

**DIAGNOSTIC TOOL TO  
DETERMINE WHETHER A  
MEASURE REQUIRES  
NOTIFICATION TO THE  
COMMISSION UNDER ARTICLES 8-  
10 AND WHETHER A STANDSTILL  
PERIOD APPLIES - THE  
TECHNICAL STANDARDS  
DIRECTIVE (98/34/EC)**

Decision Tree

JULY 2012

# Contents

<b>Contents .....</b>	<b>2</b>
<b>1. KEY POINTS ON THE REQUIREMENTS OF DIRECTIVE 98/34/EC.....</b>	<b>3</b>
<b>2. DO YOU NEED TO NOTIFY YOUR DRAFT RULES OR GUIDANCE? .....</b>	<b>4</b>
SECTION A - RULES ABOUT PRODUCTS .....	4
SECTION B - RULES ABOUT INFORMATION SOCIETY SERVICES .....	12
SECTION C - EXCEPTIONS TO THE REQUIREMENT TO NOTIFY .....	19
SECTION D - A STANDSTILL PERIOD OF AT LEAST 3 MONTHS WILL APPLY UNLESS YOU FALL WITHIN THE FOLLOWING EXCEPTIONS:.....	37

# 1. KEY POINTS ON THE REQUIREMENTS OF DIRECTIVE 98/34/EC

Before you use the diagnostic tool here are some key points to note on the requirements of the Directive:

- Subject to limited exceptions, the Directive requires notification in draft to the Commission of measures such as mandatory rules, guidance or any document which it is intended users should in practice follow (referred to as 'technical regulations') which apply in the UK or a major part of it and regulate:
  - industrially manufactured or agricultural products (including bans on products, rules about their composition, packaging or testing and rules that relate to their subsequent use), or
  - services provided on a commercial basis over the internet or through any similar medium (these are referred to as 'information society services').
- A measure is a 'draft' if the text is at a stage of preparation at which substantial amendments can be made (Article 1(12)). (Thus, for example, it is too late to make a notification in relation to an SI if the Minister has already signed it.)
- Subject to limited exceptions, after notification to the Commission, a standstill period of a minimum of 3 months (which can be extended in the event of objections from the Commission or another Member State) applies during which the draft measures may not be adopted. (NB Any amendments of substance made to the draft after notification will require re-notification.)
- **Adoption of a measure regulating goods or electronic services without following the procedure in the Directive renders the measure unenforceable. For this reason if in doubt it is safer to notify a measure in draft. (It also exposes the UK to the risk of infraction proceedings.)**
- The directive applies not only to Bills and Statutory instruments but also to soft law such as guidance (An example of this is the guidance produced in relation to the Building Regulations which the UK has notified in draft.) The test is whether the rule is in practice followed whether or not there is a strict legal requirement to do so (Fiscal rules that mean that it is advantageous to manufacture products in a particular way would for example be caught). Agreements through which particular standards are adopted which are officially endorsed may also require notification in draft.
- Notification under 98/34 may be necessary even where the rules implement a Directive.

## 2. DO YOU NEED TO NOTIFY YOUR DRAFT RULES OR GUIDANCE?

NB You need to apply the following test to draft rules such as draft statutory instruments or provisions to be included in a Bill as well as any guidance or similar document which in practice will be followed by those who use it. (References in the test to 'draft rules' includes draft guidance etc.) Go to Section A if your rules relate to products or Section B if your rules relate to electronic services.

Follow the questions in the following tables to see whether your draft rules/ guidance etc. are notifiable and whether you need to observe a standstill period.

