Case-law on Directive (EU) 2015/1535

This document identifies the principal judgments and orders of the Court of Justice of the European Union concerning the scope and application of Directive (EU) 2015/1535, which establishes a procedure for the provision of information in the field of technical regulations and rules on information society services. Its aim is to serve as a guide for Member State administrations, industry, and citizens.

As this document is not exhaustive, some relevant decisions may not be included.

The judgments are presented in chronological order and the document is structured in four parts:

[I. Classification as Technical Regulation 4](#_Toc203035665)

[a. Common Criteria for Technical Regulations 4](#_Toc203035666)

[b. Technical Specifications 6](#_Toc203035667)

[c. Other Requirements 14](#_Toc203035668)

[d. Rules on Services 21](#_Toc203035669)

[e. Prohibition Provisions 31](#_Toc203035670)

[f. De Facto Technical Regulations 34](#_Toc203035671)

[g. Excluded Matters 37](#_Toc203035672)

[II. Notification Obligation 39](#_Toc203035673)

[a. Notification at the Draft Stage 39](#_Toc203035674)

[b. Notifications of New Technical Regulations 41](#_Toc203035675)

[c. Notification of the Full Text 43](#_Toc203035676)

[d. Notification of Concerned Basic Provisions 44](#_Toc203035677)

[e. Re-Notification During the Standstill Period 45](#_Toc203035678)

[III. Exceptions to the Obligation to Notify 47](#_Toc203035679)

[a. Transposition of a European Act 47](#_Toc203035680)

[b. Use of a Safeguard Clause 49](#_Toc203035681)

[c. Amendment in Accordance with a Commission Request 51](#_Toc203035682)

[a. Circumstances That Do Not Constitute Exceptions 52](#_Toc203035683)

[IV. Inapplicability 54](#_Toc203035684)

[a. Inapplicability in the Event of Non-Notification 54](#_Toc203035685)

[b. Inapplicability in the Event of Adoption During the Standstill Period 58](#_Toc203035686)

[c. Clarification as to the Effect of Inapplicability 60](#_Toc203035687)

[d. Infringement Procedure 61](#_Toc203035688)

The decisions from which excerpts have been compiled in this document refer to successive directives laying down a procedure for the provision of information in the field of technical regulations. The following table of equivalence illustrates the continuity of their main provisions[[1]](#footnote-1).

Table of equivalence of the main provisions

Directives (EU) 2015/1535, 98/34/EC and 83/189/EEC

|  |  |  |  |
| --- | --- | --- | --- |
| Content of the provisions | [**Directive (EU) 2015/1535**](https://eur-lex.europa.eu/eli/dir/2015/1535/oj/eng)[[2]](#footnote-2) | [**Directive 98/34/EC**](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01998L0034-19980805)[[3]](#footnote-3) | [**Directive 83/189/EEC**](https://eur-lex.europa.eu/eli/dir/1983/189/oj/eng)[[4]](#footnote-4) |
| Definition of ‘products’ | Article 1(1)(a) | Article 1(1) | Article 1(7) |
| Definition of ‘services’ | Article 1(1)(b) | Article 1(2) | \_\_\_ |
| Definition of ‘technical specification’ | Article 1(1)(c) | Article 1(3) | Article 1(1) |
| Definition of ‘other requirements’ | Article 1(1)(d) | Article 1(4) | \_\_\_ |
| Definition of ‘rule on services’ | Article 1(1)(e) | Article 1(5) | \_\_\_ |
| Definition of ‘technical regulation’ | Article 1(1)(f) | Article 1(11) | Article 1(5) |
| Notification obligation | First sentence of Article 5(1) | First sentence of Article 8(1) | Article 8(1) |
| Notification of basic or concerned provisions | Second sentence of Article 5(1) | Second sentence of Article 8(1) | \_\_\_ |
| Re-notification during the standstill period | Third sentence of Article 5(1) | Third sentence of Article 8(1) | \_\_\_ |
| Standstill period | Article 6 | Article 9 | Article 9 |
| Exceptions to notification and standstill obligations | Article 7 | Article 10 | Article 10 |

**Disclaimer**

The information and guidance in this document are intended to contribute to a better understanding of Directive (EU) 2015/1535 notification rules.

This is intended purely as a guidance tool. Only the text of the Directive has legal force and is liable to create rights and obligations for individuals and Member States. This document does not create any enforceable right or expectation.

The binding interpretation of European Union legislation is the exclusive competence of the Court of Justice of the European Union. The views expressed in this document are without prejudice to the position that the Commission might take before the Court of Justice.

As this document reflects the state of case law at the time of its drafting, it should be regarded as a "living tool" open for improvement and its content may be subject to modifications without notice.

# Classification as Technical Regulation

“[…] the concept of ‘technical regulation’ encompasses four categories of measures, namely (i) ‘technical specifications’ within the meaning of Article 1.3 of Directive 98/34, (ii) ‘other requirements’ as defined in Article 1.4 of that directive, (iii) ‘rules on services’ as referred to in Article 1.5 of that directive, and (iv) ‘laws, regulations or administrative provisions of Member States … 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’.”

([Judgment of 2 February 2016](https://curia.europa.eu/juris/document/document.jsf?text=&docid=174105&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10904675), *Ince*, C-336/14, EU:C:2016:72, paragraph 70)

## Common Criteria for Technical Regulations

“‘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.”

(first sentence of Article 1(1)(f) of Directive (EU) 2015/1535)

[***Judgment of 30 April 1996***](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61994CJ0194)***, CIA Security International SA, C-194/94, EU:C:1996:172, paragraph 29***

A rule may be classified as a ‘technical regulation’ only if has legal effects of its own. This is not the case for a framework law with no legal effect for individuals.

*“29. A rule is classified as a technical regulation for the purposes of Directive 83/189 if it has legal effects of its own. If, under domestic law, the rule merely serves as a basis for enabling administrative regulations containing rules binding on interested parties to be adopted, so that by itself it has no legal effect for individuals, the rule does not constitute a technical regulation within the meaning of the directive (see the judgment in Case C-317/92 Commission v Germany [1994] ECR 1-2039, paragraph 26). It should be recalled here that, according to the first subparagraph of Article 8(1) of Directive 83/189, the Member States must communicate, at the same time as the draft technical regulation, the enabling instrument on the basis of which it was adopted, should knowledge of such text be necessary to assess the implications of the draft technical regulation.”*

[***Judgment of 20 March 1997***](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=100864&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412)***, Bic Benelux, C-13/96, EU:C:1997:173, paragraphs 19 and 20***

The reasons for the adoption of a national measure are irrelevant to the classification of that measure as a ‘technical regulation’. The aim of the Directive is, by preventive monitoring, to protect the free movement of goods, which is one of the foundations of the Community.

*“19. […] There is no basis in Directive 83/189 for an interpretation limiting its application to national measures capable of harmonization only on the basis of Article 100a of the Treaty. The aim of that Directive is, by preventive monitoring, to protect the free movement of goods, which is one of the foundations of the Community. Such monitoring is necessary since technical regulations covered by the Directive are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade in goods. Such hindrances may arise from the adoption of national technical regulations even if those regulations do not duplicate markings affixed in the Member State of origin and irrespective of the grounds on which they were adopted.*

*20. Consequently, the fact that a national measure was adopted in order to protect the environment or that it does not implement a technical standard which may itself constitute a barrier to free movement does not mean that the measure in question cannot be a technical regulation within the meaning of Directive 83/189.”*

[***Judgment of 16 November 2000***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=45811&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8919687)***, Donkersteeg, C-37/99, EU:C:2000:636, paragraphs 30 to 34***

Detailed rules on vaccination of animals are a ‘technical specification’. However, it will only be a ‘technical regulation’ requiring notification if its observance is compulsory de jure or de facto. That is not the case where, in the event of infringement of the rule, no restrictions are imposed on the marketing or use of the products concerned.

*“30. […] in accordance with Article 1(1) of the directive, so far as agricultural products are concerned, a 'technical specification’ is one contained in a document which lays down the characteristics required of a product or its production methods and procedures.*

*31. A rule such as that contained in Article 2(1) of the VBZA is a technical specification within the meaning of Article 1(1) of the directive. As the Commission rightly maintains, since the precise and detailed rules concerning vaccination against Aujeszky's disease are linked to the production, in the strict sense, of the agricultural product concerned and must be complied with throughout the production cycle, that rule therefore defines a 'procedure’ in the production of that product.*

*32. Nevertheless, in order to be classified as a technical rule within the meaning of the directive, the rule at issue in the main proceedings must, in accordance with Article 1(5) of the directive, contain technical specifications 'the observance of which is compulsory, de jure or de facto, in the case of marketing or use in a Member State or a major part thereof, except those laid down by local authorities.*

*33. It must be pointed out, as the Netherlands Government has done, that the rule in Article 2(1) of the VBZA imposes no restrictions on either the marketing or the use of the products concerned if, in contravention of that rule, pigs have not been vaccinated against Aujeszky's disease.*

*34. The answer to be given to the second question must therefore be that a provision such as that in issue in the main proceedings which requires every farmer to have the pigs on his holding vaccinated against Aujeszky's disease is not, for the purposes of the directive, a technical regulation which ought to have been notified to the Commission before being adopted.”*

[***Judgment of 3 December 2020***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=234921&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7739074)***, Star Taxi App, C-62/19, EU:C:2020:980, paragraphs 60 and 61***

For a national measure to be classified as a ‘technical regulation’, it must be binding de jure or de facto, on the provision or use of the service concerned, in a Member State or a major part thereof.

“60. […] it is apparent from the first subparagraph of Article 1(1)(f) of Directive 2015/1535 that a ‘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’.

61. It follows that, in order for national legislation affecting an information society service to be classified as a ‘technical regulation’, it must not only be classified as a ‘rule on services’ as defined in Article 1(1)(e) of Directive 2015/1535, but must also be compulsory, de jure or de facto, in the case, inter alia, of the provision of the service in question or its use in a Member State or a major part of that State.”

## Technical Specifications

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

(Article 1(1)(c) of Directive (EU) 2015/1535)

[***Judgment of 11 January 1996***](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=100042&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412)***, Commission v Netherlands, C-273/94, EU:C:1996:4, paragraph 13***

A national rule introducing a derogation from an existing technical regulation for a specific product constitutes a ‘technical regulation’ if it imposes alternative ‘technical specifications’ with which any person wishing to benefit from the derogation must comply.

*“13. The application to a specific product such as margarine of a regulation derogating from another technical regulation already in existence concerning the same product constitutes a technical regulation within the meaning of Article 1(5) of the directive since it establishes technical specifications within the meaning of Article 1(1) the observance of which is compulsory, de jure or de facto, when that product is marketed or used. If margarine is not manufactured in accordance with the provisions of the Margarine Decree, it may only be manufactured using substitute products authorized by the disputed order. Not only is the use of those substitute products restricted by the conditions laid down in the disputed order, but those products are the only alternatives to the products which may be used under the Margarine Decree. The disputed order should therefore have been notified in accordance with the directive.”*

***[Judgment of 30 April 1996](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61994CJ0194), CIA Security International SA, C-194/94, EU:C:1996:172, paragraph 30***

A rule must be classified as a ‘technical regulation’ if it requires the undertakings concerned to apply for prior approval of their equipment, even if the envisaged administrative rules have not been adopted.

*“30. […] a rule must be classified as a technical regulation within the meaning of Directive 83/189 if, as the Belgian Government submitted at the hearing, it requires the undertakings concerned to apply for prior approval of their equipment, even if the administrative rules envisaged have not been adopted.”*

***[Judgment of 16 September 1996](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=43725&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412), Commission v Italy, C-279/94, EU:C:1997:396, paragraph 34***

A provision setting limits on the concentration of respirable asbestos fibres in workplaces is not a ‘technical specification’ as it does not define the characteristics required of a product.

*“34. According to Article 1, point 5 of the Directive, however, a 'technical regulation' is to be understood as meaning 'technical specifications, including the relevant administrative provisions, the observance of which is compulsory, de jure or de facto, in the case of marketing or use in a Member State'. According to Article 1, point 1, of the Directive, a 'technical specification' is a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance and safety. Article 3(1) of Law No 257/92 lays down limits for the concentration of inhalable asbestos fibres at workplaces. Since this provision does not define a characteristic required of a product, it does not in principle fall within the definition of a technical specification and consequently cannot be regarded as a technical regulation which has to be notified to the Commission pursuant to the first subparagraph of Article 8(1) of the Directive. Although observance of the value limits for concentrations of inhalable asbestos fibres provided for by Article 3 of Law No 257/92 may have consequences as regards the characteristics of the product in question, as these are provided for by Article 1, point 1 of the Directive, the Commission has not demonstrated how this could be the case.”*

[***Judgment of 17 September 1996***](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=99992&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412)***, Commission v Italy, C-289/94, EU:C:1996:330, paragraph 32***

A decree regulating the quality of water intended for the cultivation of molluscs constitutes a ‘technical regulation’ subject to notification because of its direct impact on the marketing of the products concerned.

*“32. Although Decree No 256 does concern certain aspects of the quality of the waters intended for edible lamellibranch molluscs, it nevertheless establishes, as the Commission has rightly pointed out, a very close correlation between the quality of waters used for such cultivation and the marketing of lamellibranch molluscs for human consumption. Thus, only molluscs grown in waters complying with the technical specifications laid down by Decree No 256 may be marketed. Compliance with those specifications, which are binding, thus has a direct impact on the marketing of the molluscs, with the result that Decree No 256 must be regarded as a technical regulation subject to the notification requirement under Article 8 of Directive 83/189.”*

[***Judgment of 11 May 1999***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=44578&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10779034)***, Albers and others, C-425/97 to 427/97, EU:C:1999:243, paragraphs 16 and 17***

The rules prohibiting the administration of certain medicinal products to cattle constitute ‘technical specifications’ as they define methods of production for agricultural products.

*“16. [...] rules which, like those in the present case, are intended to prevent the administration of sympathicomimetic substances to fattening cattle over 14 weeks old constitute technical specifications within the meaning of Article 1(1) of Directive 83/189.*

*17. Such rules define the production methods and procedures for agricultural products as defined in Article 38(1) of the EC Treaty (now, after amendment, Article 32(1) EC) intended for human consumption.”*

[***Judgment of 22 January 2000***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=47026&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8919687)***, Canal Satélite Digital, C-390/99, EU:C:2002:34, paragraphs 45 to 47***

A national rule requiring prior registration and certification of equipment for the digital transmission and reception of satellite television signals before it is marketed constitutes a ‘technical regulation’ because it defines the characteristics of the products concerned.

*“45. […] the Court has already held that national provisions which merely lay down conditions governing the establishment of undertakings, such as provisions making the exercise of an activity subject to prior authorisation, do not constitute technical regulations within the meaning of Article 1, point 9, of Directive 83/189. Technical regulations within the meaning of that provision are specifications defining the characteristics of products and not specifications concerning economic operators (Case C-194/94 CIA Security [1996] ECR I-2201, paragraph 25; Case C-278/99 Van der Burg [2001] ECR I-2015, paragraph 20).*

*46. However, a national provision must be classified as a technical regulation within the meaning of Article 1, point 9, Directive 83/189 if it requires the undertakings concerned to apply for prior approval of their equipment (CIA Security, paragraph 30).*

*47. It follows that a national rule which requires operators of conditional-access services to enter the equipment, decoders or systems for the digital transmission and reception of television signals by satellite which they propose to market in a register and to obtain prior certification for those products before being able to market them constitutes a “technical regulation” within the meaning of Article 1, point 9, of Directive 83/189.”*

[***Judgment of 26 September 2000***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=45692&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10763343)***, Unilever Italia, C-443/98, EU:C:2000:496, paragraphs 25 and 26***

A provision on the labelling of the origin of olive oil is a ‘technical specification’ because it is a requirement governing the labelling of a product.

*“25. Suffice is to note, on that point, that, according to Article 1(1) thereof, Directive 83/189 treats as 'products’ both industrial and agricultural products and that, according to paragraph 2 of the same article, Directive 83/189 treats as a 'technical specification’ any specification contained in a document which lays down the characteristics required of a product, including the requirements applicable to the product as regards labelling. National rules containing such specifications constitute technical specifications within the meaning of Directive 83/189 irrespective of the grounds on which they were adopted (see, to that effect, Case C-13/96 Bic Benelux v Belgian State [1997] ECR I-1753, paragraph 19).*

*26. Thus, the contested Law, which governs labelling indicating the origin of olive oil, contains rules which must be classified as 'technical specifications’ within the meaning of Directive 83/189.”*

[***Judgment of 12 October 2000***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=45721&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10763343)***, Snellers, C-314/98, EU:C:2000:557, paragraphs 37 to 39***

A 'technical specification' must relate to the product as such. A regulation that lays down the criteria for determining the date on which a vehicle is deemed to have been first authorised to operate on public roads, for the purposes of issuing a registration certificate, does not define any characteristic required of the product itself and therefore cannot be classified as a 'technical regulation'.

*“37. […] rules which, like those at issue in the main proceedings, are designed to determine the date on which a vehicle is first authorised for use on the public highway are not technical specifications for the purposes of Directive 83/189 and cannot therefore be classified as technical regulations falling within the scope of that directive.*

*38. Article 1(1) of Directive 83/189 provides that, as regards products such as those at issue in the main proceedings, a technical specification for the purposes of that directive is 'a specification contained in a document which lays down the characteristics required of a product. Technical specifications for the purposes of Directive 83/189 must thus refer to the product as such; that is, moreover, confirmed by the non-exhaustive list of the specifications concerned provided by way of example in Article 1(1) of that directive.*

*39. The regulation lays down a number of criteria for establishing the date on which a vehicle, for the purposes of the Wegenverkeerswet, is deemed to have been first authorised to use the public highway, for the purposes of drawing up a registration certificate. The regulation does not therefore define any characteristic required of the product as such.”*

[***Judgment of 16 November 2000***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=45811&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8919687)***, Donkersteeg, C-37/99, EU:C:2000:636, paragraphs 30 and 31***

For agricultural products, a ‘technical specification’ is a text defining their required characteristics or production methods. A rule laying down conditions for the vaccination of livestock is a production rule and thus as a ‘technical specification’.

*“30. As pointed out in paragraph 20 above, in accordance with Article 1(1) of the directive, so far as agricultural products are concerned, a 'technical specification’ is one contained in a document which lays down the characteristics required of a product or its production methods and procedures.*

*31. A rule such as that contained in Article 2(1) of the VBZA is a technical specification within the meaning of Article 1(1) of the directive. As the Commission rightly maintains, since the precise and detailed rules concerning vaccination against Aujeszky's disease are linked to the production, in the strict sense, of the agricultural product concerned and must be complied with throughout the production cycle, that rule therefore defines a 'procedure’ in the production of that product.”*

[***Judgment of 8 March 2001***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=45877&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8919687)***, Van der Burg, C-278/99, EU:C:2001:143, paragraph 20***

A regulation which merely prohibits commercial advertising, but which does not lay down the characteristics required of a product does not constitute a ‘technical specification’ and cannot therefore be regarded as a ‘technical regulation’.

