

*The notification procedure
laid down by
Directive 98/34/EC*

98/34 procedure – historical background

- Cassis de Dijon judgment of the ECJ
- New policy for the Internal Market
- Adoption of Directive 83/189/EEC
- Now Directive 98/34/EC (modified by Directive 98/48/EC)

What is Directive 98/34/EC ?

**A system of notification
of technical regulations
in draft form
applying standstill periods
during which the Commission
and all Member States
can react in a specific form**

Objectives of Directive 98/34/EC

Smooth functioning of the Internal Market

Transparency

All participants in the notification procedure are informed

Prevention

Avoiding barriers to trade before they even appear

Subsidiarity

Detecting those cases where EU intervention appears most appropriate

+ **Better Regulation**

+ **Instrument for industrial policy**

Scope of Directive 98/34/EC

- **28 EU Member States, Liechtenstein, Norway and Iceland (EEA States), Switzerland, Turkey**



- **The Directive applies to all industrial and agricultural products**
- **Directive 98/48/EC extended the notification procedure to Information Society services**

Scope of Directive 98/34/EC

Factors triggering a notification:

**Measure must contain technical regulations
or rules on Information Society services**

Measure must be imputable to the State

Scope of Directive 98/34/EC

Technical regulations

***A. Technical specifications
(products)***

***B. Other requirements
(products)***

***D. Rules on Information
Society services***

***C. Laws/regulations/adm. provisions
prohibiting the manufacture,
importation, marketing/use of a
product or prohibiting the
provision/use of a service (ECJ)***

Scope of Directive 98/34/EC

De facto technical regulations

**De facto
technical
Regulations
are...**



Laws/Regulations referring to some voluntary measures with presumption of conformity



Voluntary agreements



Fiscal or financial measures affecting the consumption of products or services

Exceptions under Article 10

- Complying with binding EU Acts
- Fulfilment of obligations under an international agreement
- Implementation of an ECJ judgement
- Amendment of a technical regulation in accordance with a Commission request
- Making use of safeguard clauses (Article 114(10) of TFEU)
- General Product Safety Directive

Moment of 98/34 notification

When should a text be notified?

- When the text is at a *draft* stage
- When substantial *amendments* can still be made

=> In any case, before its adoption!

Reactions from Commission and Member States

Comments



*Total standstill
period 3 months*



Taking into account

Detailed opinion



*Total standstill
period 6 months*

*4 months for V.A.
and IS services*



*Taking into account
+ Obligation to
respond*

Blocking



*Total standstill
period 12 months*



*Possible extension to
18 month*

Communication of the final text

Request for urgency

Article 9, paragraph 7, first indent of Directive 98/34/EC

The original 3 months standstill period does not apply if a Member State invokes *serious* and *unforeseeable* circumstances relating to:

- **Protection of public health or safety, protection of animals or the preservation of plants**
- **For rules on services, also to public policy, notably the protection of minors**

Legal consequences of non-respect of the notification obligations

Principle of unenforceability

CIA Security (C-194/94)

Non-notified technical regulations

Unilever (C-443/98)

Standstill period not respected



ECJ confirmed this principle through its well established case-law

98/34 Online Database: TRIS (public)



European
Commission

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ENTERPRISE AND INDUSTRY

98/34/EC Directive (TRIS)

European Commission > Enterprise and Industry > TRIS



TRIS
Technical Regulations Information System
Public Information Website

Managers, leaders of industry, farmers, online service providers, lawyers, consultants, representatives of associations or representatives of interests...

THE 98/34 PROCEDURE CAN HELP YOU IN YOUR WORK

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Welcome to the 98/34 information site concerning national technical regulations.

What is the 98/34 Procedure?

- Key Publications, Documents, Speeches
- Legal References
- Case Law
- Report to the European Parliament
- Statistics

The Who's Who of the 98/34 procedure

- European Commission - Enterprise
- Member States - List of Central Units

Search in the 98/34 Database

- Search for recent notifications
- Search by number, country, date ... etc.
- Search by keyword

Give Feedback with your thoughts

Useful links

 To receive notifications for your area, [SUBSCRIBE TO THE MAILING LIST FREE OF CHARGE!](#)

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Useful links and contacts

Commission Internet site (TRIS):



Technical **R**egulations **I**nformation **S**ystem

<http://ec.europa.eu/enterprise/tris>

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