### SECTION A - RULES ABOUT PRODUCTS

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
A1.	<p>Products covered by 98/34</p> <p>Do the draft rules relate to any of the following kinds of products:</p> <p>industrially manufactured</p>	<p>What is a product?</p> <p>The directive applies to rules (referred to as 'technical regulations') relating to 'products' (and electronic services described in the directive as 'Information Society services'). 'Products are defined in Article 1(1) of the Directive as industrially manufactured products and agricultural products including fish products. The Commission view is that rules applying to products not in common use or with a negligible</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
	<p>products or</p> <p>agricultural products (including fish products)?</p> <p>Yes – Go to the next question.</p> <p><b>No – To consider whether your draft rules relate to an information society Service. Go to Section B.</b></p>	<p>economic impact must be notified. (See Working paper: Court of Justice Judgements and Commission Practice para 2.1.1 (Doc39/98-rev.3-EN which is available on the Commission website at <a href="http://ec.europa.eu/enterprise/tris/court/JurisprudenceEN.pdf">http://ec.europa.eu/enterprise/tris/court/JurisprudenceEN.pdf</a>)</p> <p>(See also Case C-42/10 Vlaamse Dierenartsenvereniging which contains some discussion on what a ‘product’ is. Pet passports are not ‘products’)</p>
A2	<p>Prohibitions relating to goods</p> <p>Do the draft rules introduce or amend a prohibition or ban on the manufacture, importation, marketing or use of a product?</p>	<p>What is a prohibition?</p> <p>The definition of ‘technical regulation’ in Article 1(11)</p> <p>includes provisions which prohibit the manufacture, importation, marketing or use of a product. A rule is to be regarded as a prohibition if it leaves no room for any use which can reasonably be expected of the product concerned</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
	<p>Yes – your provision is notifiable unless an exception is applicable - go to Section C to determine whether any of the exceptions apply.</p> <p>No – Go to the next question.</p>	<p>other than a purely marginal one (Case C-267/03 Lindberg).</p>
A3	<p>Technical specifications – product characteristics</p> <p>Do the draft rules specify (or amend a specification relating to) the characteristics of a product such as levels of quality, safety or performance or its dimensions or requirements</p>	<p>Technical specifications</p> <p>The definition of ‘technical regulation’ also covers ‘technical specifications’. A ‘technical specification’ includes a document which specifies the characteristics required of a product (See Article 1(3)). For example in the Lidl Italia case, a requirement for cotton buds to be biodegradable was a technical specification. In C-289/94 Commission v Italy (Molluscs), a requirement as to water quality could be a technical specification in relation to molluscs if in practice only molluscs raised in water meeting</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
	<p>as to:</p> <p>the name under which the product is sold;</p> <p>terminology or symbols;</p> <p>testing of the product (including test methods);</p> <p>packaging, marking or labelling; or</p> <p>conformity assessment procedures?</p> <p>Yes – your provision is notifiable unless an exception is applicable - go to Section C to determine whether any of the exceptions apply.</p>	<p>those standards could be sold. A rule that does not affect the characteristics of a product is not a technical specification. A requirement to immunise pigs was not a technical specification as it did not prevent pork from pigs that had not been immunised from being sold. (See Case C-37/99 Donkersteeg ECR 2000 p I-10223). Rules as to the levels of asbestos fibres in the work place do not amount to a technical regulation as they do not define the characteristics of a product. C-279/94 Commission v Italy (Asbestos) [1997] ECR I-4743. A requirement for labelling to be in a particular language is not a technical regulation. (See Case C-33/97 Colim.). See also Case C-361/10 Intercomunale Intermosane (rules about electrical installations not technical regulations as they did not affect specific products.)</p>

No.	Questions to determine whether a measure requires to be notified.		Guidance Notes.
	No – go to the next question.		
A4	<p>Technical specifications – production methods and processes</p> <p>Do the draft rules cover production methods and processes in relation to any of the following:</p> <p>agricultural products,</p> <p>products intended for human and animal consumption,</p> <p>medicinal products,</p> <p>other products where the characteristics of the</p>		See second paragraph of definition of technical specification in Article 1(3).



No.	Questions to determine whether a measure requires to be notified.		Guidance Notes.
	<p data-bbox="560 383 862 414">product are affected?</p> <p data-bbox="560 534 963 750">Yes – your provision is notifiable unless an exception is applicable - go to Section C to determine whether any of the exceptions apply.</p> <p data-bbox="560 869 840 933">No – go to the next question.</p>		
A5	<p data-bbox="560 1141 918 1244">Requirements after a product is on the market (“Other requirements”)</p> <p data-bbox="560 1284 963 1428">Do the draft rules impose or amend any requirements which apply after the product has been placed on</p>		<p data-bbox="1030 1141 1780 1204">Requirements after a product is on the market (‘other requirements’)</p> <p data-bbox="1030 1244 1892 1396">The definition of ‘technical regulation’ has been extended to cover what are described as ‘other requirements’ (See Article 1(4). These are requirements which affect the life cycle of the product after it has been placed on the market including for</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
	<p>the market and which might significantly influence:</p> <p>the composition of a product,</p> <p>the nature of product,</p> <p>the marketing of the product,</p> <p>(including in particular rules to protect consumers or the environment)?</p> <p>Yes – your provision is notifiable unless an exception is applicable - go to Section C to determine whether any of the exceptions apply.</p>	<p>example:</p> <p>conditions of use;</p> <p>recycling;</p> <p>reuse;</p> <p>disposal.</p> <p>The Directive states that this in particular includes rules to protect consumers and the environment. See also Case C-361/10 Intercommunale Interbosane for discussion of the concept of 'other requirements' - para 19-21 of the judgment.</p>