*“20. […] Under Article 1(1) of Directive 83/189, for the purposes of the directive a 'technical specification’ is 'a specification contained in a document which lays down the characteristics required of a product’. Technical specifications for the purposes of Directive 83/189 must thus refer to the product as such (see Case C-314/98 Snellers Auto's v Algemeen Directeur van de Dienst Wegverkeer [2000] ECR I-0000, paragraph 38). However, legislation such as Article C.11.1(1) of the Decree, which merely prohibits a marketing method, does not lay down the characteristics required of a product.”*

[***Judgment of 6 June 2002***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=47386&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8919687)***, Sapod Audic, C-159/00, EU:C:2002:343, paragraphs 30 to 33***

A provision of national law laying down an obligation to identify a packaging constitutes a ‘technical regulation’ to be notified in so far as it entails an obligation to mark or label that packaging.

*“30. Accordingly, since the obligation to identify the packaging prescribed by the second paragraph of Article 4 of Decree No 92-377 does not seem to imply an obligation to mark or label that packaging, that obligation does not appear necessarily to refer to the product or its packaging as such. Interpreted in that way, that provision cannot be said to lay down the characteristics required of a product within the meaning of Article 1(1) of Directive 83/189 and, hence, cannot be regarded as a technical specification (see, in particular, Case C-278/99 Van der Burg [2001] ECR I-2015, paragraph 20).*

*31.Nevertheless, it must be observed that under the division of powers provided for in Article 234 EC, it is for the national court to interpret national law, in this case the second paragraph of Article 4 of Decree No 92-377.*

*32. Consequently, the Court must also consider the possibility that, in the light of all the factual and legal evidence before the national court, that court will reach the conclusion that the second paragraph of Article 4 of Decree No 92-377 must be interpreted as imposing on producers an obligation to mark or label the packaging, although not specifying what sign must be affixed.*

*33. In such an event, it would have to be held that that provision is in fact a technical specification within the meaning of Directive 83/189 and, consequently, that, since the obligation is imposed by decree in the case of marketing of packaged products throughout the national territory, that provision constitutes a technical regulation.”*

[***Judgement of 8 September 2005***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=59577&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=12994086)***, C-500/03, Commission/Portugal, EU:C:2005:515, paragraph 30***

A rule establishing a maximum length and height of recreational craft and limiting its propulsion power is a ‘technical specification’.

(As the judgement is available only in French and Portuguese, the following text is a translation.)

*“30. It follows from the wording of Article 2(1) of that regulation that it contains technical specifications, within the meaning of point 3 of Article 1 of Directive 98/34, which constitute technical regulations within the meaning of that directive. The requirements contained in that regulation relate to maximum length and height and to the limitation of propulsion power for pleasure craft used for navigation purposes. Those technical limitations apply to all public water lagoons in the public service in Portugal, with the exception of those of the Douro River.”*

[***Judgment of 8 November 2007***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=72270&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9945922)***, Schwibbert, C-20/05, EU:C:2007:652, paragraphs 35 to 37***

National provisions introducing the obligation to affix a distinctive sign to products for the purpose of their marketing in a Member State constitute a ‘technical specification’ because they are requirements relating to the marking and labelling of products.

“35. As the Court has held, the concept of technical specification presupposes that the national measure refers to the product or its packaging as such and thus lays down one of the characteristics required of a product (see, to that effect, Case C‑278/99 van der Burg [2001] ECR I‑2015, paragraph 20; Case C‑390/99 Canal Satélite Digital [2002] ECR I‑607, paragraph 45; and also Sapod Audic, paragraph 30, and Lindberg, paragraph 57).

36. In the present case, it is clear, as the Advocate General has stated in points 46 and 48 of her Opinion, that the distinctive sign ‘SIAE’, which is intended to inform consumers and the national authorities that the reproductions are lawful, is affixed to the actual medium containing the intellectual work and thus to the product itself. It is not, therefore, correct to maintain, as the Società Italiana degli Autori ed Editori and the Italian Government have done, that that sign relates solely to the intellectual work.

37. Such a distinctive sign constitutes a ‘technical specification’ within the meaning of Article 1(3) of Directive 98/34, since it falls within the requirements applicable to the products concerned as regards marking or labelling. Therefore, since observance of that specification is compulsory de jure for marketing those products, the specification constitutes a ‘technical regulation’ within the meaning of Article 1(11) of that directive (see, to that effect, Case C‑13/96 Bic Benelux [1997] ECR I‑1753, paragraph 23).”

[***Judgment of 14 April 2011***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=81451&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9945922)***, Vlaamse Dierenartsenvereniging and Janssens, C-42/10, C-45/10 and C-57/10, EU:C:2011:253, paragraphs 68 to 70***

The Directive does not apply to pet passports which cannot be classified as ‘products’ because they cannot be the subject of commercial transactions. National provisions on pet passports are therefore no “technical specification” which must be communicated to the Commission.

*“68. […] the Court has had occasion to point out that only products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions fall within the scope of the free movement of goods (see, to that effect, inter alia, Case 7/68 Commission v Italy [1968] ECR 617, 626, and Case C‑65/05 Commission v Greece [2006] ECR I‑10341, paragraphs 23 to 25).*

*69. It is not in dispute that pet passports, since they bear a unique number and identify a specific animal, cannot, as such, be the object of commercial transactions.*

*70. Those passports cannot therefore be classified as ‘products’ within the meaning of the case-law of the Court; nor can Directive 98/34 apply to them. Consequently, specifications such as those contained in the Belgian legislation at issue in the main proceedings cannot be classified as technical specifications which, in accordance with Article 8 of that directive, must be communicated in advance to the Commission and, failing that, must not be applied by the national court (see, to that effect, Case C‑20/05 Schwibbert [2007] ECR I‑9447, paragraphs 33 and 44 and the case-law cited).”*

[***Judgment of 9 June 2011***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=85136&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=15388659)***, Intercommunale Intermosane and Fédération de l’industrie et du gaz, C-361/10, EU:C:2011:382, paragraphs 14 to 18***

National provisions laying down minimum requirements for the construction of electrical installations and the safety of workers do not constitute ‘technical specifications’ as they set general safety and protection objectives without referring directly to a product or its packaging and without defining its characteristics.

*“14. [...] it must be determined whether the national provisions at issue in the main proceedings fall within the first category of technical regulations provided for in Article 1(11) of Directive 98/34, that is to say the concept of ‘technical specification’.*

*15. It follows from the case-law that that concept, which is defined in Article 1(3) of the directive, presupposes that the national measure necessarily refers to the product or its packaging as such and thus lays down one of the characteristics required of a product (see Schwibbert, paragraph 35 and case-law cited).*

*16. As regards the national provisions at issue in the main proceedings, it must be noted that the minimum requirements relating to the carrying out of certain electrical installations provided for by those provisions seek to ensure the safety of those installations in order to protect the workers using them.*

*17. It must be noted that those minimum requirements include requirements and general objectives in relation to safety and protection, without necessarily referring to the product concerned or its packaging as such and thus without laying down the characteristics of that product.*

*18. Consequently, the national provisions at issue in the main proceedings do not contain technical specifications within the meaning of Directive 98/34.”*

[***Judgment of 19 July 2012***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=125226&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9889670)***, Fortuna and Others, C-213/11, C-214/11 and C-217/11, EU:C:2012:495, paragraphs 28 to 30***

National provisions restricting the operation of low-cost gaming machines outside casinos are not “technical regulations” because they do not refer to the characteristics of gaming machines or their packaging.

*“28. […] in order for a national measure to fall within the first category of technical regulations that is referred to in Article 1(11) of Directive 98/34, that is to say, within the concept of ‘technical specification’, that measure must necessarily refer to the product or its packaging as such and thus lay down one of the characteristics required of a product (see Intercommunale Intermosane and Fédération de l’industrie et du gaz, paragraph 15).*

*29. Suffice it to state that the transitional provisions in the Law on games of chance relate to authorisations to carry on an activity relating to gaming on low-prize machines. They do not refer to the low-prize gaming machines or their packaging as such and thus do not lay down their characteristics.*

*30. Consequently, the national provisions at issue in the main proceedings do not contain technical specifications within the meaning of Directive 98/34.”*

[***Judgment of 10 July 2014***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=154825&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9889670)***, Ivansson and Others***, ***C-307/13, EU:C:2014:2058, paragraphs 19 to 23***

A rule establishing a general objective of comfort of poultry and quality of rearing facilities is not a “technical specification” because it does not establish the characteristics of the product and is not precise enough to define a production method.

*“19. It is necessary to state that, in accordance with the case-law, that notion [of technical specification] presupposes that the national measure must necessarily refer to the product or its packaging as such and thus lay down one of the characteristics required of a product (see, to that effect, judgment in Fortuna and Others, EU:C:2012:495, paragraph 28).*

*20. In addition, with regard to agricultural products, the Court has stated that a technical specification is one contained in a document which lays down the characteristics required of a product or its production methods and procedures (see, to that effect, judgment in Donkersteeg, C‑37/99, EU:C:2000:636, paragraph 30).*

*21. It must be noted, firstly, that although Paragraph 9 of the DSF concerns the comfort and quality of the installations where hens for egg production are kept, namely enriched cages, that provision does not, however, as the Polish Government has pointed out, define the characteristics which the items at issue in the main proceedings must have.*

*22. Secondly, even if the view could be taken that that provision relates to a production method in that it refers, as stated in the preceding paragraph, to the keeping of hens for egg production in enriched cages, it must none the less be pointed out that that provision merely makes a general mention of the existence of nests, perches and sand-baths within those installations without, however, specifying the various aspects of that housing system. Paragraph 9 of the DSF does not contain any indication concerning, for example, the dimension, number, temperature, upkeep or functioning of those installations as regards the exposure of the hens for egg production to light or even concerning feeding and watering. In the absence of any specification in Paragraph 9 of the DSF, it cannot be regarded as laying down the production methods and procedures.*

*23. Furthermore, it must be noted that, by stating that ‘the housing system shall be such that the mortality rate and behaviour disorders in the hens are kept to a low level’ without any other indication, the first subparagraph of Paragraph 9 of the DSF merely states general objectives in relation to the well-being of hens for egg production, without necessarily referring to the product concerned and thus without laying down the characteristics of that product (see, by analogy, judgment in Intercommunale Intermosane and Fédération de l’Industrie et du gaz, C‑361/10, EU:C:2011:382, paragraph 17).”*

[***Judgment of 27 October 2016***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=184891&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9777324)***, James Elliott Construction, C-613/14, EU:C:2016:821, paragraph 67***

National provisions setting out implicit contractual conditions concerning the quality of products sold do not constitute ‘technical specifications’ because they do not define the characteristics of the product concerned.

*“**67. In the present case, it is apparent, first, that provisions such as those at issue in the main proceedings, either in themselves, or as interpreted by the Irish courts, do not fall within the concept of ‘technical specification’ within the meaning of Article 1(3) of Directive 98/34. That concept covers only national measures which refer to a product or its packaging as such and thus lay down one of the characteristics required of a product (judgment of 10 July 2014, Ivansson and Others, C‑307/13, EU:C:2014:2058, paragraph 19 and the case-law cited). That is clearly not the case for a requirement which applies, unless the parties have agreed otherwise, generally to the sale of all products.”*

[***Judgment of 1 February 2017***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=187343&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9777324)***, Município de Palmela, C-144/16, EU:C:2017:76, paragraph 30***

A regulation requiring the display, in a leisure area, of information on the maximum capacity of that area does not constitute a ‘technical specification’ because it does not lay down the characteristics of a product.

*“30. […] such a provision does not fall within the category of technical specifications within the meaning of Article 1(3) of Directive 98/34, in so far as it is undisputed that the provisions that lay down the requirements and general objectives in relation to safety and protection, without necessarily referring to the product concerned or its packaging as such and thus without laying down the characteristics of that product, do not constitute technical specifications (see, to that effect, judgment of 9 June 2011, Intercommunale Intermosane and Fédération de l’industrie et du gaz, C‑361/10, EU:C:2011:382, paragraphs 17 and 18).”*

[***Judgment of 26 September 2018***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=206117&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9777324)***, Van Gennip and Others, C-137/17, EU:C:2018:771, paragraph 38***

National provisions that make the marketing of products conditional upon the purchaser holding an authorisation do not fall within the concept of a ‘technical specification’, as they do not define the characteristics of the product itself or of its packaging.

*“**38. As regards, firstly, the concept of ‘technical specification’, it should be recalled that that concept presupposes that the national measure necessarily refers to the product or its packaging as such and therefore lays down one of the characteristics required of a product, such as the dimensions, the sales description, labelling or marking (judgment of 10 July 2014, Ivansson and Others, C‑307/13, EU:C:2014:2058, paragraph 19 and the case-law cited). However, as the Advocate General observed in point 74 of his Opinion, the Belgian legislation does not refer to pyrotechnic articles or their packaging as such, so that that legislation does not lay down one of the required characteristics of these products. Accordingly, that legislation does not constitute a ‘technical specification’, within the meaning of Article 1, point 3, of Directive 98/34.”*

[***Judgment of 28 May 2020***](https://curia.europa.eu/juris/document/document.jsf?text=C-727%252F17&docid=226861&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=9761408#ctx1)***, ECO-WIND Construction, C-727/17, EU:C:2020:393, paragraphs 36 and 37***

A regulation imposing a minimum distance for the installation of wind turbines does not constitute a ‘technical specification’, as it does not lay down the characteristics of the product.

“36. […], as regards the possible classification of the same requirement as a technical regulation on the basis that it falls within the category of ‘technical specifications’, it should be noted that a technical specification presupposes that the national measure prescribing it refers to the product or its packaging as such and that it therefore lays down one of the characteristics required of that product (judgments of 21 April 2005, Lindberg, C‑267/03, EU:C:2005:246, paragraph 57, and of 19 July 2012, Fortuna and Others, C‑213/11, C‑214/11 and C‑217/11, EU:C:2012:495, paragraph 28).

37. In the present case, the legislation at issue in the main proceedings merely regulates the installation of wind turbines by laying down a mandatory minimum distance requirement that must be complied with for their installation. Consequently, that legislation does not refer to a product as such, in this case the wind generator, and, therefore, does not lay down one of the characteristics required of that product within the meaning of Article 1(1)(f) of Directive 2015/1535, read in the light of Article 1(1)(c) of that directive.”

[***Judgment of 22 October 2020***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=232725&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7847310)***, Sportingbet and Internet Opportunity Entertainment, C-275/19, EU:C:2020:856, paragraphs 42 and 43***

National legislation that reserves the operation of games of chance to the State and requires licences to be granted only to public companies is not a ‘technical specification’, as it does not define the characteristics required of a product.

*“42. Under Article 1(1) of Directive 83/189 a ‘technical specification’, within the meaning of that directive, is the 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 terminology, symbols, testing and test methods, packaging, marking or labelling (see, to that effect, judgment of 8 March 2001, van der Burg, C‑278/99, EU:C:2001:143, paragraph 20).*

*43. Since Articles 3 and 9 of Decree-Law No 422/89 lay down concession rules for operating games of chance or gambling and the conditions and zones for exercising that activity, it does not appear that those provisions relate to the characteristics required for a product, within the meaning of Article 1(1) of Directive 83/189, so that they cannot be classified as ‘technical regulations’ within the meaning of Article 1(5) of that directive.”*

## Other Requirements

*“‘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;”*

(Article 1(1)(d) of Directive (EU) 2015/1535)

[***Judgment of 21 April 2005***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=58142&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8886921)***, Lindberg, C-267/03, EU:C:2005:246, paragraphs 68 to 78***

A national ban on certain games of chance may be classified as an ‘other requirement’ if it is such as to influence the composition, nature or marketing of the product. However, if the prohibition leaves no room for the use of the product, it will be described as a prohibition provision (see Part I., Subpart e. ‘Prohibition Provisions’ of this document).

*“68. […] it must be held that a national measure such as the prohibition at issue in the main proceedings seems to be specifically covered by the term ‘other requirements’ inserted by Directive 94/10 in Directive 83/189 in order to widen its scope and that it therefore does not fall within the category of technical specifications.*

*69. Such a measure is a requirement imposed in connection with a product, namely gaming machines, essentially for the purpose of the protection of consumers, in this case the players concerned.*

*70. Accordingly, a prohibition such as that laid down by the relevant provisions of the amended Law on Lotteries relates to the use of a product within the meaning of Article 1(9) of Directive 83/189.*

*71. Moreover, the requirement at issue in the main proceedings is not imposed on gaming machines for the purposes of placing them on the market but concerns their life cycle after they have been placed on the market within the meaning of the definition of ‘other requirements’ set out in Article 1(3) of Directive 83/189.*

*72. In order to fall within ‘other requirements’ within the meaning of Article 1(3) of Directive 83/189, a requirement such as the prohibition on the use of the gaming machines at issue in the main proceedings must constitute a ‘condition’, in this case, of use, which can significantly influence the composition or nature of the product or its marketing.*

*73. However, the question then arises whether that prohibition must be deemed a ‘condition’ of the use of the product concerned or whether it is, rather, a national measure falling within the third category of technical regulations referred to in Article 1(9) of Directive 83/189, which was also inserted in it by Directive 94/10, namely that of ‘laws … of Member States … prohibiting the manufacture, importation, marketing or use of a product’.*

*74. Whether a national measure such as that at issue in the main proceedings falls within one or the other of those two categories of technical regulation depends on the scope of the prohibition laid down by that measure.*

*75. In that connection, it is significant that, unlike the second category consisting of other requirements within the meaning of Article 1(3), that third category of technical regulation defined in Article 1(9) of Directive 83/189 does not include the condition that the prohibition in question must be such as to significantly influence the composition or nature of the product or its marketing.*

*76. To fall within that third category of technical regulation concerning a prohibition inter alia on use the measures must have a scope which goes well beyond a limitation to certain possible uses of the product in question and must thus not be confined to a mere restriction of its use.*

*77. As the Advocate General pointed out in point 70 of his Opinion, that category of technical regulation is particularly intended to cover national measures which leave no room for any use which can reasonably be made of the product concerned other than a purely marginal one. It is for the national court to ascertain whether the prohibition entailed by the national provision at issue in the main proceedings is such a measure.*

*78. If it should prove, following such examination by the referring court, that such is not the case in the main proceedings, that national provision would be liable to be deemed an ‘other requirement’ since it is common ground that compliance with that requirement is mandatory de jure for the use of the product in the Member State concerned within the meaning of Article 1(9) of Directive 83/189. However, in that event, it is also for the referring court to verify that the prohibition at issue may significantly influence the composition or nature of the product or its marketing within the meaning of Article 1(3).”*

[***Judgment of 9 June 2011***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=85136&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=15388659)***, Intercommunale Intermosane and Fédération de l’industrie et du gaz, C-361/10, EU:C:2011:382, paragraphs 20 and 21***

National provisions which lay down minimum requirements for the construction of electrical installations and the safety of workers cannot be classified as ‘other requirements’, since their general nature does not make it possible to significantly influence the composition, nature or marketing of the products concerned.

