



Notification Number: 2012/65/F

Order of ... setting down the list of technical equipment and devices provided for by Article 226-3 of the Penal Code

Date received : 01/02/2012

End of Standstill : 02/05/2012

Message

Message 002

Communication from the Commission - SG(2012) D/5257

Directive 98/34/EC

Translation of the message 001

Notification: 2012/0065/F

No abre el plazo - Nezahajuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμμία έναρξη προθεσμίας - Does not open the delays - N'ouvre pas de délais - Non fa decorrere la mora - Neietekmē atlikšanu - Atidėjimai nepradedami - Nem nyitja meg a késések - Ma' jiftaħ il-perijodi ta' dawmien - Geen termijnbegin - Nie otwiera opóźnień - Nao inicia o prazo - Neotvorí oneskorenia - Ne uvaja zamud - Määräaika ei ala tästä - Inleder ingen frist - He ce предвижда период на прекъсване - Nu deschide perioadele de stagnare - Nu deschide perioadele de stagnare.

(MSG: 201200257.EN)

1. Structured Information Line

MSG 002 IND 2012 0065 F EN 01-02-2012 F NOTIF

2. Member State

F

3. Department Responsible

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3. Originating Department

Premier ministre

Secrétariat général de la défense et de la sécurité nationale

Agence nationale de la sécurité des systèmes d'information

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4. Notification Number

2012/0065/F - V00T

5. Title

Order of ... setting down the list of technical equipment and devices provided for by Article 226-3 of the Penal Code

6. Products Concerned

6. The products referred to by the draft order and subject to notification are:

- a equipment designed for the interception, reception, analysis, sending, recording or processing of correspondence broadcast, sent or received on electronic communication networks;
- b equipment designed for the interception, reception or sending of the spoken word by acoustic, electromagnetic or optical means;
- c equipment enabling the analysis or scanning of the radio spectrum with a view to receiving and listening to frequencies;
- d technical devices designed to access, record, store and transmit electronic data, as it would be displayed on the screen of an automatic data-processing system or as it would be entered by the typing of characters.

7. Notification Under Another Act

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8. Main Content

Article 226-3 of the Penal Code stipulates that the manufacture, import, holding, display, offer, hiring or sale of technical equipment and devices enabling secret correspondence or personal privacy to be breached or enabling the capture of electronic data shall be subject to ministerial authorisation. Articles R 226-1 to R 226-12 of the Penal Code stipulate the conditions for the issuing of these authorisations and the Order of 29 July 2004 setting down the list of equipment provided for by Article 226-3 of the Penal Code stipulates the equipment subject to authorisation.

The aim of this regulation is to inspect the marketing and use of equipment of a particularly sensitive nature with respect to public and national security.

The draft order subject to notification consists of an update of the aforementioned Order of 29 July 2004. It principally involves explicitly adding to the list of inspected equipment electronic-data capture devices enabling certain items of personal data to be accessed from a user's computer without said user's knowledge (products referred to in point 6d above). As with data-interception equipment on networks already inspected, these devices can also breach personal privacy or the secrecy of correspondence.

9. Brief Statement of Grounds

The need to update the aforementioned Order of 29 July 2004 stems from II of Article 36 of Law No 2011-267 of 14 March 2011 on orientation and planning for the performance of domestic security. This new provision specifies the scope of the inspection provided for in Article 226-3 of the Penal Code by precisely designating the technical provisions referred to in point 6d above.



10. Reference Documents - Basic Texts

Reference texts: a) Article 226-3 and Articles R 226-1 to R 226-12 of the Penal Code (www.legifrance.gouv.fr) constitute the basic texts instituting the procedure for authorisation of the products referred to in point 6 above. These texts were established prior to the entry into force of Directive 98/34/EC.
b) the Order of 29 July 2004 (www.legifrance.gouv.fr) setting down the list of equipment provided for in Article 226-3 of the Penal code was submitted to the European Commission. This Order was established to bring in line with Directive 99/5/EC of 9 March 1999 on radio equipment the order which was in force at that time (Order of 9 May 1994 setting down the list of equipment provided for by Article 226-3 of the Penal Code).
c) II of Article 36 of Law No 2011-267 of 14 March 2011 (www.legifrance.gouv.fr) on orientation and planning for the performance of domestic security, which is the basis for updating the aforementioned Order of 29 July 2004.

11. Invocation of the Emergency Procedure

No

12. Grounds for the Emergency

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13. Confidentiality

No

14. Fiscal measures

No

15. Impact assessment

-

16. TBT and SPS aspects

TBT aspects

No – the draft has no significant impact on international trade.

SPS aspects

No – the draft is not a sanitary or phytosanitary measure.

Catherine Day
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Commission européenne

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