No.	Questions to determine whether a measure requires to be notified.		Guidance Notes.
	No – your draft rules are not notifiable.		

## SECTION B - RULES ABOUT INFORMATION SOCIETY SERVICES

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
B1	<p><b>Do the draft rules relate to a service normally provided for remuneration?</b></p> <p><b>Yes – go to the next question.</b></p> <p><b>No – Your draft rules are not caught by the notification requirements of 98/34.</b></p>	<p>The Directive has been extended to cover what are referred to as 'Information Society services' (Broadly speaking this covers services supplied over the internet or similar electronic medium.). A service is something that is provided for remuneration. The remuneration need not be paid by the recipient of the service. For example a service funded by advertising will be covered.</p>
B2	<p><b>Is this service provided by electronic means?</b></p> <p><b>Yes – go to the next question.</b></p>	<p>Services not provided 'by electronic means'</p> <p>Annex V of the Directive provides a non-exhaustive list of services that are not provided 'by electronic means'. You should definitely answer 'No' to this question if the services fall within any of the following</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
	<p><b>No – Your draft rules are not caught by the notification requirements of 98/34.</b></p>	<p>categories:</p> <p><b>Services having material content even though provided by electronic devices:</b></p> <p>automatic cash or ticket dispensing machines (banknotes, rail tickets etc.);</p> <p>access to roads/car parks where electronic devices at entrance/exit control access and/or ensure correct payment.</p> <p><b>Offline services: distribution of CD roms or software on diskettes.</b></p> <p><b>Services which are not provided via electronic processing/inventory systems:</b></p> <p>voice telephony services;</p> <p>telefax/telex services;</p> <p>services provided via voice telephony or fax;</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
		<p>telephone/telefax consultations with doctors/lawyers;</p> <p>telephone/telefax direct marketing.</p>
B3	<p><b>Is this service provided at a distance without the parties being present?</b></p> <p><b>Yes – go to the next question.</b></p> <p><b>No – Your draft rules are not caught by the notification requirements of 98/34.</b></p>	<p>Services not provided at a distance</p> <p>Annex V of the Directive provides a non-exhaustive list of services that are not provided 'at a distance'. You should definitely answer 'No' to this question if the services fall within any of the following categories:</p> <p><b>Services where the provider and recipient are both physically present even where electronic devices are used such as:</b></p> <p>medical examinations using electronic equipment;</p> <p>consultation of an electronic catalogue by a customer in a shop;</p> <p>plane ticket reservations at a travel agency in</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
		<p>the physical presence of the customer;</p> <p>electronic games in an arcade where the customer is physically present.</p>
B4	<p><b>Is this service provided through the transmission of data at the request of a person?</b></p> <p><b>Yes – go to the next question.</b></p> <p><b>No – Your draft rules are not caught by the notification requirements of 98/34.</b></p>	<p><i>Services not supplied at the individual request of a recipient of services</i></p> <p>Annex V of the Directive provides a non-exhaustive list of services that are not provided ‘at the individual request of a recipient of services’. You should definitely answer ‘No’ to this question if the services fall within any of the following categories:</p> <p><b>Services provided by transmitting data without individual demand for simultaneous reception by an unlimited number of individual receivers (point to multipoint transmission):</b></p> <p>television broadcasting services (including</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
		<p>near-video on-demand services), covered by point (a) of Article 1 of Directive 89/552/EEC;</p> <p>radio broadcasting services;</p> <p>(televised) teletext.</p>
B5.	<p>Is the specific aim or object of the draft rules to regulate information society services (i.e. electronic services) in an explicit or targeted way?</p> <p><b>Yes – go to the next question.</b></p> <p><b>No – Your draft rules are not caught by the notification requirements of 98/34.</b></p>	<p>The Directive provides that a rule is to be considered as being specifically aimed at information society services where having regard to its statement of reasons and its operative part, the specific aim and objective of all or some of its individual provisions is to regulate information society services in an explicit and targeted manner. A rule is not to be considered to be specifically aimed at Information Society Services if it affects such services only in an implicit or incidental manner. Rules of general application which incidentally affect information society services will not require to be notified (Article 1(5)). Thus a law on the protection of minors will not require notification unless it contains specific provisions relating to the internet. Similarly rules relating to the level of lawyers fees will not require notification except where</p>