*“20. According to the case-law, in order to be classified as ‘other requirements’ within the meaning of Article 1(4) of Directive 98/34, the minimum requirements laid down by the provisions at issue must constitute ‘conditions’ which can significantly influence the composition or nature of the product concerned or its marketing (see, to that effect, Lindberg, paragraph 72).*

*21. Taking account of the general nature of the said requirements, they cannot amount to such conditions or, consequently, be classified as ‘other requirements’, within the meaning of Article 1(4) of the directive.”*

[***Judgment of 19 July 2012***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=125226&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9889670)***, Fortuna and Others, C-213/11, C-214/11 and C-217/11, EU:C:2012:495, paragraphs 35, 36 and 40***

National provisions restricting the operation of gaming machines outside casinos may be classified ‘other requirements’ and hence as ‘technical rules’ if they significantly influence the nature or marketing of the products concerned.

*“35. […] the Court has held that, in order to be classified as ‘other requirements’ within the meaning of Article 1(4) of Directive 98/34, the national measures in question must constitute ‘conditions’ which can significantly influence the composition, the nature or the marketing of the product concerned (see, to this effect, Lindberg, paragraph 72, and Intercommunale Intermosane and Fédération de l’industrie et du gaz, paragraph 20).*

*36. In that regard, it is to be observed that the transitional provisions in the Law on games of chance impose conditions liable to affect the marketing of low-prize gaming machines. The prohibition on issuing, extending or amending authorisations for activity relating to gaming on low-prize machines outside casinos is such as to directly affect trade in low-prize gaming machines.”*

*“40. […] the answer to the questions referred is that Article 1(11) of Directive 98/34 must be interpreted as meaning that national provisions, such as those of the Law on games of chance, which could have the effect of limiting, or even gradually rendering impossible, the running of gaming on low-prize machines anywhere other than in casinos and gaming arcades are capable of constituting ‘technical regulations’, within the meaning of that provision, the drafts of which must be the subject of communication as provided for in the first subparagraph of Article 8(1) of the directive, in so far as it is established that those provisions constitute conditions which can significantly influence the nature or the marketing of the product concerned, which is a matter for the referring court to determine.”*

[***Judgment of 10 July 2014***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=154825&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9889670)***, Ivansson and Others***, ***C-307/13, EU:C:2014:2058, paragraphs 26 to 28***

A rule establishing a general objective of comfort of poultry and quality of rearing facilities is not an “other requirement” as its general nature is unlikely to affect the composition, nature or marketing of the final product.

*“26. […] the Court has already held that, in order to be classified as ‘other requirements’ within the meaning of Article 1(4) of Directive 98/34, the national measures at issue must constitute ‘conditions’ which can significantly influence the composition or nature of the product concerned or its marketing (see judgment in Fortuna and Others, EU:C:2012:495, paragraph 35 and the case-law cited).*

*27. The Court has also held that, where the provisions of a national measure are general in nature, they cannot amount to such conditions or, consequently, be classified as ‘other requirements’, within the meaning of Article 1(4) of the directive (see, to that effect, judgment in Intercommunale Intermosane and Fédération de l’Industrie et du gaz, EU:C:2011:382, paragraph 21).*

*28. The very general formulation of Paragraph 9 of the DSF, as stated in paragraphs 22 and 23 of the present judgment, thus precludes that provision from being regarded as placing conditions on the composition or nature of the products concerned or their marketing.”*

[***Judgment of 11 June 2015***](https://curia.europa.eu/juris/document/document.jsf?text=C-98%252F14&docid=164955&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=9889670#ctx1)***, Berlington Hungary and Others, C-98/14, EU:C:2015:386, paragraphs 98 and 99***

National provisions prohibiting the operation of slot machines outside casinos constitute ‘other requirements’ since they may significantly influence the nature or marketing of such machines.

*“98. […] the Court has already held that a national measure which restricts the organisation of certain games of chance to casinos only constitutes a ‘technical regulation’, within the meaning of Article 1(11) of the directive, in so far as it can significantly influence the nature or the marketing of the products used in that context (see, to that effect, judgments in Commission v Greece, C‑65/05, EU:C:2006:673, paragraph 61, and Fortuna and Others, Joined Cases C‑213/11, C‑214/11 and C‑217/11, EU:C:2012:495, paragraphs 24 and 40).*

*99. However, a prohibition on operating slot machines outside casinos, such as the one introduced by the amending Law of 2012, can significantly influence the nature or the marketing of those machines, which constitute goods that may be covered by Article 34 TFEU (see judgment in Läärä and Others, C‑124/97, EU:C:1999:435, paragraphs 20 and 24), by reducing the outlets in which they can be used.”*

[***Judgment of 13 October 2016***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=184507&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9889670)***, Naczelnik Urzędu Celnego I w Ł., C-303/15, EU:C:2016:771, paragraphs 25 to 30***

A provision making the exercise of gambling activities subject to the possession of a casino operating licence does not constitute an ‘other requirement’. Indeed, while provisions that limit the organisation of games of chance to casinos may significantly affect the marketing of related products by reducing their distribution channels, rules governing the conditions for the establishment of undertakings are not likely to have a significant effect on the nature or marketing of the products used.

*“25. Last, in order to determine whether Article 6(1) of the Law on Games of Chance falls within the scope of either Article 1(4) of Directive 98/34 or Article 1(11) of that directive, it must be ascertained whether such a provision can significantly influence the composition, nature or marketing of the product concerned, in this case gaming machines, as a ‘condition’ relating to the use of the product concerned, or whether it is a national measure belonging to the category of prohibitions referred to in Article 1(11) of that directive.*

*26. In that regard, it must be borne in mind that it is Article 14(1) of the Law on Games of Chance that restricts the organisation of roulette games, card games, dice games and gaming on machines to gaming casinos. That provision was notified to the Commission as a ‘technical regulation’, in view of the fact that the Court has previously held, first, that a national measure which reserves the organisation of certain games of chance to casinos alone constitutes a ‘technical regulation’, within the meaning of Article 1(11) of Directive 98/34, in so far as it can significantly influence the nature or the marketing of the products used in that context and, second, that a prohibition on operating certain products outside casinos can significantly influence the marketing of those products, by reducing the outlets in which they can be used (see, to that effect, judgment of 11 June 2015, Berlington Hungary and Others, C‑98/14, EU:C:2015:386, paragraphs 98 and 99).*

*27. On the other hand, Article 6(1) of that law, which provides that a licence to operate a gaming casino is required for the organisation of roulette games, card games, dice games and gaming on machines, was not notified.*

*28.The argument of the Commission, that the close link between the two provisions of national law concerned means that it is impossible to isolate Article 14(1) of the Law on Games of Chance from Article 6(1) of that law, cannot be accepted. As stated by the Advocate General in points 38 to 44 of his Opinion, Article 6(1) of that law and Article 14(1) of that law differ in their function and scope. The description in Article 6(1) of that law, which specifies the authorisation at issue as an authorisation ‘to operate a gaming casino’, does not alter that conclusion.*

*29. Accordingly, it must be held that Article 6(1) of the Law on Games of Chance cannot be regarded as falling within the category of ‘other requirements’, within the meaning of Article 1(4) of Directive 98/34, since the authorisation required by that provision of national law for the organisation of games of chance constitutes a condition imposed with respect to the activity of organising such games, as distinct from Article 14(1) of that law, which imposes conditions with respect to the products concerned by prohibiting their use other than in casinos.*

*30. Further, in accordance with settled case-law, provisions of national law which merely lay down conditions governing the establishment or provision of services by undertakings, such as provisions making the exercise of a business activity subject to prior authorisation, do not constitute technical regulations within the meaning of Article 1(11) of Directive 98/34 (see, to that effect, judgment of 4 February 2016, Ince, C‑336/14, EU:C:2016:72, paragraph 76 and the case-law cited).”*

[***Judgment of 27 October 2016***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=184891&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9777324)***, James Elliott Construction, C-613/14, EU:C:2016:821, paragraphs 67 to 69***

National provisions laying down implicit contractual conditions concerning the marketable quality, fitness for use, or quality of products sold do not constitute ‘other requirements’, as their general nature makes them unlikely to significantly influence the composition, nature, or marketing of the products concerned.

*“67. In the present case, it is apparent, first, that provisions such as those at issue in the main proceedings, either in themselves, or as interpreted by the Irish courts, do not fall within the concept of ‘technical specification’ within the meaning of Article 1(3) of Directive 98/34. That concept covers only national measures which refer to a product or its packaging as such and thus lay down one of the characteristics required of a product (judgment of 10 July 2014, Ivansson and Others, C‑307/13, EU:C:2014:2058, paragraph 19 and the case-law cited). That is clearly not the case for a requirement which applies, unless the parties have agreed otherwise, generally to the sale of all products.*

*68. Secondly and for the same reason, those provisions cannot be classified as ‘other requirements’ within the meaning of Article 1(4) of Directive 98/34.*

*69. In that regard, the Court has explained that, in order to be classified as ‘other requirements’ within the meaning of that provision, the national measures at issue must constitute conditions which can significantly influence the composition or nature of the product concerned or its marketing, since requirements of a general nature cannot amount to such conditions or, consequently, be classified as ‘other requirements’ (see judgment of 10 July 2014, Ivansson and Others, C‑307/13, EU:C:2014:2058, paragraph 26 and 27 and the case-law cited).”*

[***Judgment of 1 February 2017***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=187343&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9777324)***, Município de Palmela, C-144/16, EU:C:2017:76, paragraphs 23 and 33***

A provision laying down packaging requirements imposed on a product on the grounds of consumer protection is an “other requirement” because it relates to the life cycle of products after being placed on the market and significantly influences their composition and marketing.

On the other hand, a regulation requiring information on the maximum capacity of a leisure area to be displayed in several places in that area is not an ‘other requirement’ because of its general nature.

 *“**23. As regards Article 16(1) and (2) of the PRA regulation, as amended by Decree-Law No 119/2009, it must be observed, as the referring court noted, that it constitutes a technical regulation within the meaning of Directives 83/189 and 98/34, in so far as that provision lays down requirements imposed on a product, for the purpose of protecting consumers, which affect its life cycle after it has been placed on the market and significantly influence the composition and marketing of such a product. Accordingly, that provision falls within the category of ‘other requirements’ within the meaning of both Article 1(3) of Directive 83/189 and Article 1(4) of Directive 98/34.”*

*“**33. […] a provision such as that at issue in the main proceedings does not amount to an ‘other requirement’ within the meaning of Article 1(4) of Directive 98/34, taking account of the general nature of the requirements which it sets out (see, to that effect, judgment of 9 June 2011, Intercommunale Intermosane and Fédération de l’industrie et du gaz, C‑361/10, EU:C:2011:382, paragraph 21). On the other hand, it does not contain any prohibitions which could bring it within the category of the prohibitions set out in Article 1(11) of that directive.”*

***[Judgment of 26 September 2018](https://curia.europa.eu/juris/document/document.jsf?text=&docid=206117&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9777324), Van Gennip and Others, C-137/17, EU:C:2018:771, paragraphs 39 and 40***

National provisions making the marketing of products subject to the condition that the purchaser is in possession of an authorisation do not fall within the concept of ‘other requirements’ because it is a condition imposed not on the products but on purchasers.

*“39. […] as regards the category of ‘other requirements’, it is appropriate to note that, in order to be classified as ‘other requirements’, within the meaning of Article 1, point 4, of Directive 98/34, a national measure must constitute a ‘condition’ which can significantly influence the composition, nature or marketing of the product concerned (judgment of 13 October 2016, M. and S., C‑303/15, EU:C:2016:771, paragraph 20 and the case-law cited).*

*40. In that regard, it must be noted, as did the Advocate General in point 76 of his Opinion, that the Belgian legislation makes the sale of pyrotechnic articles of which the pyrotechnic composition exceeds 1 kg subject to the buyer acquiring an authorisation. Thus, the required authorisation does not constitute a requirement in respect of the product concerned, but for potential buyers and, indirectly, for economic operators selling pyrotechnic articles (see, to that effect, judgments of 21 April 2005, Lindberg, C‑267/03, EU:C:2005:246, paragraph 87, and of 13 October 2016, M. and S., C‑303/15, EU:C:2016:771, paragraph 29).”*

[***Judgment of 28 May 2020***](https://curia.europa.eu/juris/document/document.jsf?text=C-727%252F17&docid=226861&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=9761408#ctx1)***, ECO-WIND Construction, C-727/17, EU:C:2020:393, paragraphs 40 and 41***

A regulation imposing a minimum distance for the installation of wind turbines does not fall under the category of ‘other requirements’ because its impact on the marketing of the products concerned is not sufficiently direct.

“40. […] it is apparent from settled case-law that that category includes legislation which lays down a condition capable of significantly influencing the composition, nature or marketing of a product (judgments of 21 April 2005, Lindberg, C‑267/03, EU:C:2005:246, paragraphs 69 to 72, and of 19 July 2012, Fortuna and Others, C‑213/11, C‑214/11 and C‑217/11, EU:C:2012:495, paragraph 35), those ‘other requirements’ covering the requirements arising from consideration of the life cycle of the product in question after it has been placed on the market and relating, in particular, to its use.

41. In the present case, as was found in paragraph 37 of the present judgment, it should be noted that the requirement that the installation of a wind turbine is subject to the condition of a minimum distance between it and buildings with a residential function has no direct connection with the composition, nature or marketing of a product such as a wind generator. In that regard, even if that requirement were to lead to a restriction of the locations suitable for the installation of wind turbines, and therefore that it had an effect on the marketing of wind generators, that effect would not be sufficiently direct for that requirement to fall within the category of ‘other requirements’ set out in Article 1(1)(f) of Directive 2015/1535.”

[***Judgment of 4 November 2022***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=267738&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=14061944)***, Phytofar, C‑658/21, EU:C:2022:925, paragraphs 36 to 42***

Legislation prohibiting persons who do not hold an authorisation for professionals from using pesticides containing glyphosate is likely to constitute an ‘other requirement’, since it could significantly influence the marketing of glyphosate. The significance of that influence is assessed in the light of the volume of purchases of the products concerned and the changes in sales habits.

*“36. In the present case, it is apparent, first of all, from the preamble to the Decision of 14 July 2017 that the prohibition laid down by it is imposed in order to protect human health and the environment.*

*37. Next, that prohibition concerns the life cycle of pesticides containing glyphosate after they have been placed on the market, by laying down a condition relating to the use of those products, in that, on land in private use, only professionals who have a phytosanitary licence are authorised to use them.*

*38. Lastly, it must be observed that such a prohibition is liable to influence the marketing of the products concerned.*

*39. That measure results in the disappearance of a category of potential purchasers of pesticides containing glyphosate, namely individuals who wish to use such pesticides themselves, without making use of the services of professionals who have the required phytosanitary licence. Such a restriction on the possibility of using pesticides containing glyphosate thus affects their marketing (see, by analogy, judgment of 13 October 2016, M. and S., C‑303/15, EU:C:2016:771, paragraph 26 and the case-law cited).*

*40. However, as the Commission states in its written observations, in order for the measure introduced by the Decision of 14 July 2017 to be classified as a ‘technical regulation’, falling within the category of ‘other requirements’ within the meaning of Article 1(1)(d) and (f) of Directive 2015/1535, the marketing of pesticides containing glyphosate must be ‘significantly’ influenced by that measure.*

*41. It is for the referring court to determine whether that is the case here.*

*42. In making that assessment, the referring court may take into account, inter alia, the overall volume of sales of pesticides containing glyphosate in the territory of the Flemish Region and the change in the purchasing habits of each category of purchaser, on the basis of the frequency of their purchases and the quantity of product purchased, as well as the change in the places of purchase and distribution channels. In that context, that court may take into consideration the extent to which, on the one hand, demand from professional users replaces that of individuals who make use of the services of professional users and, on the other hand, individual users now obtain glyphosate-free pesticides instead of those containing that substance.”*

[***Judgment of 9 March 2023***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=271072&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=14061944)***, Vapo Atlantic, C-604/21, EU:C:2023:175, paragraphs 40 and 41***

National legislation requiring operators who release motor fuels for consumption to contribute to meeting targets for the incorporation of biofuels into motor fuels and the breach of which may lead to financial sanctions can significantly influence the marketing of fuels. It therefore constitutes an ‘other requirement’.

“40. In the present case, the referring court’s questions concern a national law which requires economic operators that release motor fuels for consumption, with the exception of LPG and natural gas, to contribute to compliance with the targets for the incorporation of biofuels in the annual quantities of motor fuel which they release for consumption, namely a target of 10% for 2020. Even though that law does not specify the type of motor fuel in question nor does it fix a percentage of biofuel to be physically incorporated into motor fuels, nor specify the type of biofuel to be incorporated, the requirement it lays down, adopted for environmental protection purposes, is aimed at the life cycle of motor fuels after they have been placed on the market and could significantly influence the marketing of those products, in that failure to comply with the obligation to incorporate biofuels laid down by that law may result in an obligation to pay financial compensation being imposed.

41. It follows that a national law which sets a target for the incorporation of 10% of biofuels into motor fuels released for consumption by an economic operator in respect of 2020 is covered by the concept of ‘other requirements’ within the meaning of Article 1(4) of Directive 98/34 and thus constitutes a ‘technical regulation’ within the meaning of Article 1(11) of that directive.”

