Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) (Text with EEA relevance)

DIRECTIVE (EU) 2015/1535 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 9 September 2015

laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114, 337 and 43 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinions of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Directive 98/34/EC of the European Parliament and of the Council[(3)] has been substantially amended several times[(4)]. In the interests of clarity and rationality, that Directive should be codified.

(2) The internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. Therefore, the prohibition of quantitative restrictions on the movement of goods and of measures having an equivalent effect is one of the basic principles of the Union.

(3) In order to promote the smooth functioning of the internal market, as much transparency as possible should be ensured as regards national initiatives for the establishment of technical regulations.

(4) Barriers to trade resulting from technical regulations relating to products may be allowed only where they are necessary in order to meet essential requirements and have an objective in the public interest of which they constitute the main guarantee.

(5) It is essential for the Commission to have the necessary information at its disposal before the adoption of technical provisions. Consequently, the Member States, which are required to facilitate the achievement of its task pursuant to Article 4(3) of the

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

Treaty on European Union (TEU), must notify it of their projects in the field of technical regulations.

(6) All the Member States must also be informed of the technical regulations envisaged by any one Member State.

(7) The aim of the internal market is to create an environment that is conducive to the competitiveness of undertakings. Increased provision of information is one way of helping undertakings to make more of the advantages inherent in this market. It is therefore necessary to enable economic operators to give their assessment of the impact of the national technical regulations proposed by other Member States, by providing for the regular publication of the titles of notified drafts and by means of the provisions relating to the confidentiality of such drafts.

(8) It is appropriate, in the interests of legal certainty, that Member States publicly announce that a national technical regulation has been adopted in accordance with the formalities laid down in this Directive.

(9) As far as technical regulations for products are concerned, the measures designed to ensure the proper functioning or the continued development of the market include greater transparency of national intentions and a broadening of the criteria and conditions for assessing the potential effect of the proposed regulations on the market.

(10) It is therefore necessary to assess all the requirements laid down in respect of a product and to take account of developments in national practices for the regulation of products.

(11) Requirements, other than technical specifications, referring to the life cycle of a product after it has been placed on the market are liable to affect the free movement of that product or to create obstacles to the proper functioning of the internal market.

(12) It is necessary to clarify the concept of a de facto technical regulation. In particular, the provisions by which the public authority refers to technical specifications or other requirements, or encourages the observance thereof, and the provisions referring to products with which the public authority is associated, in the public interest, have the effect of conferring on such requirements or specifications a more binding value than they would otherwise have by virtue of their private origin.

(13) The Commission and the Member States must also be allowed sufficient time in which to propose amendments to an envisaged measure, in order to remove or reduce any barriers which it might create to the free movement of goods.

(14) The Member State concerned must take account of those amendments when formulating the definitive text of the measure envisaged.

(15) It is inherent in the internal market that, in particular where the principle of mutual recognition cannot be implemented by the Member States, the Commission adopts or proposes the adoption of binding acts. A specific temporary standstill period has been established in order to prevent the introduction of national measures from compromising the adoption of binding acts by the European Parliament and the Council or by the Commission in the same field.

(16) The Member State concerned is to, pursuant to the general obligations laid down in Article 4(3) TEU, defer implementation of the envisaged measure for a period sufficient to allow either a joint examination of the proposed amendments or the preparation of a proposal for a legislative act or the adoption of a binding act of the Commission.

(17) With a view to facilitating the adoption of measures by the European Parliament and the Council, Member States should refrain from adopting technical regulations once the Council has adopted a position at first reading on a Commission proposal concerning that sector.

(18) It is necessary to provide for a Standing Committee, the members of which are appointed by the Member States, with the task of cooperating in the efforts of the Commission to lessen any adverse effects on the free movement of goods.

(19) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for the transposition into national law of the Directives set out in Part B of Annex III,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

1 For the purposes of this Directive, the following definitions apply:

a ‘product’ means any industrially manufactured product and any agricultural product, including fish products;

b ‘service’ means any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

For the purposes of this definition:

(i) ‘at a distance’ means that the service is provided without the parties being simultaneously present;

(ii) ‘by electronic means’ means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

(iii) ‘at the individual request of a recipient of services’ means that the service is provided through the transmission of data on individual request.

