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Annex H. Procedure for the provision of information in the field of technical regulations and of rules on Information Society services (Art. 14)

Article 1

For the purposes of this Annex, the following definitions shall apply:

«Product»: any industrially manufactured product and any agricultural product, including fish products.

«Service»: any Information Society service, that is to say, any service normally provided for remuneration, at distance, by electronic means and at the individual request of a recipient of services. For the purposes of this definition:

«at a distance» means that the service is provided without the parties being simultaneously present,

«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,

«at the individual request of a recipient of services» means that the service is provided through the transmission of data on individual request. This Annex shall not apply to:

radio broadcasting services,

television broadcasting services.

«Technical specification»: 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 labeling and conformity assessment procedures. The term «technical specification» also covers production methods and processes used in respect of products intended for human and animal consumption, and medicinal products, as well as production methods and processes relating to other products, where these have an effect on their characteristics.

«Other requirement»: 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, re-use, or disposal, where such conditions can significantly influence the composition or nature of the product or its marketing.

«Rule on services»: requirement of a general nature relating to the taking-up and pursuit of service activities within the meaning of point 2, 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. This Annex shall not apply to rules in the field of telecommunication services. For the purposes of this paragraph, «telecommunication services» means services whose provision consists wholly or partly in the transmission and routing of signals on a telecommunications network by means of telecommunications processes, with the exception of radio broadcasting and television. This Annex shall not apply to rules in the field of financial services, such as investment services, insurance and reinsurance operations, banking services, operations relating to pension funds, and services relating to dealing futures or options. With the exception of Article 2(3) this Annex shall not apply to rules enacted by or for regulated markets (investment services in the securities field) or by or for other markets or bodies carrying out clearing or settlement functions for those markets. For the purposes of this definition:

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,

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.

«Standard»: a technical specification approved by a recognized standardization body for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:

international standard: a standard adopted by an international standardization organization and made available to the public,

European standard: a standard adopted by one of the European standardization bodies and made available to the public,

national standard: a standard adopted by a national standardization body and made available to the public.

«Technical regulation»: 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 4 of this Annex 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 include:

laws, regulations or administrative provisions of a Member State which refer either to technical specifications or other requirements or to rules on services or to professional codes or codes of practice which in turn refer to technical specifications or 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,

voluntary agreements to which a public authority is a contracting party and which provide, in the public interest, for compliance with technical specifications or other requirements or rules on services, excluding public procurement tender specifications,

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 to be drawn up by the Council before the entry into force of this Annex. The same procedure shall be used for amending this list.

«Draft technical regulation»: the text of a technical specification or other requirement, or 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. This Annex shall not apply to those measures which Member States consider necessary for the protection of persons, in particular workers, when products are used, provided that such measures do not affect the products.

Article 2

Subject to Article 4, Member States shall immediately communicate to the Council any draft technical regulation, except where it merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Council have a statement of the grounds which make the enactment of such a technical regulation necessary, where these are not already made clear in the draft:

The notification shall include the full text of the draft technical regulation both in the original language and in a full translation or a summary into English;

Where appropriate, and unless it has already been sent with a prior communication, Member States shall simultaneously communicate the text of the basic legislative or regulatory provisions principally and directly concerned, should knowledge of such text be necessary to assess the implications of the draft technical regulation;

Member States shall communicate the draft again under the above conditions if they make changes to the draft that have the effect of significantly altering its scope, shortening the timetable originally envisaged for implementation, adding specifications or requirements, or making the latter more restrictive;

Where, in particular, the draft seeks to limit the marketing or use of a chemical substance, preparation or product on grounds of public health, or of the protection of consumers or the environment, Member States shall also forward either a summary or the references of all relevant data relating to the substance, preparation or product concerned and to known and available substitutes, where such information may be available, and communicate the anticipated effects of the measure on public health and protection of the consumer and the environment, together with an analysis of the risk carried out as appropriate in accordance with the general principles for the risk evaluation of new and existing chemical substances;

The Council shall immediately notify the other Member States of the draft and all documents which have been forwarded to it; it may also, where appropriate, refer this draft, for an opinion to the Committee referred to in Article 5 (hereinafter the «Committee»), and to the committee responsible for the field in question;

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 7 of Article 1, the comments or detailed opinions of the Member States may concern only the aspect 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 aspect of the measure.

The Member States may make comments to the Member State which has forwarded a draft technical regulation. That Member State shall take such comments into account as far as possible in the subsequent preparation of the technical regulation.

The Member States shall communicate the definitive text of a technical regulation to the Council without delay.

Information supplied under this Article shall not be confidential except at the express request of the notifying Member State. Any such request shall be supported by reasons. In cases of this kind, if necessary precautions are taken, the Committee and the national authorities may seek expert advice from physical or legal persons in the private sector.

Article 3

Member States shall postpone the adoption of a draft technical regulation for three months from the date of receipt by the Council of the communication referred to in Paragraph 1 of Article 2.

Member States shall postpone:

- for four months the adoption of a draft technical regulation in the form of a voluntary agreement within the meaning of Article 1(7), second indent;

- for four months the adoption of any draft rule on services;

- for six months the adoption of any other draft technical regulation;

from the date of receipt by the Council of the communication referred to in Article 2(1) if another Member State delivers a detailed opinion, within three months of that date, to the effect that the measure envisaged may create obstacles to the free movement of goods or services, or to the freedom of establishment of service operators within the area of the Association.

With regard to draft rules on services, detailed opinions from Member States may not affect any cultural policy measures, in particular in the audiovisual sphere, which a Member State might adopt in accordance with its international obligations, taking account of their linguistic diversity, their specific national and regional characteristics and their cultural heritages.

The Member State concerned shall report to the Council on the action it proposes to take on such detailed opinions.

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.

Paragraphs 1 and 2 shall not apply in those cases where:

for urgent reasons, occasioned by serious and unforeseeable circumstances, relating to the protection of public health or safety, the protection of animals or the preservation of plants, and for rules on services, also for public policy, notably the protection of minors, a Member State is obliged to prepare technical regulations in a very short space of time in order to enact and introduce them immediately without any consultations being possible; or

for urgent reasons occasioned by serious circumstances relating to the protection of the security and the integrity of the financial system, notably the protection of depositors, investors and insured persons, the Member States are obliged to enact and implement rules on financial services immediately.

The Member State shall give, in the communication referred to in Article 2, the reasons which warrant the urgency of the measures taken. The justification for urgent measures shall be detailed and clearly explained with particular emphasis on the unpredictability and the seriousness of the danger confronting the concerned authorities as well as the absolute necessity for immediate action to remedy it. The Committee shall give its views on the communication as soon as possible. It shall take appropriate action in cases where improper use is made of this procedure.

Article 4

Article 2 and 3 shall not apply to those laws, regulations and administrative provisions of the Member States or voluntary agreements by means of which those Member States fulfil the obligations arising out of international agreements which result in the adoption of common technical specifications, or rules on services.

Article 3 shall not apply to laws, regulations and administrative provisions of the Member States prohibiting manufacture insofar as they do not impede the free movement of products.

Article 3 shall not apply to the technical specifications or other requirements or the rules on services referred to in Paragraph 7 of Article 1, third indent.

Article 5

The Council shall establish a Committee which shall be responsible for the management and proper application of this Annex.

For this purpose, the Committee shall make recommendations.

The Committee may in particular recommend to the Council to amend the provisions of this Annex.

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