## Rules on Services

“‘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:

1. 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;
2. 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;”

(Article 1(1)(e) of Directive (EU) 2015/1535)

*“‘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;”*

(Article1(1)(b) of Directive (EU) 2015/1535)

“Indicative list of services not covered by the second subparagraph of Article 1(1)(b)

1. *Services not provided ‘at a distance’*

*Services provided in the physical presence of the provider and the recipient, even if they involve the use of electronic devices:*

*(a) medical examinations or treatment at a doctor's surgery using electronic equipment where the patient is physically present;*

*(b) consultation of an electronic catalogue in a shop with the customer on site;*

*(c) plane ticket reservation at a travel agency in the physical presence of the customer by means of a network of computers;*

*(d) electronic games made available in a video arcade where the customer is physically present.*

1. *Services not provided ‘by electronic means’*

*— services having material content even though provided via electronic devices:*

*(a) automatic cash or ticket dispensing machines (banknotes, rail tickets);*

*(b) access to road networks, car parks, etc., charging for use, even if there are electronic devices at the entrance/exit controlling access and/or ensuring correct payment is made,*

*— offline services: distribution of CD-ROMs or software on diskettes,*

*— services which are not provided via electronic processing/inventory systems:*

*(a) voice telephony services;*

*(b) telefax/telex services;*

*(c) services provided via voice telephony or fax;*

*(d) telephone/telefax consultation of a doctor;*

*(e) telephone/telefax consultation of a lawyer;*

*(f) telephone/telefax direct marketing.*

*3. Services not supplied ‘at the individual request of a recipient of services’*

*Services provided by transmitting data without individual demand for simultaneous reception by an unlimited number of individual receivers (point to multipoint transmission):*

*(a) television broadcasting services (including near-video on-demand services), covered by point (e) of Article 1(1) of Directive 2010/13/EU;*

*(b) radio broadcasting services;*

*(c) (televised) teletext.”*

(Annex I to Directive (EU) 2015/1535)

[***Judgment of 2 June 2005***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=60336&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1728241)***, Mediakabel BV, C-89/04, EU:C:2005:348, paragraphs 38 and 39***

A television broadcasting service made available at the subscriber's request, but for which the frequency and timing of movies are determined by the provider, does not constitute an “information society service”, as the content is selected and scheduled by the provider and therefore not supplied at the individual request of the recipient.

“38. Although such a service fulfils the first two criteria for constituting an ‘information society service’ within the meaning of Article 1(2) of Directive 98/34, that is, it is provided at a distance and transmitted in part by electronic equipment, it does not meet the third criterion of the concept, according to which the service in question must be provided ‘at the individual request of a recipient of services’. The list of films offered as part of a service such as Filmtime is determined by the service provider. That selection of films is offered to all subscribers on the same terms, either through written media or through information transmitted on the television screen, and those films are accessible at the broadcast times determined by the provider. The individual key allowing access to the films is only a means of unencoding images the signals of which are sent simultaneously to all subscribers.

39. Such a service is thus not commanded individually by an isolated recipient who has free choice of programmes in an interactive setting. It must be considered to be a near-video on-demand service, provided on a ‘point to multipoint’ basis and not ‘at the individual request of a recipient of services’.”

[Judgment of 2 February 2016](https://curia.europa.eu/juris/document/document.jsf?text=&docid=174105&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10904675), Ince, C-336/14, EU:C:2016:72, paragraphs 75 and 76

National provisions restricting the offering of online games of chance or prohibiting the online advertising of such games may be considered “rules on services”, as they concern an “information society service.” By contrast, provisions requiring prior authorisation for operators organising games of chance or prohibiting such authorisation from being granted to private operators, relate to the conditions for the establishment of undertakings and therefore do not constitute “rules on services.”

“75. […], some of the provisions of the Treaty on gaming may be categorised as ‘rules on services’, in so far as they concern an ‘Information Society service’ within the meaning of Article 1.2 of Directive 98/34. Those provisions include the prohibition of offering games of chance on the internet laid down in Paragraph 4(4) of the Treaty on gaming, the exceptions to that prohibition listed in Paragraph 25(6) of that treaty, the restrictions placed on offering sporting bets via telemedia services under Paragraph 21(2) of that treaty, and the prohibition of broadcasting advertisements for games of chance on the internet or via telecommunications equipment pursuant to Paragraph 5(3) of that treaty.

76. With regard, by contrast, to the provisions of the Treaty on gaming other than those relating to an ‘Information Society service’, within the meaning of Article 1.2 of Directive 98/34, such as the provisions introducing the obligation to obtain an authorisation to organise or collect sporting bets and the impossibility of issuing such an authorisation to private operators, these do not constitute ‘technical regulations’ within the meaning of Article 1.11 of that directive. National provisions which merely lay down conditions governing the establishment or provision of services by undertakings, such as provisions making the exercise of an activity subject to prior authorisation, do not constitute technical regulations within the meaning of that provision (see, to that effect, judgment in Lindberg, C‑267/03, EU:C:2005:246, paragraph 87).”

[Judgment of the Court of 13 October 2016](https://curia.europa.eu/juris/document/document.jsf?text=&docid=184507&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9889670), Naczelnik Urzędu Celnego I w., C‑303/15, EU:C:2016:771, paragraph 24

A provision making the exercise of gambling activities subject to the holding of a casino operating licence does not constitute a ‘rule on services’, as it does not concern an ‘information society service’.

“24. […] that provision cannot be placed in the category of ‘rules on [information society] services’, within the meaning of Article 1(5) of Directive 98/34, since it does not relate to an ‘Information society service’, within the meaning of Article 1(2) of that directive.”

[Judgment of 20 December 2017](https://curia.europa.eu/juris/document/document.jsf?text=&docid=198051&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10880021), Falbert and Others, C‑255/16, EU:C:2017:983, paragraphs 27 to 29, 32 and 33

National provisions on gaming or advertising services may constitute ‘rules on services’ if they directly concern services provided at a distance, by electronic means, and at the individual request of the recipient. Even if the wording of such provisions does not differentiate between online and offline services, their objective with respect to ‘information society services’ may be inferred from their recitals or the *travaux préparatoires*.

“27. It should be borne in mind that, under Article 1(2) of that directive, the concept of a ‘technical regulation’ covers solely regulations relating to information society services, that is, any service provided at a distance by electronic means and at the individual request of a recipient of services (see judgments of 13 October 2016, M. and S., C‑303/15, EU:C:2016:771, paragraph 21, and 1 February 2017, Município de Palmela, C‑144/16, EU:C:2017:76, paragraph 28).

28. It should be noted in that regard that, in principle, Paragraph 10(3)(3) of the Law on gaming concerns two types of services being, on the one hand, advertising services, which are immediately sanctioned under that provision and, on the other, gaming services covered by the prohibition on advertising and which are the principal subject-matter of the Law on gaming, read as a whole.

29. Both advertising services and gaming services, in so far as they are provided, inter alia, by electronic means (online), constitute ‘Information Society services’ within the meaning of Article 1(2) of Directive 98/34 and the rules relating thereto which may accordingly be held to be ‘rules on services’ within the meaning of Article 1(5) of Directive 98/34.”

“32. It should be noted in that regard, firstly, that under the first indent of Article 1(5) of Directive 98/34, the question whether a rule is aimed specifically at information society services must be determined in the light of both the stated reasons and the wording of the rule. Under that same provision, moreover, it is not required that ‘the specific aim and object’ of all of the rule in question be to regulate information society services, as it is sufficient that the rule pursue that aim or object in certain of its provisions.

33. Consequently, if it is not apparent solely from the wording of a national rule that it is aimed, at least in part, at regulating specifically information society services – such as in the present case, where the wording does not draw any distinction between services provided offline and services provided online – that object may nevertheless be gleaned quite readily from the stated reasons given for the rule – again as in the present case under the relevant national rules of interpretation, which allow for inter alia the travaux préparatoires for the rule to provide guidance.”

[Judgment of 20 December 2017](https://curia.europa.eu/juris/document/document.jsf?text=&docid=198047&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10880021), Asociación Profesional Elite Taxi, C‑434/15, EU:C:2017:981, paragraphs 37 and 39 to 41

An intermediation service that connects, via a smartphone application and for remuneration, non-professional drivers using their own vehicles with persons seeking urban transport must be regarded as intrinsically linked to a transport service and, therefore, classified as a ‘service in the field of transport’ (not as an ‘information society service’).

“37. It is appropriate to observe, however, that a service such as that in the main proceedings is more than an intermediation service consisting of connecting, by means of a smartphone application, a non-professional driver using his or her own vehicle with a person who wishes to make an urban journey.”

“39. In that regard, it follows from the information before the Court that the intermediation service provided by Uber is based on the selection of non-professional drivers using their own vehicle, to whom the company provides an application without which (i) those drivers would not be led to provide transport services and (ii) persons who wish to make an urban journey would not use the services provided by those drivers. In addition, Uber exercises decisive influence over the conditions under which that service is provided by those drivers. On the latter point, it appears, inter alia, that Uber determines at least the maximum fare by means of the eponymous application, that the company receives that amount from the client before paying part of it to the non-professional driver of the vehicle, and that it exercises a certain control over the quality of the vehicles, the drivers and their conduct, which can, in some circumstances, result in their exclusion.

40. That intermediation service must thus be regarded as forming an integral part of an overall service whose main component is a transport service and, accordingly, must be classified not as ‘an information society service’ within the meaning of Article 1(2) of Directive 98/34, to which Article 2(a) of Directive 2000/31 refers, but as ‘a service in the field of transport’ within the meaning of Article 2(2)(d) of Directive 2006/123.

41. That classification is indeed confirmed by the case-law of the Court, according to which the concept of ‘services in the field of transport’ includes not only transport services in themselves but also any service inherently linked to any physical act of moving persons or goods from one place to another by means of transport (see, to that effect, judgment of 15 October 2015, Grupo Itevelesa and Others, C‑168/14, EU:C:2015:685, paragraphs 45 and 46, and Opinion 2/15 (Free Trade Agreement with Singapore) of 16 May 2017, EU:C:2017:376, paragraph 61).”

[Judgment of 10 April 2018](https://curia.europa.eu/juris/document/document.jsf?text=&docid=200882&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10880021), Uber France, C‑320/16, EU:C:2018:221, paragraphs 21 and 22

A provision of national law that imposes criminal penalties for organising a system to connect customers with drivers, without the necessary authorisation, concerns a ‘service in the field of transport’ (and not an ‘information society service’) insofar the intermediation service to which it applies forms an integral part of an overall service whose main component is the transport service.

“21. […] the Court found that the intermediation service provided by the company concerned was inherently linked to the offer by that company of non-public urban transport services, in view of the fact that, in the first place, that company provided an application without which those drivers would not have been led to provide transport services, and the persons who wished to make an urban journey would not have used the services provided by those drivers and, in the second place, that company exercised decisive influence over the conditions under which services were provided by those drivers, inter alia by determining the maximum fare, by collecting that fare from the customer before paying part of it to the non-professional driver of the vehicle, and by exercising a certain control over the quality of the vehicles, the drivers and their conduct, which could, in some circumstances, result in their exclusion (see, to that effect, judgment of 20 December 2017, Asociación Profesional Elite Taxi, C‑434/15, EU:C:2017:981, paragraphs 38 and 39).

22. The Court found, on the basis of those factors, that the intermediation service at issue in that case had to be regarded as forming an integral part of an overall service the main component of which was a transport service and, accordingly, had to be classified, not as an ‘information society service’ within the meaning of Article 1(2) of Directive 98/34, but as a ‘service in the field of transport’ within the meaning of Article 2(2)(d) of Directive 2006/123 (see, to that effect, judgment of 20 December 2017, Asociación Profesional Elite Taxi, C‑434/15, EU:C:2017:981, paragraph 40).”

[Judgment of 26 September 2018](https://curia.europa.eu/juris/document/document.jsf?text=&docid=206117&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9777324), Van Gennip and Others, C-137/17, EU:C:2018:771, paragraphs 42 and 43

National provisions making the marketing of products conditional on the purchaser holding an authorisation do not fall within the concept of a ‘rule on services’, as they do not concern ‘information society services’.

“42. Concerning, thirdly, the category ‘rule on services’, it must be recalled that, under Article 1, point 5, of Directive 98/34, such a rule constitutes any requirement of a general nature relating to the taking-up and pursuit of services referred to in Article 1, point 2, of that directive, which designate ‘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’ (judgment of 4 February 2016, Ince, C‑336/14, EU:C:2016:72, paragraph 74).

43. In the present case, it must be held, as the Advocate General stated in point 73 of his Opinion, that the legislation at issue in the main proceedings does not involve Information Society services, within the meaning of Article 1, point 2, of Directive 98/34. Accordingly, that legislation cannot fall within the category ‘rule on services’ of the Information Society, within the meaning of Article 1, point 5, of that directive.”

[Judgment of 12 September 2019](https://curia.europa.eu/juris/document/document.jsf?text=&docid=217670&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10880021), VG Media, C-299/17, EU:C:2019:716, paragraphs 32, 33 and 36

A national provision prohibiting commercial operators of search engines and providers of commercial content services from making newspapers available to the public constitutes a ‘technical regulation’ and must be notified to the Commission.

A rule is considered to be specifically aimed at ‘information society services’ if certain provisions pursue that objective, even if it is not the rule’s exclusive aim. That objective may be inferred from the stated reasons given for the rule, which can appear in the travaux préparatoires, even if they are not explicitly apparent from the wording of the rule itself.

“32. In that regard it should be noted that under the first indent of Article 1(5) of that directive, a rule shall be considered as specifically aimed at information society services having regard to both its statement of reasons and its operative part. Under that same provision, moreover, it is not required that ‘the specific aim and object’ of all of the rule in question be to regulate information society services, as it is sufficient that the rule pursue that aim or object in some of its provisions (judgment of 20 December 2017, Falbert and Others, C‑255/16, EU:C:2017:983, paragraph 32).

33. In addition, even where it is not apparent solely from the wording of a national rule that it is aimed, at least in part, at regulating information society services specifically, that object may nevertheless be gleaned quite readily from the stated reasons given for the rule, as they appear, in accordance with the relevant national rules of interpretation in that regard, inter alia from the travaux préparatoires for the rule (see, to that effect, judgment of 20 December 2017, Falbert and Others, C‑255/16, EU:C:2017:983, paragraph 33).”

“36. Although the referring court does not provide any clear indications as to the specific aim and object of the national legislation at issue in the main proceedings, it is, however, apparent from the observations submitted by the German Government at the hearing before the Court that, initially, the amendment of the UrhG specifically concerned internet search engine providers. Moreover, the parties to the main proceedings and the Commission state, in their written observations, that the purpose of that legislation was to protect the legitimate interests of publishers of newspapers and magazines in the digital world. It appears, therefore, that the main aim and object of the national provision at issue in the main proceedings was to protect those publishers from copyright infringements by online search engines. In that context, protection appears to have been considered necessary only for systematic infringements of works of online publishers by information society service providers.”

[Judgment of 19 December 2019](https://curia.europa.eu/juris/document/document.jsf?text=&docid=221791&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10861227), Airbnb Ireland, C‑390/18, EU:C:2019:1112, paragraphs 64 to 68 and 99

An intermediation service connecting customers with hosts offering short-term accommodation via an electronic platform, while providing ancillary services, constitutes an ‘information society service’ because the ancillary services do not confer a significant influence over the provision of the accommodation services.

For a service to be classified as an ‘information society service’, it must cumulatively meet four conditions: it must be provided for remuneration, at a distance, by electronic means, and at the individual request of the recipient.

“64. Even taken together, the services, optional or otherwise, provided by Airbnb Ireland and referred to in paragraphs 59 to 63 above, do not call into question the separate nature of the intermediation service provided by that company and therefore its classification as an ‘information society service’, since they do not substantially modify the specific characteristics of that service. In that regard, it is also paradoxical that such added-value ancillary services provided by an electronic platform to its customers, in particular to distinguish itself from its competitors, may, in the absence of additional elements, result in the nature and therefore the legal classification of that platform’s activity being modified, as was observed by the Advocate General in point 46 of his Opinion.

65. Furthermore, and contrary to what AHTOP and the French Government maintain, the rules for the functioning of an intermediation service such as the one provided by Airbnb cannot be equated to those of the intermediation service which gave rise to the judgments of 20 December 2017, Asociación Profesional Elite Taxi (C‑434/15, EU:C:2017:981, paragraph 39), and of 10 April 2018, Uber France (C‑320/16, EU:C:2018:221, paragraph 21).

66. Apart from the fact that those judgments were given in the specific context of urban passenger transport to which Article 58(1) TFEU applies and that the services provided by Airbnb Ireland are not comparable to those that were at issue in the cases giving rise to the judgments referred to in the previous paragraph, the ancillary services referred to in paragraphs 59 to 63 above do not provide evidence for the same level of control found by the Court in those judgments.

67. Thus, the Court stated in those judgments that Uber exercised decisive influence over the conditions under which transport services were provided by the non-professional drivers using the application made available to them by that company (judgments of 20 December 2017, Asociación Profesional Elite Taxi, C‑434/15, EU:C:2017:981, paragraph 39, and of 10 April 2018, Uber France, C‑320/16, EU:C:2018:221, paragraph 21).

68. The matters mentioned by the referring court and recalled in paragraph 19 above do not establish that Airbnb Ireland exercises such a decisive influence over the conditions for the provision of the accommodation services to which its intermediation service relates, particularly since Airbnb Ireland does not determine, directly or indirectly, the rental price charged, as was established in paragraphs 56 and 62 above, still less does it select the hosts or the accommodation put up for rent on its platform.”

“99. Bearing in mind that the French Republic did not give notification of the Hoguet Law and given the cumulative nature of the conditions laid down in Article 3(4) of Directive 2000/31, recalled in paragraphs 84 and 85 above, the view must be taken that that law cannot, on any view, be applied to an individual in a situation like that of Airbnb Ireland in the main proceedings, regardless of whether that law satisfies the other conditions laid down in that provision.”

[Judgment of 22 October 2020](https://curia.europa.eu/juris/document/document.jsf?text=&docid=232725&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7847310), Sportingbet and Internet Opportunity Entertainment, C‑275/19, EU:C:2020:856, paragraphs 47 to 49

Legislation conferring on a public entity the exclusive right to operate certain games of chance, including on the internet, falls within the definition of ‘rules on services’ in so far as they concern an information society service.

“47. According to Article 1(5) of that directive, ‘rules on services’ consist of every requirement of a general nature relating to the taking-up and pursuit of the service activities referred to in Article 1(2) of that directive, which include ‘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’.

48. In that regard, the Court has already held that provisions relating to the prohibition of offering games of chance on the internet, the exceptions to that prohibition, the restrictions placed on offering sporting bets on the internet and the prohibition of broadcasting advertisements for games of chance on the internet may be classified as ‘rules on services’ for the purposes of Article 1(5) of Directive 98/34, in so far as they concern an ‘Information Society service’ for the purposes of Article 1(2) of that directive (see, by analogy, judgment of 4 February 2016, Ince, C‑336/14, EU:C:2016:72, paragraph 75).

49. In the present case, the rules laid down in Articles 2 and 3 of Decree-Law 282/2003 specifically refer to Information Society services. In addition, as a result of the award to Santa Casa of the exclusive right to operate games of chance on the internet, those provisions prohibit all economic operators from providing those services, with the exception of Santa Casa.”

[Judgment of 3 December 2020](https://curia.europa.eu/juris/document/document.jsf?text=&docid=234921&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412), Star Taxi App, C‑62/19, EU:C:2020:980, paragraphs 52 to 54 and 64 to 66

An intermediation service that merely connects customers with already authorised taxi drivers - without organising the transport service itself, selecting drivers, setting fares, or exercising control over vehicles or drivers - falls within the category of ‘information society services’.

