

NOTIFICATION - BACKGROUND

NEW PHILOSOPHY -

In the beginning of the 80's, the European Commission had taken on board a decision of the European Court of Justice, known as the "Cassis de Dijon" decision, to launch a new policy for the internal market based on the following three principles:

- i. Mutual Recognition: every Member State is obliged to allow the placing on its market of products legally manufactured in any other Member State;
- ii. Harmonisation limited to the most important economic sectors particularly in the spheres of health, security and the environment;
- iii. That the approval of national regulation be based on prevention.

For this reason, in 1984, Directive 83/189/EEC, which became Directive 98/34/EC after an exercise of codification, established the procedure of prevention which would be progressively be more extensively applied. Nowadays, the EU Member States have the obligation to notify each other and the EU with every draft of technical regulations related to products. Moreover, since 5th August, 1999, even information society services regulations have to be notified in draft form.

This system had been revolutionary in the beginning and has never been retouched. It has proved crucial to the avoidance of the creation of disparate technical regulations and therefore in the avoidance of the creation of technical barriers to trade (TBT's) since it has encouraged legislative transparency, dialogue, prevention and reciprocal verification.

TRANSPARENCY -

The effect of this procedure has spread to the extent that up till the end of the year 2004, there have been 9500 notifications of texts. For the Commission, for the Member States and for the enterprises, this procedure opened a window on the activities of the national authorities with regards to the technical regulation which regulation industrial and agricultural products and information society services. This procedure, in a simplified format, also applies to EFTA countries who are EEA signatories, Turkey and Switzerland.

The accessibility of information enables legitimate authorities to identify the best solutions to particular problems. On the other hand, enterprises have the facility to know beforehand which technical legislation is being adopted and adapt accordingly.

All the notifications in fact are publicly available and may be viewed on the following website:

<http://europa.eu.int/comm/enterprise/tris/>

PREVENTION THROUGH MUTUAL VERIFICATION -

The Commission and the Member States operate a system of preventive control. By means of the standstill period of at least three months from when the draft of the technical regulation is notified, the Member State cannot implement the draft whilst the standstill period is still running. This period of three months may be extended up till eighteen months, if it would appear that the measures might prejudice the internal market. Moreover, the period of eighteen months is also applicable if the Commission intends to legislate on the same issue or if work on similar legislation would already be underway on Community level.

Therefore, this procedure eliminates all the obstacles which would otherwise hinder the operation and, indeed, further development of the internal market PRIOR to the implementation of such obstacles and therefore retroactive – and costly – action is avoided.

According to the CIA Security Case (30th April, 1996), any technical regulation which is notifiable but which would be implemented without its being notified when it is still draft is not applicable against third parties. The same applies to the notifiable technical regulations adopted during the standstill period after their notification (Unilever Case – 26th September, 2000).