 : the two most important electrical sub-sectors in 1988 cover :

- electric cables (code W08) : 29 new projects
- telecommunications cables (code V10) : 20 new projects.

Note 2 : In the absence of more detailed figures, the numbers given relate to the EEC countries + EFTA.

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Table IV

Table IV - Application of Article 3 (request to be involved in national standardization work and request for the drawing up of European standard)

Year	Request for Information	Comments	Request for Involvement	Request for a European standard
1985	5	14	5	-
1986	8	16	10	1
1987	5	74*	5	-
1988	-	67	15	-
1989	-	52	16	1

Source : notifications to CEN/CENELEC

Note : In the absence of detailed figures, the numbers given relate to the EEC countries plus EFTA.

(*) Following the reminder sent out by CEN/CENELEC, some earlier comments (1985/86) have been included under 1987.

Table V - a

Table V - a Standardization work entrusted to CEN and CENELEC and approved by the 83/189 Committee in the course of 1988

1. Standardization work was entrusted to the European standardization institutions in the following fields :
 - Chemical toys
 - Personal safety equipment
 - Machines
 - Public contracts :
 - Supply of drinking water
 - Canalization
 - Sacks for food aid

2. Standardization work in the field of information technology and telecommunications :
 - Local networks
 - Electronic systems for the household
 - IT quality assurance
 - Ergonomics of terminals
 - Digital network
 - AVC interconnection systems
 - Electromagnetic compatibility
 - Electronic equipment
 - Bar codes
 - Test specifications
 - List of ISDN operating standards
 - Interface for mini-computers
 - Computer graphics
 - Requirements for identity and payment cards
 - POSIX operating system

Table V - b

Table V - b Standardisation work entrusted to
CEN, CENELEC and/or ETSI and approved
by the 83/189 Committee in the course
of 1989

1. Standardization work was entrusted to the European
standardization institutions in the following fields
:

- Electromagnetic compatibility
- Pressure vessels
- Building products - building lime and cement
- Gas apparatus
- Standardization programme in the field of
advanced ceramics
- Implementation of a 3rd standardization programme
in the field of iron and steel
- Transfer of EUROCODES work to the CEN.

2. Standardization work in the field of information
technology and telecommunications :

- Virtual terminals
- Directory
- Computer graphics
- Data exchange on products
- O.D.A. (Office Document Architecture)
- Narrow-band ISDN networks
- Magnetic media
- Local networks
- Bank and identification cards
- Ergonomics in the AMT (Advanced Manufacturing
Technologies) field
- Identification of containers and vehicles

Table VI - a

INFORMATION PROCEDURE FOR TECHNICAL REGULATIONS
 Notification (Art. 8.1)
 Observation (Art. 8.2)
 Detailed opinion (Art. 9.1)
 Intention to prepare a Directive (Art. 9.2 + 9.2 (a))

1988 STATISTICS

Member State	Notifications	Observations		Detailed opinion		Intention to prepare a Directive
		MS*	CEE	MS*	CEE	
Belgium	10	1	2	4	2	0
Denmark	12	5	1	3	5	1
Germany	52	18	12	7	18	2
Spain	7	2	2	3	1	0
France	31	7	5	8	3	0
Greece	4	3	0	1	4	0
Ireland	7	3	2	2	2	0
Italy	6	1	0	0	2	0
Luxemburg	0	0	0	0	0	0
Netherlands	16	3	4	11	2	1
Portugal	3	0	1	3	3	0
United Kingdom	9	3	3	10	2	2
TOTAL EEC	157	46	32	52	44	6

(*) The figures in this column show the number of comments or detailed opinions received by each Member State.