An indicative list of services not covered by this definition is set out in Annex I;

c ‘technical specification’ means a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures.

The term ‘technical specification’ also covers production methods and processes used in respect of agricultural products, as referred to in the second subparagraph of Article 38(1) of the Treaty on the Functioning of the European Union (TFEU), products intended for human and animal consumption, and medicinal products as defined in

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

Article 1 of Directive 2001/83/EC of the European Parliament and of the Council[(5)], as well as production methods and processes relating to other products, where these have an effect on their characteristics;

d 'other requirements' means a requirement, other than a technical specification, imposed on a product for the purpose of protecting, in particular, consumers or the environment, and which affects its life cycle after it has been placed on the market, such as conditions of use, recycling, reuse or disposal, where such conditions can significantly influence the composition or nature of the product or its marketing;

e 'rule on services' means a requirement of a general nature relating to the taking-up and pursuit of service activities within the meaning of point (b), in particular provisions concerning the service provider, the services and the recipient of services, excluding any rules which are not specifically aimed at the services defined in that point.

For the purposes of this definition:

(i) a rule shall be considered to be specifically aimed at Information Society services where, having regard to its statement of reasons and its operative part, the specific aim and object of all or some of its individual provisions is to regulate such services in an explicit and targeted manner;

(ii) a rule shall not be considered to be specifically aimed at Information Society services if it affects such services only in an implicit or incidental manner;

f 'technical regulation' means technical specifications and other requirements or rules on services, including the relevant administrative provisions, the observance of which is compulsory, de jure or de facto, in the case of marketing, provision of a service, 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 7, 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 shall include:

(i) laws, regulations or administrative provisions of a Member State which refer either to technical specifications or to other requirements or to rules on services, or to professional codes or codes of practice which in turn refer to technical specifications or to other requirements or to rules on services, compliance with which confers a presumption of conformity with the obligations imposed by the aforementioned laws, regulations or administrative provisions;

(ii) 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;

(iii) technical specifications or other requirements or rules on services 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.

This comprises technical regulations imposed by the authorities designated by the Member States and appearing on a list drawn up and updated, where appropriate, by the Commission, in the framework of the Committee referred to in Article 2.

The same procedure shall be used for amending this list;

g 'draft technical regulation' means 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.

2 This Directive shall not apply to:

a radio broadcasting services;

b television broadcasting services covered by point (e) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council[(6)].

3 This Directive shall not apply to rules relating to matters which are covered by Union legislation in the field of telecommunications services, as covered by Directive 2002/21/EC of the European Parliament and of the Council[(7)].

4 This Directive shall not apply to rules relating to matters which are covered by Union legislation in the field of financial services, as listed non-exhaustively in Annex II to this Directive.

5 With the exception of Article 5(3), this Directive shall not apply to rules enacted by or for regulated markets within the meaning of Directive 2004/39/EC of the European Parliament and of the Council[(8)] or by or for other markets or bodies carrying out clearing or settlement functions for those markets.

6 This Directive shall not apply to those measures Member States consider necessary under the Treaties for the protection of persons, in particular workers, when products are used, provided that such measures do not affect the products.

Article 2

A Standing Committee shall be set up consisting of representatives appointed by the Member States who may call on the assistance of experts or advisers; its chairman shall be a representative of the Commission.

The Committee shall draw up its own rules of procedure.

Article 3

1 The Committee shall meet at least twice a year.

The Committee shall meet in a specific composition to examine questions concerning Information Society services.

2 The Commission shall submit to the Committee a report on the implementation and application of the procedures set out in this Directive, and shall present proposals aimed at eliminating existing or foreseeable barriers to trade.

3 The Committee shall express its opinion on the communications and proposals referred to in paragraph 2 and may, in that regard, propose, in particular, that the Commission:

a ensure where necessary, in order to avoid the risk of barriers to trade, that initially the Member States concerned decide amongst themselves on appropriate measures;

b take all appropriate measures;