Moreover, legislation that does not specifically target such services but applies indiscriminately to all forms of dispatching, including by telephone or via an application, cannot be classified as a ‘rule on services’.

“52. First, it is apparent from the order for reference that, unlike the intermediation service at issue in the case which gave rise to the judgment of 20 December 2017, Asociación Profesional Elite Taxi (C‑434/15, EU:C:2017:981), which offered and rendered accessible urban transport services operated by non-professional drivers previously absent from the market, the service at issue in the main proceedings is confined, as the Advocate General observed in point 49 of his Opinion, to putting persons wishing to make urban journeys in touch solely with authorised taxi drivers already engaged in that activity and for whom the intermediation service is merely one of a number of methods of acquiring customers, and not one, moreover, which they are in any way obliged to use.

53. Secondly, such an intermediation service cannot be regarded as organising the general operation of the urban transport service subsequently provided, since the service provider does not select the taxi drivers, or determine or receive the fare for the journey, or exercise control over the quality of the vehicles and their drivers or the drivers’ conduct.

54. It follows that an intermediation service such as that provided by Star Taxi App cannot be regarded as an integral part of an overall service whose main component is a transport service and is, accordingly, to be classified as an ‘information society service’ within the meaning of Article 2(a) of Directive 2000/31.”

“64. In the present case, it is apparent from the order for reference that the Romanian legislation at issue in the main proceedings, whether Law No 38/2003 or Decision No 178/2008, does not make any reference to information society services. Furthermore, Article 3, Article 21(1) and (31) and Article 41(21) of Annex I to Decision No 178/2008 relate indiscriminately to all types of dispatching services, whether supplied by telephone or any other means, such as a software application.

65. Furthermore, as the Advocate General pointed out in point 108 of his Opinion, Law No 38/2003 requires providers of dispatching services operating by means of a smartphone application, just like all other providers of dispatching services, to possess equipment, in this case two-way radios, which, given the technology used to provide the service, serves no useful purpose.

66. Accordingly, since it is not specifically aimed at information society services, regulations such as those at issue in the main proceedings affect such services only in an implicit or incidental manner. Such a rule cannot, therefore, be regarded as a ‘rule on services’ within the meaning of Article 1(1)(e) of Directive 2015/1535, or, consequently, as a ‘technical regulation’ within the meaning of Article 1(1)(f) of that directive.”

[***Judgment of 29 February 2024***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=283281&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=14054161)***, Doctipharma SAS, C-606/21, EU:C:2024:179, paragraphs 26 to 30 and 34 to 36***

Remuneration for a service supplied by a service provider in the course of an economic activity does not necessarily have to be paid by the persons who are the beneficiaries. This applies to a service provided on a website, consisting of connecting pharmacists and customers for the sale of medicinal products, where the service is remunerated by the pharmacists who subscribed to its platform on the basis of a fixed fee.

Such a service is not a part of an overall service whose main element is subject to another legal classification than of ‘information society service’.

“26. […] Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535 define the concept of ‘information society service’ as meaning ‘any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services’.

27. In the present case, with regard to the first condition set out in those provisions, it should be borne in mind that, according to settled case-law, remuneration for a service supplied by a service provider in the course of an economic activity does not necessarily have to be paid by the persons who are the beneficiaries (see, to that effect, judgments of 15 September 2016, Mc Fadden, C‑484/14, EU:C:2016:689, paragraph 41, and of 4 May 2017, Vanderborght, C‑339/15, EU:C:2017:335, paragraph 36).

28. Thus, for the purposes of classifying a service such as that at issue in the main proceedings as falling within the concept of an ‘information society service’ within the meaning of Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535, it is irrelevant whether that service is provided free of charge to the person purchasing the non-prescription medicinal product, if it gives rise to the conclusion between the provider of that service and each pharmacist using that service of a contract for the provision of services involving payment.

29. Similarly, it is irrelevant in that regard that, as Doctipharma indicated, it was, under the general terms and conditions of sale, remunerated by the pharmacists who subscribed to its platform on the basis of a fixed fee or, as the French Government indicated, the fact that the service provided by Doctipharma was subject to a monthly subscription paid to Doctipharma by client pharmacists and a retrocession of a percentage of the amount of sales, deducted by the platform.

30. It follows that, subject to the verifications to be carried out by the referring court, the service at issue in the main proceedings must, in any event, be regarded as having been provided for remuneration.”

“34. That conclusion is not called into question by the case-law established by the Court in the judgments of 20 December 2017, Asociación Profesional Elite Taxi (C‑434/15, EU:C:2017:981), of 19 December 2019, Airbnb Ireland (C‑390/18, EU:C:2019:1112), and of 3 December 2020, Star Taxi App (C‑62/19, EU:C:2020:980).

35. It follows from that case-law that a service whose purpose is to connect customers with providers of another service of a different nature and which fulfils all the conditions laid down in Article 1(2) of Directive 98/34 and Article 1(1)(b) of Directive 2015/1535 must be classified as an ‘information society service’ where such a service is distinct from the service of a different nature supplied by those service providers. However, the situation must be different if it is apparent that that service which connects sellers with customers forms an integral part of an overall service, the main element of which is subject to a legal classification other than that of ‘information society service’ (judgment of 3 December 2020, Star Taxi App, C‑62/19, EU:C:2020:980, paragraph 49 and the case-law cited).

36. As the Advocate General pointed out in paragraphs 28 and 29 of his Opinion, a service for connecting pharmacists and customers for the purpose of selling non-prescription medicinal products from the websites of pharmacies which have subscribed to that service is not capable of forming an integral part of an overall service, the main element of which does not qualify as an ‘information society service’.”

[***Judgment of 13 March 2025***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=296555&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=14002600)***, Unigames UAB, C‑120/24, EU:C:2025:174, paragraphs 38 to 42***

The prohibition on advertising games of chance on gaming sites does not concern an advertising service independent of the gambling service, but rather a service inseparable from the online gambling service. Consequently, in order to determine whether it constitutes a ‘rule on services’, it is necessary to first consider the classification of online gaming services as ‘information society services’.

“38. The considerations set out in paragraphs 36 and 37 of the present judgment [according to which online gambling services are to be considered as “information society services”] are not called into question by the fact that the information on gambling published by the gambling operator on its website is not necessarily provided ‘at the individual request of a recipient of services’. That publication of information cannot, in circumstances such as those at issue in the main proceedings, be regarded as an advertising service or other service provided to recipients of the remote gambling services, but constitutes an activity that is ancillary to and inseparable from the remote gambling services concerned from which it derives all of its economic meaning (see, by analogy, judgment of 1 October 2020, A (Advertising and sale of medicinal products online), C‑649/18, EU:C:2020:764, paragraph 56). Therefore, it is only the gambling services themselves which must meet the relevant conditions in order to fall within the concept of ‘service’, within the meaning of Article 1(1)(b) of Directive 2015/1535, and the prohibition at issue in the main proceedings, which relates to such a publication of information, must, for its part, satisfy the specific criteria laid down in Article 1(1)(e) of that directive in order to be regarded as a ‘rule on’ those services, within the meaning of the latter provision.

39. In the latter regard, while it is common ground that the prohibition at issue in the main proceedings constitutes ‘a requirement of a general nature’ within the meaning of Article 1(1)(e) of Directive 2015/1535, it must still be examined, first, whether it may be regarded as ‘relating to the taking-up and pursuit of service activities’, that provision stating that that is the case, in particular, with regard to provisions concerning the service provider, the services and the recipient of services.

40. In that regard, it must be stated that Article 10(19) of the Law on gambling is capable of falling within the concept of a ‘rule on services’, in that it lays down a prohibition on encouraging, inter alia, participation in remote gambling and, in particular, on publishing information relating to gambling on the website of a gambling operator or performing acts encouraging participation in gambling (see, to that effect, judgment of 22 October 2020, Sportingbet and Internet Opportunity Entertainment, C‑275/19, EU:C:2020:856, paragraph 48 and the case-law cited).

41. Second, as is apparent from the very wording of Article 1(1)(e) of Directive 2015/1535, in order to be classified as a ‘rule on services’, the prohibition at issue in the main proceedings must be ‘specifically’ aimed at Information Society services (see, to that effect, judgment of 12 September 2019, VG Media, C‑299/17, EU:C:2019:716, paragraph 31).

42. In that regard, it follows from point (i) of the second subparagraph of Article 1(1)(e) of Directive 2015/1535 that the verification that a rule is specifically aimed at Information Society services must be carried out in the light of both the wording of that rule and the aim it pursues. Furthermore, under that provision, it is not required that ‘the specific aim and object’ of all of the rule in question be to regulate Information Society services, but it is sufficient that it pursue that aim or object by means of some of its provisions (see, to that effect, judgment of 12 September 2019, VG Media, C‑299/17, EU:C:2019:716, paragraph 32 and the case-law cited). Last, in accordance with point (ii) of the second subparagraph of Article 1(1)(e) of that directive, 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.”

## Prohibition Provisions

“‘technical regulation’ means […] 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.”

(first sentence of Article 1(1)(f) of Directive (EU) 2015/1535)

[Judgment of 16 September 1996](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=43725&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412), Commission v Italy, C-279/94, EU:C:1997:396, paragraph 30

The ban on the placing on the market and use of asbestos is a notifiable ‘technical regulation’ to be notified because it prohibits the marketing and use of a product.

“30. As far as Article 1(2) of Law No 257/92 is concerned, that provision prohibits the extraction, importation, exportation, marketing and production of asbestos, asbestos products and products containing asbestos after a period of one year after the date of entry into force of the Law. Such a provision, in prohibiting the marketing and use of asbestos, constitutes a technical regulation which the Italian Government ought to have notified in accordance with the first subparagraph of Article 8(1) of the Directive.”

[Judgment of 21 April 2005](https://curia.europa.eu/juris/document/document.jsf?text=&docid=58142&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8886921), Lindberg, C-267/03, EU:C:2005:246, paragraphs 75 to 77

A national prohibition concerning certain games of chance may be classified as a prohibition provision if it leaves no room for any use which can reasonably be made of the product concerned other than a purely marginal one. On the other hand, classification as a prohibition does not depend on the effect of the prohibition on the composition, nature or marketing of the products concerned.

“75. In that connection, it is significant that, unlike the second category consisting of other requirements within the meaning of Article 1(3), that third category of technical regulation defined in Article 1(9) of Directive 83/189 does not include the condition that the prohibition in question must be such as to significantly influence the composition or nature of the product or its marketing.

76. To fall within that third category of technical regulation concerning a prohibition inter alia on use the measures must have a scope which goes well beyond a limitation to certain possible uses of the product in question and must thus not be confined to a mere restriction of its use.

77. As the Advocate General pointed out in point 70 of his Opinion, that category of technical regulation is particularly intended to cover national measures which leave no room for any use which can reasonably be made of the product concerned other than a purely marginal one. It is for the national court to ascertain whether the prohibition entailed by the national provision at issue in the main proceedings is such a measure.”

[Judgment of 8 September 2005](https://curia.europa.eu/juris/document/document.jsf?docid=59571&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=8886921), Lidl Italia, C-303/04, EU:C:2005:528, paragraphs 12 and 13

A national prohibition on the marketing of products which are not manufactured from certain materials constitutes a provision prohibiting the manufacture and marketing of products.

“12. […] under Article 1(11) of Directive 98/34, a national provision of a Member State prohibiting the manufacture, importation, marketing or use of a product must be regarded as a category of technical regulation (see Case C-267/03 Lindberg [2005] ECR I-0000, paragraph 54).

13. In the present case, it is sufficient to state that Article 19(2) of Law No 93/2001 is a provision of that kind. Under that provision, the manufacture and marketing of cotton buds which do not exhibit the features mentioned, namely those which are not manufactured entirely from biodegradable materials in accordance with UNI 10785 standards, constitute infringements attracting administrative penalties.”

[Judgment of 26 October 2006](https://curia.europa.eu/juris/document/document.jsf?text=&docid=63941&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8886921), Commission v Greece, C-65/05, EU:C:2006:673, paragraph 61

Measures prohibiting the installation, outside casinos, of all electrical or electronic game devices and the use of computer games in undertakings providing internet services as well as making the operation of such undertakings subject to the issue of a special licence must be regarded as technical regulations.

“61. […] measures such as those provided for in Articles 2(1) and 3 of Law No 3037/2002, in so far as they prohibit the installation in Greece of all electrical, electromechanical and electronic games, including all computer games, on all public and private premises apart from casinos, and the use of games on computers in undertakings providing internet services, and make the operation of such undertakings subject to the issue of a special authorisation, must be considered to be technical regulations within the meaning of Article 1(11) of Directive 98/34 (see, to that effect, Case C‑267/03 Lindberg [2005] ECR I‑3247).”

[Judgment of 19 July 2012](https://curia.europa.eu/juris/document/document.jsf?text=&docid=125226&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9889670), Fortuna and Others, C-213/11, C-214/11 and C-217/11, EU:C:2012:495, paragraphs 24 and 25

A measure prohibiting the use of gaming machines outside casinos must be classified as a ‘technical regulation’.

“24. […] the Court has already held that measures which prohibit the use of all electrical, electromechanical and electronic games on all public and private premises apart from casinos must be considered to be technical regulations within the meaning of Article 1(11) of Directive 98/34 (Case C‑65/05 Commission v Greece [2006] ECR I‑10341, paragraph 61).

25. Accordingly, a measure, such as Article 14(1) of the Law on games of chance, which permits only gaming casinos to organise gaming on machines must be classified as a ‘technical regulation’ within the meaning of Article 1(11) of Directive 98/34.”

[Judgment of 27 October 2016](https://curia.europa.eu/juris/document/document.jsf?text=&docid=184891&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9777324), James Elliott Construction, C-613/14, EU:C:2016:821, paragraph 70

National provisions laying down implied contractual conditions concerning the merchantable quality, fitness for use, or general quality of products sold do not constitute prohibition provisions.

“70. […] the legislation at issue in the main proceedings does not fall within the scope of the technical regulations referred to in Article 1(11) of Directive 98/34, in so far as, by merely stating implied contractual requirements, it does not contain any prohibition, within the meaning of that directive, of the manufacture, importation, marketing or use of a product, the provision or use of a service, or establishment as a service provider.”

[Judgment of 28 May 2020](https://curia.europa.eu/juris/document/document.jsf?text=C-727%252F17&docid=226861&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=9761408#ctx1), ECO-WIND Construction, C-727/17, EU:C:2020:393, paragraphs 45 to 47

Legislation imposing a minimum distance for the installation of wind turbines does not constitute a prohibition on the manufacture, import, marketing or use of a product, unless it entails a de facto prohibition on the marketing of wind turbines, leaving no room for any use of wind turbines other than a purely marginal one.

“45. That category presupposes that the measure at issue has a scope that goes clearly beyond a limitation to certain uses of the product at issue and that it is not confined to a mere restriction on its use (judgments of 21 April 2005, Lindberg, C‑267/03, EU:C:2005:246, paragraph 76, and of 19 July 2012, Fortuna and Others, C‑213/11, C‑214/11 and C‑217/11, EU:C:2012:495, paragraph 31).

46. That category is particularly intended to cover national measures which leave no room for any use that could reasonably be made of the product concerned other than a purely marginal one (judgments of 21 April 2005, Lindberg, C‑267/03, EU:C:2005:246, paragraph 77, and of 19 July 2012, Fortuna and Others, C‑213/11, C‑214/11 and C‑217/11, EU:C:2012:495, paragraph 32).

47. In the present case, although the requirement that the installation of a wind turbine is subject to compliance with the condition of a minimum distance between that wind turbine and buildings with a residential function, imposed by the national legislation at issue in the main proceedings, admittedly includes a prohibition on installing a wind turbine at a minimum distance less than ten times the total height of the planned installation from any building having a residential function, it should be noted that that legislation does not, however, prohibit economic operators from continuing to install wind turbines and, therefore, using and marketing wind generators.”

## De Facto Technical Regulations

*“De facto technical regulations shall include:*

1. *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;*
2. *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;*
3. *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.”*

(second and third sentence of Article 1(1)(f) of Directive (EU) 2015/1535)

[Judgment of 20 March 1997](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=100864&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412), Bic Benelux, C-13/96, EU:C:1997:173, paragraphs 23 to 25

A marking requirement intended to inform the consumer of the environmental footprint of certain products and linked to a tax but constitutes a technical specification. It cannot be regarded as exclusively ‘linked to a fiscal measure’ and therefore does not fall within the definition of ‘de facto technical regulations’.

“23. […] first, the marking requirement in issue in the main proceedings constitutes, according to the definition given in Article 1 (5) of Directive 83/189, a de jure technical regulation in that its 'observance ... is compulsory ... in the case of marketing' of the product concerned and in that it is, according to the definition given in Article 1(1), a technical specification, since the enactment defines 'the characteristics required of a product such as ... the requirements applicable to the product as regards ... marking or labelling'.

24. Second, the marking in issue is intended to inform the public of, inter alia, the effects of the products on the environment, and the Belgian Government has confirmed the importance to be attached to that aspect of the rules governing marking. The aim of the environmental tax, which is to protect the environment, is thus reinforced by the marking, which, like other environmental labelling, whether linked to an environmental tax or not, reminds consumers of the harmful effects of the products in question on the environment.

25. Since the marking requirement in issue can in no way be regarded as exclusively a fiscal accompanying measure, it does not therefore constitute a requirement linked to a fiscal measure for the purposes of the third indent of the second subparagraph of Article 1(9) of Directive 83/189, as amended by Directive 94/10.”

[***Judgment of 10 July 2014,***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=154825&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9889670) ***Ivansson and Others***, ***C-307/13, EU:C:2014:2058, paragraphs 30 et 31***

A reference to detailed administrative rules containing ‘technical specifications’ or ‘other requirements’ may confer on a draft law the status of a ‘de facto technical regulation’.

“30. […] it must be held that although that paragraph [of the national law] does not itself constitute a technical regulation, in its second subparagraph it refers to additional provisions concerning the rearing of hens which would be communicated at a later date by the Board of Agriculture.

31. Such a reference to more detailed administrative rules is likely, provided that those rules can be regarded as themselves constituting ‘technical specifications’ or ‘other requirements’, to confer the status of ‘de facto technical regulation’ on Paragraph 9 of the DSF in accordance with the first indent of Article 1(11) of Directive 98/34.”

[Judgment of 11 June 2015](https://curia.europa.eu/juris/document/document.jsf?text=C-98%252F14&docid=164955&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=9889670#ctx1), Berlington Hungary and Others, C-98/14, EU:C:2015:386, paragraphs 95 to 97

National provisions which multiply by five the tax payable on slot machines operated in amusement arcades and also introduce a proportional tax on that activity do not constitute ‘de facto technical regulations’, since they are fiscal provisions and not ‘technical specifications linked to a fiscal rule’ within the meaning of the Directive.