Table VI - b

INFORMATION PROCEDURE FOR TECHNICAL REGULATIONS
 Notification (Art. 8.1)
 Observation (Art. 8.2)
 Detailed opinion (Art. 9.1)
 Intention to prepare a Directive (Art. 9.2 + 9.2 (a))
 1989 STATISTICS

Member State	Notifications	Observations		Detailed opinion		Intention to prepare a Directive	
		MS*	CEE	MS*	CEE	9.2	9.2 bis
Belgium	24	10	4	15	10	4	2
Denmark	19	7	9	4	4	2	1
Germany	86	27	20	42	48	5	1
Spain	33	11	8	6	10	2	1
France	50	18	10	13	5	4	4
Greece	10	8	2	3	5	2	0
Ireland	4	1	0	0	0	0	0
Italy	21	5	1	3	7	0	0
Luxemburg	3	2	0	2	0	0	0
Netherlands	24	13	5	16	3	1	1
Portugal	4	2	0	1	0	0	0
United Kingdom	40	12	4	19	6	2	0
TOTAL EEC	318	116	63	124	98	22	10

(*) The figures in this column show the number of comments or detailed opinions received by each Member State.

Table VII - a

**BREAKDOWN OF NOTIFICATIONS BY SECTOR
1988 STATISTICS**

SECTOR	B	DE	DK	E	F	GR	IRL	I	L	NL	P	UK	EBC TOT
Mechanical engineering	0	11	1	1	6	0	0	0	0	1	0	0	20
Building and construction	0	5	0	3	1	1	0	1	0	0	1	1	13
Metalic materials	0	1	1	0	0	1	0	0	0	0	0	1	4
Products for household	1	10	0	1	0	0	1	1	0	1	0	2	17
Chemicals	3	1	0	0	6	2	4	2	0	7	0	2	27
Non-metalic materials	0	0	0	0	0	0	1	0	0	0	0	1	2
Transports	1	14	0	1	3	0	1	0	0	3	0	1	24
Electrical engineering	1	2	1	1	12	0	0	0	0	1	0	0	18
Electronics exluding Telecom	0	4	1	0	0	0	0	0	0	2	1	0	8
Health and medical equipment	0	1	0	0	2	0	0	1	0	1	0	1	6
Optics and measurement instruments	2	0	1	0	1	0	0	0	0	0	1	0	5
Electrotechnical standards	0	0	0	0	0	0	0	0	0	0	0	0	0
Telecommunications	2	3	7	0	0	0	0	1	0	0	0	0	13
TOTAL BY COUNTRY	10	52	12	7	31	4	7	6	0	16	3	9	157

Table VII - b

**BREAKDOWN OF NOTIFICATIONS BY SECTOR
1989 STATISTICS**

SECTOR	B	DE	DK	E	F	GR	IRL	I	L	NL	P	UK	EEC TOT
Mechanical engineering	3	16	1	0	2	1	0	2	0	0	0	0	25
Building and construction	1	3	1	8	2	3	0	4	0	0	0	8	30
Metalic materials	0	2	0	0	0	0	0	0	0	0	1	1	4
Products for household	0	13	1	0	2	2	0	1	0	1	0	1	21
Chemicals	1	7	3	0	4	1	0	0	0	1	0	2	19
Non-metalic materials	0	0	0	0	0	0	0	0	0	0	1	0	1
Transports	1	15	4	0	7	1	1	4	0	4	0	5	42
Electrical engineering	3	1	0	0	0	0	1	1	0	0	0	0	6
Electronics exluding Telecom	0	1	0	0	0	0	0	1	0	0	0	2	4
Health and medical equipment	3	4	1	1	3	2	0	2	0	3	0	1	20
Medical products	1	3	0	0	1	0	2	0	0	0	0	1	8
Optics and measurement instruments	1	0	1	0	2	0	0	0	0	1	2	1	8
Telecommunications	4	5	6	17	4	0	0	4	0	1	0	4	45
Agricultural	0	3	1	1	0	0	0	2	0	0	0	0	7
Food products	6	13	0	6	23	0	0	0	3	13	0	14	78
TOTAL BY COUNTRY	24	86	19	33	50	10	4	21	3	24	4	40	318

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