The notification procedure laid down by the Single Market Transparency Directive (SMTD) (EU) 2015/1535
The Internal Market is a space without frontier where people, goods, services and capital can circulate freely.
**Introduction**

The free movement of goods and services (within the MS) is based on various rules:

- **The Treaty on the functioning of the EU provisions aiming at banning any national measure which could affect intra EU trade** (Art 34 to 36, 49 and 56 Treaty on the Functioning of the European Union, TFEU);
- **The secondary European Union law**, when the Treaty is not ‘sufficient’ (Regulations, Directives and Decisions);
- **Rules aiming at preventing the creation of new obstacles to trade** (Communications etc.).
Introduction

Improving day-to-day functioning of the Single Market by building on a new compliance culture within the regulatory cycle

Ex ante: prevention of obstacles to the smooth functioning of the internal market before they appear (ensuring compliance of draft national legislation with TFEU and EU secondary legislation)

Ex post: market surveillance, infringement proceedings (checking compliance of national legislation already in force with TFEU and EU secondary legislation)
WHAT IS THE SMTD?


The Commission receives national legislation at a draft stage sent by the MS through the databases "TRIS" (Technical Regulations Information System).
Video

https://www.youtube.com/watch?v=ziuAkIsNKdI
Objectives of the Directive

Smooth functioning of the Internal Market

**Transparency**
All participants in the notification procedure are informed

**Prevention**
Avoiding barriers to trade before they even appear

**Subsidiarity**
Detecting those cases where EU intervention appears most appropriate

+ Better Regulation
+ Benchmarking
+ Instrument for industrial policy
What needs to be notified

- **Technical regulations:**
  - Technical specifications (products)
  - Other requirements (products)
  - Legislation 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
  - Rules on information society services

- **De facto technical regulations:**
  - Referring to rules conferring a presumption of conformity
  - Fiscal or financial measures affecting the consumption of products or services
  - Voluntary agreements

- **Exceptions:**
  - Article 7 of the Directive (general exceptions)
  - Radio and TV services (covered by the Audiovisual Media Services Directive)
  - Telecommunication services (if EU rules)
  - Financial services (if EU rules) and regulated markets
Standards vs Technical regulations

- Standards are voluntary by nature, unlike technical regulations

- If standards are mandatory (this should be avoided!): standards become technical regulations and shall be notified under Directive (EU) 2015/1535
Actors of the procedure

- **Notifying Member State**
- **COM and other Member States:** assessment of the notified draft and reaction
- **Stakeholders:** can send their position to COM and other Member States
Reactions from Commission and Member States

- Comments
  - Total standstill period 3 months
  - Taking into account

- Detailed opinion
  - Total standstill period 6 months
    - 4 months for V.A. and IS services
    - Taking into account + Obligation to respond

- Blocking
  - Total standstill period 12 months
  - Extension to 18 month poss.

Communication of final text
Legal consequences of non-notification

Principle of unenforceability

CIA Security (C-194/94)
Non-notified technical regulations

Unilever (C-443/98)
Standstill period not respected

ECJ confirmed this principle through its well established case-law