No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
		there is specific provision to services provided over the internet.
B6	<p>Prohibitions</p> <p>Do the draft rules prohibit (or amend a prohibition relating to) the provision or use of a service, or establishment as a service provider?</p> <p><b>Yes – your provision is notifiable unless an exception is applicable - go to Section C to determine whether any of the exceptions apply.</b></p> <p><b>No – go to the next question.</b></p>	<p>The definition of ‘technical regulation’ in Article 1(11) includes measures which prohibit the provision or use of a service or establishment of a person as a service provider.</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
B7	<p>Rules on Services provided electronically</p> <p>Do the draft rules impose (or amend) requirements on the take up and pursuit of a service provided electronically in particular provisions concerning:</p> <p>the service provider</p> <p>the services</p> <p>the recipient of the services</p> <p><b>Yes – your provision is notifiable unless an exception is applicable - go to Section C to determine whether any of the exceptions apply.</b></p> <p><b>No – Your draft rules are not caught by the notification requirements of 98/34</b></p>	<p><b>The definition of ‘rule on services’ is to be found in Article 1(5). Examples of the kinds of thing that may be covered are rules on domain names and electronic signatures and rules relating to advertising on the internet.</b></p>

## SECTION C - EXCEPTIONS TO THE REQUIREMENT TO NOTIFY

No.	Questions to determine whether a measure requires to be notified.		Guidance Notes.
C1	<p>Repeals</p> <p>Will the draft rules repeal a technical regulation in its entirety?</p> <p><b>Yes – the draft rules do not need to be notified.</b></p> <p><b>No – go to the next question.</b></p>		<p>The Commission has indicated that the total repeal of a technical regulation does not need to be notified. However measures that liberalise or derogate from existing rules which are not whole scale repeals need to be notified. See Case 273/94 Commission v Netherlands (Margarine) ECR 1996 I-131. (See para. 2.1.10 of Working paper: Court of Justice Judgements and Commission Practice.)</p>
C2	Re-enactments		<p>In Case C-33/97 Colim NV v Bigg's Continent Noord NV the court noted that national measures which reproduce or replace – without adding new or additional</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
	<p>Are the draft rules limited to a pure re-enactment of existing rules which were notified under 98/34 (without adding new or additional rules)?</p> <p><b>Yes – the draft rules do not need to be notified.</b></p> <p><b>No – go to the next question.</b></p>	<p>specifications – existing technical regulations which were originally duly notified under 98/34 cannot be technical regulations.</p>
C3	<p>Powers and other rules of no legal effect for individuals</p> <p>Are the draft rules limited to conferring a power to make rules?</p>	<p>A provision that merely confers on the Minister a power to make subordinate legislation such as Regulations will not be notifiable provided that it does not itself contain any substantive provisions that amount to a technical regulation. However provisions made under the power must be notified in draft if they are technical regulations and where applicable the appropriate standstill period must be</p>