“95. Under the third indent of Article 1(11) of that directive, the ‘de facto technical regulations’ within the meaning of that provision consist of ‘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’.

96. It follows from that wording that the concept of ‘de facto technical regulations’ means, not the tax measures themselves, but the technical specifications or other requirements linked to it.

97. Accordingly, tax legislation such as that at issue in the main proceedings, which is not accompanied by any technical specification or any other requirement with which it is purportedly intended to ensure compliance, cannot be described as a ‘de facto technical regulation’.”

[Judgment of 8 October 2020](https://curia.europa.eu/juris/document/document.jsf?text=&docid=232154&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10904675), Admiral Sportwetten and Others, EU:C:2020:812, paragraphs 38 and 41

Tax legislation, which is not accompanied by any ‘technical specification’ or any other requirement with which it is intended to ensure compliance, cannot be classified as a ‘de facto technical regulation’. National tax legislation which provides for taxation of the operation of sports betting machines does not therefore constitute a ‘technical regulation’.

“38. […] regarding de facto technical regulations within the meaning of Article 1(1)(f)(iii) of Directive 2015/1535, the Court has previously held that tax legislation, which is not accompanied by any technical specification or any other requirement with which it is purportedly intended to ensure compliance, cannot be described as a ‘de facto technical regulation’ (see, to that effect, judgment of 11 June 2015, Berlington Hungary and Others, C‑98/14, EU:C:2015:386, paragraph 97).”

“41. Consequently, having regard to all the foregoing considerations, the answer to the first question is that Article 1 of Directive 2015/1535 must be interpreted as meaning that a national tax rule that provides for taxation of the operation of betting terminals does not constitute a ‘technical regulation’ within the meaning of that article.”

[***Judgment of 22 December 2022***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=268786&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=14061944)***, Airbnb Ireland and Airbnb Payments UK, C‑83/21, EU:C:2022:1018, paragraphs 29 and 30***

Legislation of a fiscal nature cannot, as such, be classified as a ‘de facto technical regulation’.

“29. As regards, in the third place, Directive 2015/1535, it should be noted that that directive refers to ‘the [FEU] Treaty, and in particular Articles 114, 337 and 43 thereof’. Thus, it should be noted at the outset that the exclusion laid down in Article 114(2) TFEU concerning ‘fiscal provisions’ also applies in relation to that directive, for the reasons set out in paragraph 25 of the present judgment.

30. Furthermore, the content of Directive 2015/1535 indirectly confirms the exclusion of ‘fiscal provisions’ from its scope, since the wording of Article 1(1)(f)(iii) of that directive refers, among de facto technical regulations, to technical specifications or other requirements or rules on services which are ‘linked to fiscal or financial measures’. They are not therefore actual tax measures, but only measures linked to tax measures (see, to that effect, judgment of 8 October 2020, Admiral Sportwetten and Others, C‑711/19, EU:C:2020:812, paragraph 38); the latter therefore remain, as such, outside the scope of that directive.”

## Excluded Matters

“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 (1).

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 (2).

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 (3) 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 1(2) to (6) of Directive (EU) 2015/1535)

“‘television broadcasting’ or ‘television broadcast’ (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;”

(Article 1(1)(e) of Directive 2010/13/EU)

*Indicative list of the financial services covered by Article 1(4)*

*— Investment services,*

*— insurance and reinsurance operations,*

*— banking services,*

*— operations relating to pension funds,*

*— services relating to dealings in futures or options.*

*Such services include in particular:*

*(a) investment services referred to in the Annex to Directive 2004/39/EC; services of collective investment undertakings;*

*(b) services covered by the activities subject to mutual recognition referred to in Annex I to Directive 2013/36/EU of the European Parliament and of the Council (1);*

*(c) operations covered by the insurance and reinsurance activities referred to in Directive 2009/138/EC of the European Parliament and of the Council (2).*

(Annex II to Directive (EU) 2015/1535)

“‘regulated market’ means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of this Directive;”

(Article 4(21) of Directive (EU) 2014/65,

recasting Directive 2004/39/EC)

[***Judgment of 2 June 2005***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=60336&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1728241)***, Mediakabel BV, C-89/04, EU:C:2005:348, paragraphs 22 and 23***

A television broadcasting service available on demand by the subscriber, consisting of films whose frequency and timing are determined by the provider, constitutes a ‘near-video-on-demand’ service falling under the concept of “television broadcasting services”. That concept is autonomously defined by Directive 2010/13/EU (formerly Directive 89/552/EEC), independently of the concept of ‘information society service’.

“22. […] the scope of the concept of ‘television broadcasting’ can certainly not be inferred by exclusion from that of the concept of ‘information society service’. Directive 98/34, both in Article 1(2) and in Annex V, refers to services which are not covered by the concept of ‘information society service’ and which do not as such constitute television broadcasting services. This is the case, inter alia, of radio broadcasting services. Likewise, television broadcasting services cannot be limited to services ‘provided by transmitting data without individual demand for simultaneous reception by an unlimited number of individual receivers’, referred to in point 3 of Annex V to Directive 98/34. If that interpretation was followed, services such as television available by subscription, transmitted to a limited number of recipients, would be excluded from the concept of ‘television broadcasting service’, whereas they do come within that concept, by virtue of the criteria laid down in Article 1(a) of Directive 89/552.

23. Lastly, it was not the intention of the Community legislature, when Directives 98/34 and 98/48 were adopted, to amend Directive 89/552, which itself had been amended less than a year earlier by Directive 97/36. Thus recital 20 to Directive 98/48, which amended Directive 98/34, states that Directive 98/48 ‘is without prejudice to the scope of … Directive 89/552’.”

[Judgment of 12 September 2019](https://curia.europa.eu/juris/document/document.jsf?text=&docid=217670&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10880021), VG Media, C-299/17, EU:C:2019:716, paragraph 38

‘Technical rules’ in the field of intellectual property are not excluded from the scope of the Directive, unlike those relating to telecommunications or financial services.

“ 38. […] the fact that Paragraph 87g(4) of the UrhG forms part of national legislation on copyright or rights related to copyright is not such as to call that assessment into question. Technical rules on intellectual property are not expressly excluded from the scope of Article 1(5) of Directive 98/34, unlike those forming the subject matter of European legislation in the field of telecommunications services or financial services. In addition, it is apparent from the judgment of 8 November 2007, Schwibbert (C‑20/05, EU:C:2007:652) that provisions of national intellectual property legislation may constitute a ‘technical regulation’ subject to notification pursuant to Article 8(1) of that directive.”

# Notification Obligation

## Notification at the Draft Stage

“Subject to Article 7, Member States shall immediately communicate to the Commission 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 Commission have a statement of the grounds which make the enactment of such a technical regulation necessary, where those grounds have not already been made clear in the draft.”

(first sentence of Article 5(1) of Directive (EU) 2015/1535)

[Judgment of 2 August 1993](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=98488&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=12994086), Commission v Italy, C-139/92, EU:C:1993:346, paragraphs 8 and 9

By failing to notify, at the draft stage, a ministerial decree concerning the definition and verification of maximum power, as well as the construction and installation of engines for pleasure craft, Italy failed to fulfil its obligations to notify draft technical regulations.

“8. The Italian Government does not deny that it failed to communicate the ministerial decree in question to the Commission at the draft stage.

9. Since it is established that Articles 8 and 9 of the directive have been infringed, a declaration must be given in the terms sought by the Commission that there has been a failure to fulfil obligations.”

[Judgment of 14 July 1994](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=98918&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=12994086), Commission v Netherlands, C-61/93, EU:C:1994:302, paragraphs 6 and 10

By adopting decrees concerning the resistance requirements for soft drinks bottles and the composition, classification, packaging and labelling of pesticides, without notifying them to the Commission at the draft stage, the Netherlands failed to fulfil its obligations to notify draft technical regulations.

“6. In a letter of 17 November 1989, the Netherlands authorities acknowledged that the decree of 16 January 1989 contained technical standards covered by Directive 83/189 and that they had failed to notify the Commission of the draft amendment. They pointed out, however, that the decree had been sent to the Commission, annexed to a letter of 22 May 1989 giving that institution information on the privatization of the weights and measures authorities.”

“10. It is not disputed that in accordance with Article 8 of the directive the draft decrees of 16 January 1989, 24 August 1988 and 21 October 1988 ought to have been notified forthwith to the Commission at the drafting stage and that such notification was not given.”

[Judgment of 14 July 1994](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=98889&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=12994086), Commission v Netherlands, C-52/93, EU:C:1994:301, paragraphs 6 and 10

By amending the regulation on quality standards for flower bulbs without notifying it to the Commission at the draft stage, the Netherlands failed to fulfil its obligations to notify draft technical regulations.

“6. By letter of 4 November 1991, the Netherlands authorities acknowledged that the regulation in question was a technical regulation for the purposes of Directive 83/189 and that they had failed to notify the Commission of the draft amendment.”

“10. It is not disputed that in accordance with Article 8 of the directive draft amendment XIII to the PVS regulation ought to have been notified forthwith to the Commission and that such notification was not given.”

[Judgment of 8 September 2005](https://curia.europa.eu/juris/document/document.jsf?text=&docid=59577&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=12994086), Commission v Portugal, C-500/03, EU:C:2005:515, paragraphs 39 to 41

The Directive requires Member States to notify the Commission immediately of any draft technical regulation. By adopting a technical regulation without notifying it to the Commission, Portugal failed to fulfil its obligations to notify draft technical regulations.

(As the judgement is solely available in French and Portuguese, the following text is a translation.)

“39. Since the present action for failure to fulfil obligations is limited to an application for a declaration of failure to comply with the formal prior notification procedure, it is sufficient to point out, without its being necessary to reply to the other arguments of the parties, that the Court has already held that Article 8(1) of Directive 98/34 requires the Member States to communicate immediately to the Commission any draft technical regulation (see, in particular, to that effect, as regards provisions similar to those of that directive, judgments of 2 August 1993 in Case 139/92 Commission v Italy [4707] ECR‑I 3, paragraph‑31, and of 11 January 1996 in Case 273/94 Commission v Netherlands [15] ECR‑I-, paragraph).

40. Since the relevant provisions of Decree No 783/98 constitute technical regulations within the meaning of Directive 98/34, as stated in paragraph 31 of this judgment, the Portuguese Republic was required to notify them in draft form pursuant to Article 8(1) of Directive 98/34 (see, inter alia, to that effect, as regards provisions similar to those of Directive 98/34, judgments of 7 May 1998 in Case 145/97 Commission v Belgium [2643]‑ECR‑I-13, paragraph 43, and of 21 April 2005 in Case 267/03 Lindberg ‑ECR I-, paragraph).

41. Consequently, it must be held that, by adopting Order No 783/98 without notifying it to the Commission at the draft stage, the Portuguese Republic has failed to fulfil its obligations under Article 8 of Directive 98/34.”

[Judgment of 26 October 2006](https://curia.europa.eu/juris/document/document.jsf?text=&docid=185545&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=13138882), Commission v Greece, C-65/05, EU:C:2006:673, paragraphs 60 to 62

The Directive requires Member States to notify the Commission immediately of any draft technical regulation. By failing to give such notification before adoption of a technical regulation, Greece failed to fulfil its obligations under this Directive.

“60. […] there is nothing in Regulation No 1367/2006 to support the view that the concept of ‘emissions into the environment’ within the meaning of the first sentence of Article 6(1) of that regulation must be limited to emissions emanating from certain industrial installations, such as factories and power stations.

61. Nor may that restriction be inferred from the Aarhus Convention, which must be taken into account in interpreting Regulation No 1367/2006, since, as Article 1 thereof provides, the objective of that regulation is to contribute to the implementation of the obligations arising under that convention, by laying down rules to apply the provisions of that convention to EU institutions and bodies.

62. On the contrary, as the Court noted in paragraph 72 of the judgment delivered today, Bayer CropScience and Stichting De Bijenstichting (C‑442/14), such a restriction would be contrary to the express wording of point (d) of the first subparagraph of Article 4(4) of the Aarhus Convention. That provision states that information on emissions which is relevant for the protection of the environment must be disclosed. Information concerning emissions emanating from sources other than industrial installations, such as those resulting from the use of plant protection products on plants or soil, are just as relevant to environmental protection as information relating to emissions of industrial origin.”

## Notifications of New Technical Regulations

[Judgment of 1 June 1994](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=98765&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412), Commission v Germany, C-317/92, EU:C:1994:212, paragraphs 25 and 26

The extension of an existing ‘technical regulation’ to new products is covered by the notification obligation, even though the initial technical regulation whose scope is being extended has already been notified to the Commission.

“25. That argument cannot be upheld. The German regulation in question constitutes a new technical specification within the meaning of Article 1, cited above, since non reusable sterile medical instruments may henceforth be marketed or used in Germany only if certain obligations are fulfilled the application of which was formerly confined to the labelling of medicinal products. The application, to given products, of a rule which previously only affected other products, constitutes, with regard to the former, a new regulation and must therefore be notified in accordance with the directive.

26. That finding is not called in question by the fact that, as contended by the German Government, the extension of the scope of the rule is based on an enabling provision which was previously communicated to the Commission. That enabling measure, taken as such, does not require to be notified on the basis of Article 8 aforesaid since it does not constitute a new specification. The situation is different as regards the implementation of that measure, which does constitute a new specification which must be notified.”

[***Judgment of 3 June 1999***](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=44625&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7836692)***, Colim NV, C-33/189, EU:C:1999:274, paragraph 22***

A national measure reproducing or replacing existing ‘technical regulations’, which have already been notified to the Commission, without adding new specifications, does not constitute a draft ‘technical regulation’.

“22. […] the aim of Directive 83/189 is to protect, by preventive monitoring, the free movement of goods, which is one of the foundations of the Community (Case C-13/96 Bic Benelux ν Belgian State [1997] ECR I-1753, paragraph 19). That monitoring is designed to eliminate or reduce barriers to the free movement of goods that might result from technical regulations which the Member States propose to adopt. A national measure which reproduces or replaces, without adding new or additional specifications, existing technical regulations which, if adopted after the entry into force of Directive 83/189, have been duly notified to the Commission, cannot be regarded as a 'draft' technical regulation within the meaning of Article 1(6) of Directive 83/189 or, consequently, as subject to the obligation to notify.”

[Judgment of 21 April 2005](https://curia.europa.eu/juris/document/document.jsf?text=&docid=58142&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8886921), Lindberg, C-267/03, EU:C:2005:246, paragraphs 82 and 85

A rule which merely reproduces or replaces rules already notified without adding new ‘technical regulations” does not need to be notified.

“82. […] it must first be observed that a national measure which reproduces or replaces, without adding new or additional specifications, existing technical regulations which, if adopted after the entry into force of Directive 83/189, have been duly notified to the Commission, cannot be regarded as a ‘draft’ technical regulation within the meaning of Article 1(9) of Directive 83/189 or, consequently, as subject to the obligation to notify (see Colim, cited above, paragraph 22). In the present case, the date of the entry into force of Directive 83/189 as regards the Kingdom of Sweden should be taken into account.”

“85. In the light of the foregoing, the answer to the third question must be that redefining in national legislation a service connected with the design of a product, in particular that of operating certain gaming machines, as the 1996 law did, can constitute a technical regulation which must be notified under Directive 83/189, if that new legislation does not merely reproduce or replace, without adding new or additional specifications, existing technical regulations which, if adopted after the entry into force of Directive 83/189 in the Member State concerned, have been duly notified to the Commission.”

[***Judgment of 13 March 2025***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=296555&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=14002600)***, Unigames UAB, C-120/24, EU:C:2025:174, paragraphs 57 and 58***

An amendment to a draft technical regulation that substantially extends its scope must be notified. An amendment that introduces sanctions for new conduct must be regarded as substantially revising a technical regulation.

“57. It is apparent from the request for a preliminary ruling that Article 10(19) of the Law on gambling ‘substantially revised’ the prohibition on encouraging participation in gambling. In particular, the referring court states that the conduct of which Unigames is accused on the basis of the law currently in force, consisting of the publication, on that company’s website, of information relating to the gambling activities offered by it, was not liable to be punished under the former Law on gambling. Therefore, according to the referring court, that Article 10(19) extended the scope of that prohibition.

58. It thus follows from the information set out in the request for a preliminary ruling that Article 10(19) of the Law on gambling added new or additional requirements, within the meaning of the case-law referred to in paragraph 52 of the present judgment, in comparison with Article 10(19) of the former Law on gambling. It follows that, subject to any verifications which it is for the referring court to carry out, the amendment that gave rise to the law currently in force should have been notified under the first subparagraph of Article 5(1) of Directive 2015/1535.”

## Notification of the Full Text

[Judgment of 16 September 1997](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=43725&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10904675), C-279/94, Commission v Italy, EU:C:1997:396, paras 38 and 42

A text containing “technical regulations” must be notified in its entirety, including measures that are not “technical regulations”, even if only “technical regulations” are subject to the standstill period.

“38. As regards the Italian Government's obligation to notify the full text of Law No 257/92, including the provisions which do not constitute technical regulations, it must be observed that, according to the last sentence of the first subparagraph of Article 8(1) of the Directive, the Member States must also communicate to the Commission 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.”

“42. However, the mere fact that all the provisions contained in Law No 257/92 are notified to the Commission does not prevent the Italian Republic from bringing into force immediately, and therefore without waiting for the results of the examination procedure provided for by the Directive, the provisions which do not constitute technical regulations.”

## Notification of Concerned Basic Provisions

“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 to the Commission, should knowledge of such text be necessary to assess the implications of the draft technical regulation.”

(second sentence of Article 5(1) of Directive (EU) 2015/1535)

[Judgment of 7 May 1998](https://curia.europa.eu/juris/document/document.jsf?text=&docid=43839&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412), Commission v Belgium, C-145/97, EU:C:1998:212, paragraphs 11 and 12

Member States must communicate not only the draft text containing the “technical regulations”, but also the text of the basic legislative or regulatory provisions principally and directly concerned. The purpose of that obligation is to enable the Commission to have as much information as possible and thus to effectively exercise the powers conferred on it by the Directive.

*“11. Secondly, as regards the precise scope of the obligation to communicate, the lastsentence of the first subparagraph of Article 8(1) of the Directive provides thatMember States are also to communicate the text of the basic legislative orregulatory provisions principally and directly concerned, should knowledge of suchtext be necessary to assess the implications of the draft technical regulation.*

*12. As the Court made clear in its judgment in Case C-279/94 Commission v Italy[1997] ECR I-4743, paragraph 40, the aim of that provision is to enable theCommission to have as much information as possible on any draft technicalregulation with respect to its content, scope and general context in order to enableit to exercise as effectively as possible the powers conferred on it by the Directive.”*

## Re-Notification During the Standstill Period

“Member States shall communicate the draft technical regulation again to the Commission under the conditions set out in the first and second subparagraphs of this paragraph 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.”