No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
		required security systems to have prior approval.
C4	<p>Implementation of Community law</p> <p>Are the draft rules being adopted for the purposes of a binding Community obligation in respect of which there is no choice as to methods of implementation?</p> <p><b>Yes – the draft rules do not need to be notified.</b></p> <p><b>No – go to the next question.</b></p>	<p>There is an exception that provides that the notification and standstill requirements do not apply to things done to:</p> <p>“comply with binding Community Acts which result in the adoption of technical specifications or rules on services.” (Article 10(1))</p> <p><b>The Commission view on this is that where Member States have ‘room to manoeuvre’ national measures need to be notified. In Case C-159/00 Sapod Audic v Eco-Emballages, an attempt to rely on article 10 in relation to laws implementing a directive failed because “....that directive establishes only a general framework, leaving Member States a significant degree of freedom”. If a</b></p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
		<p><b>directive leaves choices for a Member State, then Art 10(1) cannot be relied upon. A case where Art 10(1) was successfully invoked was C-425/97 Albers (prohibition on administering clenbuterol to cattle.) (See para 1.1.7 of the Working paper: Court of Justice Judgments and Commission Practice.)</b></p>
C5	<p>Implementation of International Agreements</p> <p>Do the draft rules fulfil obligations arising out of international agreements which result in the adoption of common technical specifications or rules on services in the Community?</p> <p><b>Yes – the draft rules do not need to be notified.</b></p>	<p>This exception is contained in Article 10(1) second indent. This exception cannot be invoked unless all the Member States are party to the Agreement. Additionally the provisions of the international agreement must be measures leaving Member States no margin for manoeuvre in implementation however narrow. (See para 2.2.3 of the Working paper: Court of Justice Judgments and Commission Practice.)</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
	No – go to the next question.	
C6	<p>Safeguard clauses in Community Acts</p> <p><b>Do the draft rules make use of safeguard clauses provided for in binding Community acts?</b></p> <p><b>Yes – the draft rules do not need to be notified</b></p> <p><b>No – go to the next question</b></p>	<p>This exception is to be found in Article 10(1) of the Directive (Third indent).</p> <p><b>What is a safeguard clause?</b></p> <p>A safeguard clause will usually be indicated in the Article heading. An example is to be found in Article 3 of Directive 2001/18/EC of the European Parliament and of the Council of 12<sup>th</sup> March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EC. This Article is headed “Safeguard Clause” and it permits the banning of GMOs where new evidence appears which demonstrates a risk to human health or the environment notwithstanding that the procedures in that Directive have been followed.</p>



No.	Questions to determine whether a measure requires to be notified.		Guidance Notes.
C7	<p>General Product Safety - Application of Article 8(1) of Directive 92/59/EEC</p> <p><b>Do the draft rules apply Article 12(1) of Directive 2001/95/EC (which relates to the Community rapid information system in the event of serious risk to the health and safety of consumers)?</b></p> <p><b>Yes – the draft rules do not need to be notified.</b></p> <p><b>No – go to the next question.</b></p>		<p>This exception refers to any situation where Member states apply Article 8(1) of Directive 92/59 on general product safety. This has been replaced by Article 12(1) of Directive 2001/95/EC. This lays down a Community rapid information system (RAPEX) in the event of a serious risk to the health and safety of consumers. The Directive provides a procedure for taking measures to deal with health and safety issues relating to specific products.</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
C8	<p>Implementation of ECJ judgments</p> <p>Do the draft rules restrict themselves to implementing a judgment of the ECJ?</p> <p><b>Yes – the draft rules do not need to be notified.</b></p> <p><b>No – go to the next question.</b></p>	<p>This exception is to be found in Article 10(1).</p>
C9	<p>Amendment of technical regulation at request of Commission</p> <p><b>Do the draft rules restrict themselves to amending a technical regulation in accordance with a Commission request with a</b></p>	<p>This exception is to be found in Article 10(1).</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
	<p><b>view to removing an obstacle to trade or, in the case of rules on services, to the free movement of services or the freedom of establishment of service operators?</b></p> <p><b>Yes – the draft rules do not need to be notified.</b></p> <p><b>No – go to the next question.</b></p>	
C10	<p>Rules on Worker protection</p> <p>Are the draft rules concerned with a measure considered necessary by the UK under the Treaty for the protection of persons, in particular workers, when products are used, provided that such measures do not</p>	<p>This exemption is contained in Article 1(12) final paragraph. Thus a rule reserving use of certain dangerous equipment for specified skilled workers does not need to be notified. The exception means that a measure requiring compulsory use of protection equipment for certain activities does not require notification provided the measures do not specify the characteristics of the</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
	<p>affect the products?</p> <p><b>Yes – the draft rules do not need to be notified.</b></p> <p><b>No – go to the next question.</b></p>	<p>protection equipment that must be used.</p>
C11	<p>Radio Broadcasting Services</p> <p>Do the draft rules relate to radio broadcasting services?</p> <p><b>Yes – the draft rules do not need to be notified.</b></p>	<p>This exception is to be found in Article 1(2).</p>

No.	Questions to determine whether a measure requires to be notified.		Guidance Notes.
	<b>No – go to the next question.</b>		
C12	<p>Television broadcasting services</p> <p>Do the draft rules relate to television broadcasting services covered by point (a) of Article 1 of Directive 89/552/EEC?</p> <p><b>Yes – the draft rules do not need to be notified.</b></p> <p><b>No – go to the next question.</b></p>		<p>This exception is to be found in Article 1(2). A service comes within the concept of ‘television broadcasting’ referred to in Article 1(a) of Directive 89/552, as amended by Directive 97/36, if it consists of the initial transmission of television programmes intended for reception by the public, that is, an indeterminate number of potential television viewers, to whom the same images are transmitted simultaneously. The manner in which the images are transmitted is not a determining element in that assessment. (See Case C-89/04 Mediakabel).</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
C13.	<p data-bbox="577 308 875 339">Telecommunications</p> <p data-bbox="577 459 1066 639">Do the draft rules relate to matters which are covered by Community legislation in the field of telecommunications services, as defined by Directive 90/387/EEC?</p> <p data-bbox="577 759 1077 823"><b>Yes – the draft rules do not need to be notified.</b></p> <p data-bbox="577 943 1021 975"><b>No – go to the next question.</b></p>	<p data-bbox="1178 308 1827 930">Commission guidance indicates that this exception only covers matters that are actually harmonised by Community law. There was some debate as to whether internet service providers fall within the scope of this exception. However there are no harmonised rules on these. The Commission give as an example of a law that requires notification as a law on the liability of internet access suppliers. Article 1(4) defines telecommunications 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. The Commission guidance states :</p> <p data-bbox="1178 1050 1827 1409">Future national drafts relating to telecommunications matters already harmonised at Community level - i.e. including national measures other than those covered by the general exemption in Article 10 – will not fall within the scope of the Directive and will not therefore be subject to the obligation to notify.....As a result of this specific exemption, not only the measures referred to in Article 10 of Directive 98/34/EC</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
		<p>but also all other national regulations relating to questions governed by the Telecommunications Services Directives (e.g. laws amending, clarifying, or repealing the scope of a law transposing a Directive) are not subject to the obligation of prior notification in Directive 98/34/EC (given that, for the most part, they will have to be notified under these Directives.....Similarly, a future national law, subsequent to the law which transposed Directive 97/13/EC and laying down specific conditions for granting licences to supply electronic mail telecommunications services, will not, as a result of this exemption, be subject to the obligation of prior notification.”</p> <p>(See generally the Commission’s Vade Mecum to Directive 98/48/EC – Doc. S-42/98-EN (def.))</p>
		<p><b>Annex VI of the Directive sets out a non-</b></p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
C14	<p>Financial Services</p> <p>Do the draft rules relate to matters which are covered by Community legislation in the field of financial services?</p> <p><b>Yes – the draft rules do not need to be notified.</b></p> <p><b>No – go to the next question.</b></p>	<p><b>exhaustive list of matters covered by Community legislation in the field of financial services. Answer ‘yes’ to this question if the rules cover any of the following:</b></p> <p>investment services</p> <p>insurance and reinsurance operations</p> <p>banking services</p> <p>operations relating to pension funds</p> <p>services related to dealing in futures and options.</p> <p>In particular this exception includes:</p> <p>investment services referred to in the Annex to Directive 93/22/EEC; services of Collective investment undertakings,</p> <p>services cover by the activities subject to mutual recognition referred to in the Annex to</p>



No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
		<p>Directive 89/646/EEC</p> <p>operations covered by the insurance and reinsurance activities referred to in:</p> <p>Article 1 of Directive 73/239/EEC</p> <p>the Annex to Directive 79/267/EEC</p> <p>Directive 64/225/EEC</p> <p>Directives 92/49/EEC and 92/96/EEC</p> <p>The exception for financial services is to be found in the third sub-paragraph of point 5 of Article 1. The Commission's Vade Mecum to Directive 98/48 EC states (page 26) that this exception covers not only anything falling within the Article 10 general exception relating to the implementation of Community law but also all measures supplementing or subsequent to the implementing instrument.</p>
		<p>Article 1(5) contains this exemption which</p>