(third sentence of Article 5(1) of Directive (EU) 2015/1535)

[Judgment of 15 April 2010](https://curia.europa.eu/juris/document/document.jsf?text=&docid=81369&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10904675), Sandström, C-433/05, EU:C:2010:184, paragraphs 47 and 48

Amendments to a draft technical regulation already notified to the Commission that merely relax the conditions of use of the product in question do not constitute a significant change requiring further notification.

“47. […] in the light of the objective of Directive 98/34, referred to in paragraph 41 above, amendments made to a draft technical regulation already notified to the Commission pursuant to the first subparagraph of Article 8(1) of Directive 98/34, which contain, in relation to the notified draft, merely a relaxation of the conditions of use of the product in question and which, therefore, reduce the possible impact of the technical regulation on trade, are not a significant alteration of the draft for the purposes of the third subparagraph of Article 8(1) of that directive. Such amendments are not, therefore, subject to the obligation of prior notification.

48. Although, under Article 8(3) of Directive 98/34, Member States are to communicate the definitive text of a technical regulation to the Commission without delay, the failure to communicate a non-significant amendment to such a regulation prior to its adoption does not affect the applicability of that regulation, if there is no obligation of prior notification.”

[Judgment of 31 January 2013](https://curia.europa.eu/juris/document/document.jsf?text=&docid=133244&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10904675), Belgische Petroleum Unie and Others, C-26/11, EU:C:2013:44, paragraphs 56 and 57

The directive does not require re-notification of draft national legislation where, after having been notified, the draft has been amended to take account of the Commission’s comments and the amended draft has subsequently been communicated to the Commission.

“56. […] the Kingdom of Belgium, in these circumstances, restricted itself to amending the provisions of draft legislation in accordance with a request from the Commission to remove a barrier to trade, and so, by virtue of Article 10(1), final indent, of Directive 98/34, the obligation to notify the Commission under the first subparagraph of Article 8(1) of that directive does not apply to the draft Law on the blending obligation.

57. In those circumstances, the answer to the second question is that Article 8 of Directive 98/34, read in conjunction with Article 10(1), final indent, of that directive, must be interpreted as not requiring notification of draft national legislation which obliges petroleum companies placing petrol and/or diesel fuels on the market also to place on the market, in the same calendar year, certain percentages of biofuels, where, after having been notified pursuant to the first subparagraph of Article 8(1), the draft was amended to take account of the Commission’s observations on it, and the amended draft was then communicated to the Commission.”

[***Judgment of 10 July 2014,***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=154825&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9889670) ***Ivansson and Others***, ***C-307/13, EU:C:2014:2058, paragraphs 48 to 50***

Any significant change to the timetable for the implementation of a national measure, including a substantial shortening, must be communicated to the Commission. Failure to notify renders the measure inapplicable and unenforceable against individuals.

“48. In that regard, it must be borne in mind that the Court has held that a failure to observe the obligation to notify the Commission constitutes a procedural defect in the adoption of the technical regulations concerned, and renders those technical regulations inapplicable and therefore unenforceable against individuals (see, in particular, judgment in CIA Security International, C‑194/94, EU:C:1996:172, paragraph 54, and judgment in Schwibbert, C‑20/05, EU:C:2007:652, paragraph 44). Individuals may rely on that inapplicability before the national court which must decline to apply a national technical regulation which has not been notified in accordance with Directive 98/34 (see, in particular, judgment in Schwibbert, EU:C:2007:652, paragraph 44 and the case-law cited).

49. It follows therefrom that, if the communication to the Commission of Paragraph 9 of the DSF actually contained the date of 1 May 2003 as the date of the entry into force and the shortening of its timetable for implementation to 15 April 2003 was significant in nature, the failure to make a new communication of that national provision to the Commission would render it unenforceable against the defendants in the main proceedings.

50. The answer to the second question is, consequently, that, if the shortening of the timetable for the entry into force of a technical regulation is subject to the obligation of communication to the Commission, as laid down in the third subparagraph of Article 8(1) of Directive 98/34, the failure to make such a communication would render that national measure inapplicable, such that it could not be enforced against individuals.”

# Exceptions to the Obligation to Notify

## Transposition of a European Act

*“Articles 5 and 6 shall not apply to those laws, regulations and administrative provisions of the Member States or voluntary agreements by means of which Member States:*

*(a) comply with binding Union acts which result in the adoption of technical specifications or rules on services;”*

(Article 7(1)(a) of Directive (EU) 2015/1535)

[Judgment of 17 September 1996](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=99992&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412), Commission v Italy, C-289/94, EU:C:1996:330, paragraphs 43 to 45

In order for a national measure to be regarded as a transposition measure exempted from notification, a direct link with a binding Community act must be established.

“43. Directive 91/492 for its part contains much wider provisions on the marketing not only of bivalve molluscs but also of marine gastropods, tunicates and echinoderms. It lays down new requirements for all stages of gathering, handling, storing, transporting and distributing molluscs, and also introduces a system of registration and marking to allow the origin of each batch to be identified for health purposes.

44. Moreover, the absence of a direct link between Directive 91/492 and the two decrees in question is confirmed by the Italian Government's assertion that that directive was transposed into Italian law by means of Legislative Decree No 530 of 30 December 1992, referred to above, which, as it says itself, constitutes the only measure for the implementation of Directive 91/492 and in respect of which the Commission sent a detailed opinion on 27 January 1993 criticizing that decree in that it applied to another toxin (NSP) not referred to in Directive 91/492.

45. Since they do not constitute measures transposing Directive 91/492 such as to justify application of Article 10 of Directive 83/189, Decree No 257 of 1 August 1990 and the Decree of 1 September 1990 had to be notified to the Commission pursuant to Article 8 of the latter directive.”

[Judgment of 26 September 2000](https://curia.europa.eu/juris/document/document.jsf?text=&docid=45692&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10763343), Unilever, C-443/98, EU:C:2000:496, paragraphs 28 and 29

Where Member States have a wide margin of discretion in transposing an EU directive, national measures adopted to that effect cannot be regarded as national provisions ‘comply[ing] with a binding Community act’.

“28. Second, the Italian Government submits that the contested Law was exempted from the requirement of notification under Article 10 of Directive 83/189 since it was adopted in accordance with Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1). Article 3(1)(7) of that directive requires that the place of origin or provenance of the product be indicated on the label in cases where omission of such information would be liable to mislead consumers as to the real origin or provenance of the foodstuff.

29. That contention cannot be accepted. As the Commission has pointed out, that provision of Directive 79/112, drafted in general terms, leaves the Member States sufficient room for manoeuvre for it to be concluded that national rules on labelling relating to origin such as those adopted in the contested Law cannot be regarded as national provisions conforming to a binding Community act within the meaning of the first indent of Article 10(1) of Directive 83/189.”

[Judgment of 22 January 2000](https://curia.europa.eu/juris/document/document.jsf?text=&docid=47026&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8919687), Canal Satélite Digital, C-390/99, EU:C:2002:34, paragraph 48

National provisions transposing binding Community measures containing “technical specifications” are not subject to the notification obligation, provided that they are strictly limited to such transposition.

“48. As regards the second part of the third question, which relates to the obligation under Article 8 of Directive 83/189 to communicate any draft technical regulation to the Commission, Article 10 of that directive shows that Articles 8 and 9 do not apply to laws, regulations or administrative provisions of Member States, or to voluntary agreements entered into by them, whereby Member States comply with binding Community measures which result in the adoption of technical specifications. So, to the extent that the national legislation at issue in the main proceedings transposes Directive 95/47, and to that extent only, there will be no duty of notification under Directive 83/189.”

[Judgment of 8 September 2005](https://curia.europa.eu/juris/document/document.jsf?text=&docid=59577&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=12994086), Commission v Portugal, C-500/03, EU:C:2005:515, paragraphs 34 and 35

National provisions determining the characteristics of recreational craft cannot benefit from the exemption from notification reserved for transpositions, where the directive relied upon leaves Member States free to define the conditions they consider necessary to protect the environment, the configuration, and the safety of waterways.

(The judgement being solely available in French and Portuguese, the following text is a translation.)

“34. […]Member States have the right, provided for in Article 2(2) of Directive 94/25, to define, at national level, the conditions which they consider necessary with regard to navigation in certain waters in order to protect the environment and the fabric of waterways and to ensure safety on those waters. However, those provisions of national legislation cannot under any circumstances be regarded as having been adopted for the purposes of compliance with a binding Community act.

35. It follows that the Regulation on navigation in lagoons, which introduces technical limits for recreational craft pursuant to Article 2(2) of Directive 94/25, does not fall within the scope of the first indent of Article 10(1) of Directive 98/34.”

## Use of a Safeguard Clause

“Articles 5 and 6 [on the notification obligation and the standstill period] shall not apply to those laws, regulations and administrative provisions of the Member States or voluntary agreements by means of which Member States:

[…]

(c) make use of safeguard clauses provided for in binding Union acts;”

(Article 7(1)(c) of Directive (EU) 2015/1535)

“The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Union control procedure.”

(Article 114(10) of the Treaty on the Functioning of the European Union)

[Judgment of 8 September 2005](https://curia.europa.eu/juris/document/document.jsf?text=&docid=59577&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=12994086), Commission v Portugal, C-500/03, EU:C:2005:515, paragraphs 34 and 35

National provisions creating permanent measures cannot benefit from the exemption from notification reserved for safeguard clauses because, by definition, the latter only include provisional measures.

(As the judgement is solely available in French and Portuguese, the following text is a translation.)

“39. Since the present action for failure to fulfil obligations is limited to an application for a declaration of failure to comply with the formal prior notification procedure, it is sufficient to point out, without its being necessary to reply to the other arguments of the parties, that the Court has already held that Article 8(1) of Directive 98/34 requires the Member States to communicate immediately to the Commission any draft technical regulation (see, in particular, to that effect, as regards provisions similar to those of that directive, judgments of 2 August 1993 in Case C-139/92 Commission v Italy [4707] ECR I-3, paragraph 31, and of 11 January 1996 in Case C-273/94 Commission v Netherlands [15] ECR I-, paragraph).

40. Since the relevant provisions of Decree No 783/98 constitute technical regulations within the meaning of Directive 98/34, as stated in paragraph 31 of this judgment, the Portuguese Republic was required to notify them in draft form pursuant to Article 8(1) of Directive 98/34 (see, inter alia, to that effect, as regards provisions similar to those of Directive 98/34, judgments of 7 May 1998 in Case C-145/97CommissionvBelgium [2643] ECR I-13, paragraph 43, and of 21 April 2005 in Case C-267/03Lindberg ECR I-, paragraph).”

[***Judgment of 8 October 2020***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=232150&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=12985433)***, Union des industries de la protection des plantes, C-514/19, EU:C:2020:803, paragraphs 46 and 47***

***(referring to the*** [***Opinion of the Advocate General Kokott***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=226981&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5973987)***, EU:C:2020:422, paragraph 58)***

A clause corresponding to the definition in Article 114 of the Treaty on the Functioning of the European Union is a safeguard clause, even if it is not so named by the act providing for it. It therefore benefits from an exemption from the notification obligation.

(Judgement of the Court) *“46 […] Article 71(1) of that regulation must be treated as a safeguard clause, as the Advocate General stated in point 58 of her Opinion.*

*47. The difference between the procedures laid down in Article 5 of that directive and Article 71 of that regulation respectively is therefore confirmed by Article 7(1)(c) of that directive, which provides that Articles 5 and 6 of that directive are not to apply to the provisions of the Member States by which the latter make use of safeguard clauses provided for in binding Union acts.”*

(opinion of Advocate General Kokott)*“58.      Although, unlike a number of comparable provisions, Article 71 of the Plant Protection Regulation is not entitled ‘safeguard clause’, its content corresponds to the definition of safeguard clauses in Article 114(10) TFEU. It can therefore also be regarded as a safeguard clause for the purposes of Article 7(1)(c) of the Notification Directive.”*

[***Judgment of 9 March 2023***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=271072&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=14061944)***, Vapo Atlantic, C‑604/21, EU:C:2023:175, paragraphs 55 to 57***

An exception to the notification requirement based on a 'safeguard clause' is only possible if the harmonisation act invoked explicitly contains a clause corresponding to the definition set out in Article 114 of the Treaty on the Functioning of the European Union.

“55. It should be noted that the first two subparagraphs of Article 4(1) of Directive 2009/30 merely lay down a period within which the Member States are to transpose the directive, that is to say, by 31 December 2010 at the latest, by means of laws, regulations or administrative provisions necessary for that purpose, while requesting them to communicate immediately to the Commission the text of those provisions. The third subparagraph of that provision provides that, when Member States adopt those provisions, they are to refer to Directive 2009/30.

56. There is nothing, however, in the wording of Article 4(1) of Directive 2009/30 to suggest that the EU legislature intended to introduce in that directive a safeguard clause, within the meaning of Article 114(10) TFEU, which the Member States could have used.

57. In that regard, the latter provision provides that harmonisation measures are, in appropriate cases, to include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 36 TFEU, provisional measures subject to an EU control procedure. It follows that such a safeguard clause must be expressly provided for in the harmonising measure. Article 4(1) of Directive 2009/30 does not have those characteristics and cannot, therefore, constitute such a safeguard clause.”

## Amendment in Accordance with a Commission Request

“Articles 5 and 6 [on the notification obligation and the standstill period] shall not apply to those laws, regulations and administrative provisions of the Member States or voluntary agreements by means of which Member States:

[…]

(f) restrict themselves to amending a technical regulation within the meaning of point (f) of Article 1(1), in accordance with a Commission request, with a view to removing a barrier to trade or, in the case of rules on services, to the free movement of services or the freedom of establishment of service operators.”

(Article 7(1)(f) of Directive (EU) 2015/1535)

[Judgment of 31 January 2013](https://curia.europa.eu/juris/document/document.jsf?text=&docid=133244&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10904675), Belgische Petroleum Unie and Others, C-26/11, EU:C:2013:44, paragraphs 56 and 57

The directive does not require the notification of draft national legislation where, after initial notification, the draft has been amended to take account of the Commission’s comments and the amended version has subsequently been communicated to the Commission.

“56. […] the Kingdom of Belgium, in these circumstances, restricted itself to amending the provisions of draft legislation in accordance with a request from the Commission to remove a barrier to trade, and so, by virtue of Article 10(1), final indent, of Directive 98/34, the obligation to notify the Commission under the first subparagraph of Article 8(1) of that directive does not apply to the draft Law on the blending obligation.

57. In those circumstances, the answer to the second question is that Article 8 of Directive 98/34, read in conjunction with Article 10(1), final indent, of that directive, must be interpreted as not requiring notification of draft national legislation which obliges petroleum companies placing petrol and/or diesel fuels on the market also to place on the market, in the same calendar year, certain percentages of biofuels, where, after having been notified pursuant to the first subparagraph of Article 8(1), the draft was amended to take account of the Commission’s observations on it, and the amended draft was then communicated to the Commission.”

## Circumstances That Do Not Constitute Exceptions

[Judgment of 11 January 1996](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=100042&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10811412), Commission v Netherlands, C-273/94, EU:C:1996:4, paragraphs 14 and 15

The obligation to notify does not depend on the presumed effect of the rule on trade between Member States.

“14. That assessment cannot be undermined by the Netherlands Government's argument that the effect of the disputed order is to encourage the marketing of margarine and that it therefore complies with the directive's main objective of eliminating barriers to intra-Community trade in goods.

15. Member States are required to communicate to the Commission any draft technical regulation in accordance with Article 8 of the directive. Such an obligation cannot be subject to the unilateral assessment by the Member State which drafted the regulation of the effects which it may have on trade between Member States.”

[Judgment of 16 June 1998](https://curia.europa.eu/juris/document/document.jsf?text=&docid=43935&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10779034), Lemmens, C-226/97, EU:C:1998:296, paragraphs 18 to 20

The Directive applies to “technical regulations” irrespective of the reason for their adoption. The fact that a measure covers criminal law does not exempt it from the notification obligation. Thus, the national provisions governing the respiratory analysis apparatus used by the police to measure alcohol constitute a technical regulation that should have been notified to the Commission prior to its adoption.

*“18. The French Government, for its part, contends that the Directive does not apply to products which, like those in this case, are intended to be used in connection with the exercise of public authority and a fortiori in criminal proceedings instituted by the Member States.*

*19. Those arguments cannot be accepted. Although in principle criminal legislation and the rules of criminal procedure are matters for which the Member States are responsible, it does not follow that this branch of the law cannot be affected by Community law (see, to that effect, Case 186/87 Cowan [1989] ECR 195, paragraph19, and Case 203/80 Casati [1981] ECR 2595, paragraph 27).*

*20. In this case, there is nothing in the Directive to suggest that technical regulations within the meaning of Article 1 thereof are excluded from the notification requirement because they fall within the scope of criminal law, or that the scope of the Directive is limited to products intended to be used otherwise than in connection with the exercise of public authority. As the Court has already stated in Case C-13/96 Bic Benelux [1997] ECR I-1753, paragraph 19, a directive applies to technical regulations irrespective of the grounds on which they were adopted.”*

[Judgment of 21 April 2005](https://curia.europa.eu/juris/document/document.jsf?text=&docid=58142&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8886921), Lindberg, C-267/03, EU:C:2005:246, paragraphs 86, 91 and 92

The value of the product to which a rule relates, the size of its market and the effect of that rule on intra-Community trade are not relevant criteria for determining whether a ‘technical regulation’ must be notified.

“86. By its fourth question, the referring court seeks the views of the Court on the significance for the purpose of the obligation to notify laid down by Directive 83/189 of the following factors:

–      the replacement of a licence requirement by a prohibition in national law,

–      the greater or lesser value of the product/service,

–      the size of the market for the product/service or

–      the effect of a new national provision on use, which could be either a total prohibition on use or a prohibition or restriction within one of a number of possible areas of use?”

“91. As regards the second and third factors mentioned in the fourth question referred for a preliminary ruling, it must be observed that, as pointed out in paragraph 50 of this judgment, Directive 83/189 lays down a preventive monitoring procedure for ascertaining whether a national standard comprising a technical regulation falls within the Treaty provisions on free movement of goods and, if so, for examining whether such a standard is compatible with those provisions.

92. On that point, it was held in paragraph 51 of this judgment that the possible effects of the technical regulation on intra-Community trade do not constitute a criterion for the definition of the scope of Directive 83/189, as regards, in particular, the obligation to notify for which it provides."