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
C15	<p>Regulated markets</p> <p>Do the draft rules apply to rules enacted by or for regulated markets within the meaning of Directive 93/22/EEC or by or for other markets or bodies carrying out clearing or settlement functions for those markets?</p> <p><b>Yes – the draft rules do not need to be notified (but the definitive text must be sent to the Commission when the measure is adopted).</b></p> <p><b>No – go to the next question.</b></p>	<p>relates to stock markets and markets on which financial instruments are traded etc.</p> <p>The Commission's Vade Mecum to Directive 98/48 (page 27) gives the following examples of things that are not notifiable:</p> <p>A draft regulation on computerised stock exchange dealing and settlement;</p> <p>A draft decree concerning the clearing system for electronic trades made on the stock exchange;</p> <p>A draft regulation relating to the procedures for the supply and conclusion of electronic transactions concerning securities traded on financial markets other than stock exchanges.</p>
C16	Geographical Indications	Regulation 2081/92/EEC expressly disapplies the Directive in relation to rules

No.	Questions to determine whether a measure requires to be notified.	Guidance Notes.
	<p>Do the draft rules relate to geographical indications and designations of origin for agricultural products and foodstuffs within regulation 2081/92/EEC?</p> <p><b>Yes – your measure does not need to be notified.</b></p> <p><b>No – go to the next question.</b></p>	<p>relating to geographical indications and designations of origin for agricultural products and foodstuffs.</p>
C17	<p>Social Security systems</p> <p>Do the draft rules relate to technical specifications or other requirements or rules on services linked to national social security systems?</p>	<p>Article 1(11) contains this exemption.</p>



**SECTION D - A STANDSTILL PERIOD OF AT LEAST 3 MONTHS WILL APPLY UNLESS YOU FALL WITHIN THE FOLLOWING EXCEPTIONS:**

No.	Questions to determine whether a measure requires to be notified.		Guidance Notes.
D1	<p>Prohibitions on manufacturing not impeding free movement of products</p> <p><b>Do the draft rules contain a manufacturing prohibition which does not impede the free movement of products?</b></p> <p><b>Yes – You need not observe the standstill period (but you must still notify the rules to the Commision)</b></p> <p><b>No – go to the next question</b></p>		<p>This exception is to be found in Article 10(2).</p>

D2	<p>Fiscal measures</p> <p>Are the draft rules:</p> <p>to be imposed by an authority on a list drawn up by the Commission under Article 1(11) and</p> <p>to be linked to fiscal or financial measures which affect the consumption of products or services by encouraging compliance with the draft rules?</p> <p><b>Yes – You need not observe the standstill period (but you must still notify the rules to the Commission)</b></p> <p><b>No – go to the next question</b></p>		<p>This exception is to be found in Article 10(3).</p>
			<p>This exception is to be found in Article 9(7) of</p>

D3	<p>Cases of urgency - products</p> <p>Do the rules need to be adopted because there are:</p> <p>urgent reasons arising out of serious and unforeseeable circumstances relating to:</p> <p>the protection of public health or safety</p> <p>the protection of animals</p> <p>the preservation of plants</p> <p>and the rules need to be prepared and enacted in a short space of time with no consultation being possible.</p> <p><b>Yes – You need not observe the standstill period (but you must still notify the rules to the Commission.)</b></p> <p><b>No – go to the next question.</b></p>	<p>the Directive.</p> <p>This exception is construed narrowly. A Member State cannot rely on urgency of its own making e.g a failure to implement a Directive on time.</p>
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D4	<p>Cases of urgency - services</p> <p>Are the draft rules to be adopted because:</p> <p>there are urgent reasons arising out of serious and unforeseeable circumstances relating to public policy reasons (especially the protection of minors) (or any reason mentioned in the previous question) and</p> <p>the rules need to be prepared and enacted in a short space of time with no consultation being possible?</p> <p><b>Yes – You need not observe the standstill period (but you must still notify the rules to the Commission)</b></p> <p><b>No – go to the next question.</b></p>		<p>This exception is to be found in Article 9(7) of the Directive.</p>
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D5	<p>Cases of urgency – financial markets</p> <p>Do the draft rules need to be adopted immediately 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?</p> <p><b>Yes – You need not observe the standstill period (but you must still notify the rules to the Commission)</b></p> <p><b>No – Your rules do not fall within any exception and must observe the standstill period.</b></p>		<p>This exception is to be found in Article 9(7) of the Directive.</p>

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