# Inapplicability

## Inapplicability in the Event of Non-Notification

[Judgment of 30 April 1996](https://curia.europa.eu/juris/showPdf.jsf?text=&docid=99809&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10904675), CIA Security International SA, C-194/94, EU:C:1996:172, paragraphs 48 and 55

Breach of the notification obligation renders the ‘technical regulations’ concerned inapplicable, so that they cannot be enforced against individuals. Individuals may rely on Articles 8 and 9 of Directive 83/189 before a national court which must refuse to apply a national ‘technical regulation’ which has not been notified in accordance with that directive.

“48. For such a consequence to arise from a breach of the obligations laid down by Directive 83/189, an express provision to this effect is not required. As pointed out above, it is undisputed that the aim of the directive is to protect freedom of movement for goods by means of preventive control and that the obligation to notify is essential for achieving such Community control. The effectiveness of Community control will be that much greater if the directive is interpreted as meaning that breach of the obligation to notify constitutes a substantial procedural defect such as to render the technical regulations in question inapplicable to individuals.”

“55. The answer to the fifth and sixth questions must therefore be that Articles 8 and 9 of Directive 83/189 are to be interpreted as meaning that individuals may rely on them before the national court which must decline to apply a national technical regulation which has not been notified in accordance with the directive.”

[Judgment of 16 June 1998](https://curia.europa.eu/juris/document/document.jsf?text=&docid=43935&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10779034), Lemmens, C-226/97, EU:C:1998:296, paragraphs 34 to 37

Failure to comply with the obligation to notify a technical regulation relating to breath-analysis apparatus does not have the effect of rendering unenforceable against an individual charged with drink-driving the evidence obtained by means of breath-analysis apparatus authorised in accordance with rules which have not been notified.

“34. In criminal proceedings such as those in the main action, the regulations applied to the accused are those which, on the one hand, prohibit and penalise driving while under the influence of alcohol and, on the other, require a driver to exhale his breath into an apparatus designed to measure the alcohol content, the result of that test constituting evidence in criminal proceedings. Such regulations differ from those which, not having been notified to the Commission in accordance with the Directive, are unenforceable against individuals.

35. While failure to notify technical regulations, which constitutes a procedural defect in their adoption, renders such regulations inapplicable inasmuch as they hinder the use or marketing of a product which is not in conformity therewith, it does not have the effect of rendering unlawful any use of a product which is in conformity with regulations which have not been notified.

36. The use of the product by the public authorities, in a case such as this, is not liable to create an obstacle to trade which could have been avoided if the notification procedure had been followed.

37. The answer to the first question must therefore be that the Directive is to be interpreted as meaning that breach of the obligation imposed by Article 8 thereof to notify a technical regulation on breath-analysis apparatus does not have the effect of making it impossible for evidence obtained by means of such apparatus, authorised in accordance with regulations which have not been notified, to be relied upon against an individual charged with driving while under the influence of alcohol.”

[Judgment of 6 June 2002](https://curia.europa.eu/juris/document/document.jsf?text=&docid=47386&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8919687), Sapod Audic, C-159/00, EU:C:2002:343, paragraphs 52 and 53

It is for the national court to refuse to apply provisions that are inapplicable due to a failure to notify. The consequences of such inapplicability are governed by national law, provided that it is not less favourable than for similar domestic actions and does not render impossible the exercise of EU rights.

“52. It should, however, be observed that the question of the conclusions to be drawn in the main proceedings from the inapplicability of the second paragraph of Article 4 of Decree No 92-377 as regards the severity of the sanction under the applicable national law, such as nullity or unenforceability of the contract between Sapod and Eco-Emballages, is a question governed by national law, in particular as regards the rules and principles of contract law which limit or adjust that sanction in order to render its severity proportionate to the particular defect found. However, those rules and principles may not be less favourable than those governing similar domestic actions (principle of equivalence) and may not be framed in such a way as to render impossible in practice the exercise of rights conferred by Community law (principle of effectiveness) (see, inter alia, Case 33/76 Rewe v Landwirtschaftskammer für das Saarland [1976] ECR 1989, paragraph 5, and Joined Cases C-52/99 and C-53/99 Camorotto and Vignone [2001] ECR I-1395, paragraph 21).

53. The answer to the second part of the second question, in so far as it concerns Directive 83/189, must therefore be that, in the event that a national provision such as the second paragraph of Article 4 of Decree No 92-377 were to be interpreted as requiring a mark or label to be applied, an individual may invoke the failure to make notification of that national provision in accordance with Article 8 of that directive. It is then for the national court to refuse to apply that provision, the question of the conclusions to bedrawn from the inapplicability of that national provision as regards the severity of the sanction under the applicable national law, such as nullity or unenforceability of a contract, being a question governed by national law. That conclusion is, however, subject to the condition that the applicable rules of national law are not less favourable than those governing similar domestic actions and are not framed in such a way as to render impossible in practice the exercise of rights conferred by Community law.”

[Judgment of 8 September 2005](https://curia.europa.eu/juris/document/document.jsf?docid=59571&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=8886921), Lidl Italia, C-303/04, EU:C:2005:528, paragraphs 22 and 23

Breach of the obligation to notify constitutes a substantial procedural defect such as to render the ‘technical regulations’ in question inapplicable and therefore unenforceable against individuals.

“22. […] it is settled case-law that Directive 98/34 is designed to protect, by means of preventive monitoring, the free movement of goods, which is one of the foundations of the Community and that this control serves a useful purpose in that technical regulations falling within the scope of that directive may constitute obstacles to trade in goods between Member States, such obstacles being permissible only if they are necessary to satisfy compelling requirements relating to the public interest (see, to that effect, Case C-194/94 CIA Security International [1996] ECR I-2201, paragraph 40, and Case C-226/97 Lemmens [1998] ECR I-3711, paragraph 32).

23. As the obligation to notify referred to, inter alia, in the first subparagraph of Article 8(1) of Directive 98/34 is essential for achieving that Community control, the effectiveness of such control will be that much greater if that directive is interpreted as meaning that failure to observe the obligation to notify constitutes a substantial procedural defect such as to render the technical regulations in question inapplicable and therefore unenforceable against individuals (CIA Security International, paragraphs 44, 48 and 54, and Lemmens, paragraph 33).”

[Judgment of 31 January 2013](https://curia.europa.eu/juris/document/document.jsf?text=&docid=133244&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10904675), Belgische Petroleum Unie and Others, C‑26/11, EU:C:2013:44, paragraph 50

Breach of the obligation to notify constitutes a substantial procedural defect such as to render the ‘technical regulations’ in question inapplicable and therefore unenforceable against individuals.

“50.  As the obligation to notify referred to in the first subparagraph of Article 8(1) of Directive 98/34 is essential for achieving that control, the effectiveness of such control will be that much greater if that directive is interpreted as meaning that failure to observe the obligation to notify constitutes a substantive procedural defect such as to render the technical regulations in question inapplicable and therefore unenforceable against individuals (see Lidl Italia, paragraph 23 and Sandström, paragraph 43).”

[Judgment of 2 February 2016](https://curia.europa.eu/juris/document/document.jsf?text=&docid=174105&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10904675), Ince, C-336/14, EU:C:2016:72, paragraphs 67 and 68

Failure to notify a ‘technical regulation’ renders it inapplicable and unenforceable against individuals. The latter may invoke Article 8 of Directive 98/34 before national courts, which are therefore obliged to refuse to apply the non-notified rule.

“67. As a preliminary point, it must be borne in mind that a breach of the notification obligation laid down in Article 8(1) of Directive 98/34 constitutes a procedural defect in the adoption of the technical regulations concerned, and renders those technical regulations inapplicable and therefore unenforceable against individuals (see, inter alia, judgment in Ivansson and Others, C‑307/13, EU:C:2014:2058, paragraph 48 and the case-law cited).

68. In that regard, it should be emphasised that, as the Advocate General noted in point 60 of his Opinion, even though Article 8(1) of that directive requires the entire draft of a law containing technical regulations to be communicated to the Commission (see, to that effect, judgment in Commission v Italy, C‑279/94, EU:C:1997:396, paragraphs 40 and 41), the non-applicability which results from the breach of that obligation extends not to all of the provisions of such a law, but only to the technical regulations contained therein.”

[Order of 21 April 2016](https://curia.europa.eu/juris/document/document.jsf?text=&docid=177362&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=12982840), Beca Engineering, C-285/15, EU:C:2016:295, paragraph 37

Failure to notify a ‘technical regulation’ renders it inapplicable and unenforceable against individuals, who may invoke Article 8 of Directive 98/34 before national courts, which are consequently obliged to refuse its application.

(As the order is solely available in French and Italian, the following text is a translation.)

“37. It is settled case-law that failure to comply with the obligation of immediate notification of technical regulations by the Member States to the Commission, laid down in Article 8 of Directive 98/34, renders the technical regulations concerned inapplicable, so that they cannot be enforced against individuals and the latter may thus rely on Article 8 of Directive 98/34 before the national court, which must refuse to apply a national technical regulation which has not been notified in accordance with that directive (see, to that effect, judgments of 30 April 1996 inCIA Security International‑, 194/94, EU:C:1996:172, paragraphs 44 and 54; of 26 September 2000, Unilever,‑443/98, EU:C:2000:496, paragraph 49; and of 16 July 2015, UNIC and Uni.co.pel, 95/14‑, EU:C:2015:492, paragraph 29).”

[Judgment of 1 February 2017](https://curia.europa.eu/juris/document/document.jsf?text=&docid=187343&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9777324), Município de Palmela, C‑144/16, EU:C:2017:76, paragraphs 36 and 37

The inapplicability of non-notified technical regulations extends only to the provisions qualifying as such and not to the entire text in which they are laid down.

“36. Moreover, the penalty for failure to comply with such a notification obligation is that technical rules which have not been notified will be inapplicable (see, to that effect, with regard to Directive 83/189, judgment of 30 April 1996, CIA Security International, C‑194/94, EU:C:1996:172, paragraph 54, and, with regard to Directive 98/34, judgment of 4 February 2016, Ince, C‑336/14, EU:C:2016:72, paragraph 67 and the case-law cited).

37. As regards the extent of such a penalty, even though Article 8(1) of Directive 83/189 and Article 8(1) of Directive 98/34 require the entire draft of a law containing technical regulations to be communicated to the Commission, the non-applicability which results from the breach of that obligation extends, not to all of the provisions of such a law, but only to the technical regulations contained therein (see, to that effect, judgment of 4 February 2016, Ince, C‑336/14, EU:C:2016:72, paragraph 68).”

[Judgment of 12 September 2019](https://curia.europa.eu/juris/document/document.jsf?text=&docid=217670&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10880021), VG Media, C-299/17, EU:C:2019:716, paragraph 39

The inapplicability of a non-notified ‘technical regulation’ may be relied on in proceedings between individuals.

“39. In so far as a rule, such as that at issue in the main proceedings, is specifically aimed at information society services, the draft technical regulation must be subject to prior notification to the Commission pursuant to Article 8(1) of Directive 98/34. Failing that, according to settled case-law, the inapplicability of a technical regulation that has not been notified in accordance with that provision may be relied upon in proceedings between individuals (judgment of 27 October 2016, James Elliott Construction, C‑613/14, EU:C:2016:821, paragraph 64 and the case-law cited).”

## Inapplicability in the Event of Adoption During the Standstill Period

[Judgment of 26 September 2000](https://curia.europa.eu/juris/document/document.jsf?text=&docid=45692&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10763343), Unilever, C-443/98, EU:C:2000:496, paragraphs 44 and 49

The breach of the obligation to postpone the adoption of a ‘technical regulation’ constitutes a substantial procedural defect, and the resulting inapplicability may be raised in civil contract law litigation proceedings.

“44. Although, in paragraph 48 of CIA Security, after reiterating that the aim of Directive 83/189 was to protect freedom of movement for goods by means of preventive control and that the obligation to notify was essential for achieving such Community control, the Court found that the effectiveness of such control would be that much greater if the directive were interpreted as meaning that breach of the obligation to notify constituted a substantial procedural defect such as to render the technical regulations in question inapplicable to individuals, it follows from the considerations set out in paragraphs 40 to 43 of this judgment that breach of the obligations of postponement of adoption set out in Article 9 of Directive 83/189 also constitutes a substantial procedural defect such as to render technical regulations inapplicable.”

“49. Thus, it follows from the case-law of the Court that the inapplicability of a technical regulation which has not been notified in accordance with Article 8 of Directive 83/189 can be invoked in proceedings between individuals for the reasons set out in paragraphs 40 to 43 of this judgment. The same applies to failure to comply with the obligations laid down by Article 9 of that directive and there is no need, in that regard, to treat disputes between individuals in matters of unfair competition differently, as in CIA Security International, from disputes between individuals concerning rights and obligations of a contractual nature, as in the main proceedings.”

[Judgment of 16 July 2015](https://curia.europa.eu/juris/document/document.jsf?text=&docid=165924&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=12979947), UNIC and Uni.co.pel, C-95/14, EU:C:2015:492, paragraphs 29 and 30

A ‘technical regulation’ cannot be applied if it has not been notified or if, although notified, it has been adopted and implemented before the end of the standstill period. Failure to comply with that standstill period constitutes a substantive procedural defect rendering the ‘technical regulation’ in question inapplicable and unenforceable against individuals.

“29. In that respect, it must be noted that a technical regulation cannot be applied if it has not been notified in accordance with Article 8(1) of Directive 98/34, or if, though notified, it has been adopted and implemented before the end of the three month standstill period required under Article 9(1) of that directive (see judgments in CIA Security International, C‑194/94, EU:C:1996:172, paragraphs 41, 44 and 54, and Unilever, C‑443/98, EU:C:2000:496, paragraph 49).

30. Consequently, in the main proceedings, it is for the referring court to verify whether Law No 8/2013 entered into force without respecting the standstill period required under Article 9 of Directive 98/34. If so, the failure to respect that standstill period is a material procedural defect rendering the technical regulation at issue inapplicable. As the Advocate General pointed out in points 44 to 47 of her Opinion, Article 3(2) of Law No 8/2103 would, in that case, be unenforceable against individuals.”

[***Judgment of 21 December 2023***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=280771&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=14061944)***, Papier Mettler Italia, C-86/22, EU:C:2023:1023, paragraphs 48 and 51***

The adoption of a draft “technical regulation” six days after its notification is contrary to the Directive.

Clauses making the entry into force of legislation subject to the absence of a reaction from the Commission on that legislation (“suspensive clauses”) are contrary to the Directive because the adoption of such legislation does not allow the views of other Member States to be taken into account and it infringes the principle of legal certainty.

“48. Second, the adoption of the decree at issue in the main proceedings within six days of its notification to the Commission under Article 8(1) of that directive also infringes the obligation laid down in Article 9(1) thereof, under which Member States are to postpone the adoption of a ‘draft technical regulation’ for three months from the date of receipt by the Commission of the communication referred to in Article 8(1) of the directive.”

“51. Moreover, that government maintains that the entry into force of the decree at issue in the main proceedings was made conditional, under Article 6 therefore, on the ‘successful outcome’ of the notification procedure initiated on 12 March 2013 on the basis of Article 8(1) of Directive 98/34. However, that procedure did not have such an outcome because the Commission did not issue an opinion regarding that decree. That argument must rejected given that, first, the adoption and publication of that decree are capable per se of having certain effects on the free movement of the goods concerned; second, they did not make it possible to take account of the observations and detailed opinions issued by the Kingdom of the Netherlands, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland; third, as observed by the Advocate General in point 52 of his Opinion, they constitute a legislative technique which is incompatible with the principle of legal certainty.”

## Clarification as to the Effect of Inapplicability

[Judgment of 11 June 2015](https://curia.europa.eu/juris/document/document.jsf?text=C-98%252F14&docid=164955&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=9889670#ctx1), Berlington Hungary and Others, C-98/14, EU:C:2015:386, paragraphs 108 and 109

Notification and standstill obligations are not intended to confer rights on individuals. Consequently, their breach by a Member State does not, under EU law, give individuals a right to seek compensation from that Member State for any resulting damage.

“108. In that regard, it is apparent from the case-law that, although Directive 98/34 is intended to ensure the free movement of goods by organising a preventive control the effectiveness of which requires the disapplication, in the context of a dispute between individuals, of a national measure adopted in breach of Articles 8 and 9 thereof, that directive does not in any way define the substantive scope of the legal rule on the basis of which the national court must decide the case before it. Thus, that directive creates neither rights nor obligations for individuals (judgment in Unilever, C‑443/98, EU:C:2000:496, paragraph 51).

109. In those circumstances, it must be held that the first of the conditions listed in paragraph 104 is not fulfilled, so that individuals cannot rely on the infringement of Articles 8 and 9 of that directive to establish liability on the part of the Member State concerned on the basis of EU law.”

## Infringement Procedure

[Judgment of 4 June 2009](https://curia.europa.eu/juris/document/document.jsf?text=&docid=74815&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=12991943), Commission v Greece, C-109/08, EU:C:2009:346, paragraphs 14 to 17

A judgment of the Court finding a failure to fulfil the obligation to notify must be complied with immediately to ensure the uniform application of EU law. The question of whether there has been such a failure under Article 228 EC is assessed at the end of the period laid down in the reasoned opinion. In the present case, since Greece took no measures before the expiry of the prescribed period, it has failed to fulfil its obligations under Article 228(1) EC.

*“**14. Although Article 228 EC does not specify the period within which a judgment of the Court establishing that a Member State has failed to fulfil its obligations must be complied with, it follows from settled case-law that the importance of immediate and uniform application of Community law means that the process of compliance must be initiated at once and completed as soon as possible (see, inter alia, Case C-121/07 Commission v France [2008] ECR I‑0000, paragraph 21 and the case‑law cited).*

*15. In addition, the reference date for assessing whether there has been a failure to fulfil obligations under Article 228 EC is the date of expiry of the period prescribed in the reasoned opinion issued under that provision (see, inter alia, Case C‑503/04 Commission v Germany [2007] ECR I‑6153, paragraph 19 and the case‑law cited).*

*16. In the present case, it is quite clear that, by the date on which the two-month period laid down in the reasoned opinion of 29 June 2007 expired, the Hellenic Republic had not taken any of the measures necessary for compliance with the judgment in Case C‑65/05 Commission v Greece, since the draft of a first measure designed to comply with that judgment was not notified to the Commission until 7 May 2008.*

*17. In those circumstances, it must be held that, as it itself acknowledges, the Hellenic Republic has failed to fulfil its obligations under Article 228(1) EC.”*

1. *The comparison of Directive 2015/1535 and Directive 83/189/EEC is based on the original unamended acts, whereas the comparison of Directive 98/34/EC is based on the version amended by Directive 98/48/EC of 20 July 1998.* [↑](#footnote-ref-1)
2. *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)* [↑](#footnote-ref-2)
3. *Directive 98/34/EC of 22 June 1998 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Directive 98/48/EC of 20 July 1998 (including rules on services)* [↑](#footnote-ref-3)
4. *Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations* [↑](#footnote-ref-4)